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STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

1993

Constitution of 1879 as Amended

Measures Submitted to Vote of Electors,
Special Statewide Election, November 2, 1993

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

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she has submitted to any reasonable examinations as the director may require for the purpose of determining his or her disability.

(d) Except as provided in Section 2708.1, he or she has filed a certificate as required by Section 2708 or 2709.

SEC. 10. Section 2627.3 of the Unemployment Insurance Code is amended to read:

2627.3. Except as provided in Sections 708 and 708.5, 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. 11. Section 2627.5 of the Unemployment Insurance Code is amended to read:

2627.5. (a) Except as provided in Sections 708 and 708.5, if an individual, pursuant to orders of his or her physician, is confined in a hospital for at least one day, any unexpired full days of the waiting period required by subdivision (b) of Section 2627 shall be waived. This subdivision shall apply to an individual's confinement in a nursing home as defined by subparagraph (B) of paragraph (4) of subdivision (b), but only if immediately prior to that confinement he or she was confined in a hospital (other than a nursing home) for not less than 15 consecutive days pursuant to the orders of his or her physician or confined to the nursing home by order of a physician, where the nursing home is used where an individual's disability requires immediate hospitalization and a bed is unavailable in a hospital (other than a nursing home). The department may use any means it deems reasonable to obtain or verify the information required by this paragraph.

(b) As used in this section:

(1) "Confined" means a registered bed patient.

(2) "Day" means any 24-hour period of time during which the claimant is in a hospital, or any 24-hour period or any part thereof for which a hospital charges a patient a full day's rate.

(3) "Full day's rate" means the regular and customary daily charge for board and room by the hospital.

(4) "Hospital" means:

(A) Within the State of California, any institution which is any of the following:

(i) Licensed by the State Department of Health Services as a general acute care hospital, chemical dependency recovery hospital or specialized hospital.

(ii) Operated as a hospital but exempt from licensing by the State Department of Health Services under subdivision (a) of Section 1270 of the Health and Safety Code.

(iii) Operated as a mental hospital licensed by the State Department of Health Services which is primarily intended for, staffed and equipped to provide for the reception, care, diagnosis and treatment of acute mental and nervous diseases.

(B) Within the states of the United States, any institution operated as a "nursing home" which is any of the following:

(i) An extended care facility as defined in subsection (j) of Section 1395x of Title 42 of the United States Code.

(ii) Conducted by and for the adherents of any well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend upon prayer or spiritual means for healing in the practice of the religion of the church or denomination.

(C) Outside the State of California, any institution in other states or foreign countries, or in the territories or possessions of any country which is any of the following:

(i) Licensed as a hospital pursuant to the statutes or laws of that state or foreign country, or a territory or possession of a country.

(ii) Operated pursuant to law with organized facilities for diagnosis and surgery, and 24-hour nursing service for the care and treatment of sick and injured persons, if the state or foreign country, or the territory or possession of the country does not have statutes or laws concerning the requirements for licensing hospitals.

(D) Any institution which is operated as a hospital by the United States government or a duly authorized agency thereof.

(5) "Orders of his or her physician" means court order or physician's or health officer's certificate or order of a physician as defined in Section 3209.3 of the Labor Code or order of a practitioner duly authorized by any bona fide church, sect, denomination or organization whose principles or teachings call for dependence for healing entirely upon prayer or spiritual means or order of a duly authorized medical officer of any facility of the United States government or order of any member of any one of the professions enumerated in Section 3209.3 of the Labor Code duly licensed by and practicing within the scope of the license in any state outside this state or in any foreign country, or in a territory or possession of any country.

(c) The amendments made to this section by the act adding this subdivision shall apply to periods of disability commencing on or after January 1, 1992.

SEC. 12. Section 2627.7 of the Unemployment Insurance Code, as amended by Section 3.5 of Chapter 1134 of the Statutes of 1991, is amended to read:

2627.7. (a) Except as provided in Sections 708 and 708.5, if an individual, pursuant to orders of his or her physician, receives treatment in a hospital surgical unit or a surgical clinic which requires a stay of less than 24 hours, or receives treatment in an institution that operates under the auspices of a postsurgical recovery care pilot designation pursuant to Section 1250.9 of the Health and Safety Code, any unexpired full days of the waiting period required by subdivision (b) of Section 2627 shall be waived, provided the individual is disabled for a period of eight days or more during the disability benefit period as a result of the treatment. The department may use any means it deems reasonable to obtain or verify the information required by this section.

(b) As used in this section:

(1) "Hospital" means:

(A) Within the State of California, any institution which is licensed as a general hospital by the State Department of Health Services under Section 1253 of the Health and Safety Code or licensed by the State Department of Health Services as a general acute care hospital, as defined in Section 1250 of the Health and Safety Code.

(B) Outside the State of California, any institution in another state or foreign country, or in a territory or possession of any country, which is either:

(i) Licensed as a hospital pursuant to the statutes or laws of that state, foreign country, or territory or possession of any country.

(ii) Operated pursuant to law with organized facilities for the care and treatment of sick and injured persons, if that state, foreign country, or territory or possession of any country does not have statutes or laws concerning requirements for licensing hospitals.

(C) Any institution operated as a hospital by the United States government or a duly authorized agency thereof.

(2) "Surgical clinic" means a clinic which provides treatment for patients who remain less than 24 hours, is not a part of and does not operate under the license of a hospital, and is any of the following:

(A) Licensed by the State Department of Health Services under paragraph (1) of subdivision (b) of Section 1204 of the Health and Safety Code, or under Section 1205 of the Health and Safety Code.

(B) Exempt from licensing under subdivision (b), (c), (d), (f), or (i) of Section 1206 of the Health and Safety Code.

(C) Certified to participate in the federal Medicare program as an "ambulatory surgical center" as defined in Section 416.2 of Title 42 of the Code of Federal Regulations.

For purposes of this section, a surgical clinic does not include the offices of private physicians as defined in Section 3209.3 of the Labor Code in individual or group practice.

(3) "Surgical unit" means a unit located in or operating under the license of a hospital and providing treatment for patients who remain less than 24 hours.

(4) "Orders of his or her physician" means a court order or physician's or health officer's certificate or order of a physician as defined in Section 3209.3 of the Labor Code or order of a duly authorized medical officer of any facility of the United States government or order of any member of any one of the professions enumerated in Section 3209.3 of the Labor Code duly licensed by and practicing within the scope of that license in any state outside this state or in any foreign country, or in a territory or possession of any country.

(c) The amendments made to this section by the act adding this subdivision shall apply to periods of disability commencing on or after January 1, 1992.

(d) This section shall remain in effect only until January 1, 1995,

and as of that date is repealed.

SEC. 13. Section 2627.7 of the Unemployment Insurance Code, as added by Section 3.7 of Chapter 1134 of the Statutes of 1991, is amended to read:

2627.7. (a) Except as provided in Sections 708 and 708.5, if an individual, pursuant to orders of his or her physician, receives treatment in a hospital surgical unit or a surgical clinic which requires a stay of less than 24 hours, any unexpired full days of the waiting period required by subdivision (b) of Section 2627 shall be waived, provided the individual is disabled for a period of eight days or more during the disability benefit period as a result of the treatment. The department may use any means it deems reasonable to obtain or verify the information required by this section.

(b) As used in this section:

(1) "Hospital" means:

(A) Within the State of California, any institution which is licensed as a general hospital by the State Department of Health Services under Section 1253 of the Health and Safety Code or licensed by the State Department of Health Services as a general acute care hospital, as defined in Section 1250 of the Health and Safety Code.

(B) Outside the State of California, any institution in another state or foreign country, or in a territory or possession of any country, which is either:

(i) Licensed as a hospital pursuant to the statutes or laws of that state, foreign country, or territory or possession of any country.

(ii) Operated pursuant to law with organized facilities for the care and treatment of sick and injured persons, if that state, foreign country, or territory or possession of any country does not have statutes or laws concerning requirements for licensing hospitals.

(C) Any institution operated as a hospital by the United States government or a duly authorized agency thereof.

(2) "Surgical clinic" means a clinic which provides treatment for patients who remain less than 24 hours, is not a part of and does not operate under the license of a hospital, and is any of the following:

(A) Licensed by the State Department of Health Services under paragraph (1) of subdivision (b) of Section 1204 of the Health and Safety Code, or under Section 1205 of the Health and Safety Code.

(B) Exempt from licensing under subdivision (b), (c), (d), (f), or (i) of Section 1206 of the Health and Safety Code.

(C) Certified to participate in the federal Medicare program as an "ambulatory surgical center" as defined in Section 416.2 of Title 42 of the Code of Federal Regulations.

For purposes of this section, a surgical clinic does not include the offices of private physicians as defined in Section 3209.3 of the Labor Code in individual or group practice.

(3) "Surgical unit" means a unit located in or operating under the license of a hospital and providing treatment for patients who remain less than 24 hours.

(4) "Orders of his or her physician" means a court order or physician's or health officer's certificate or order of a physician as defined in Section 3209.3 of the Labor Code or order of a duly authorized medical officer of any facility of the United States government or order of any member of any one of the professions enumerated in Section 3209.3 of the Labor Code duly licensed by and practicing within the scope of that license in any state outside this state or in any foreign country, or in a territory or possession of any country.

(c) This section shall apply to periods of disability commencing on or after January 1, 1995.

(d) This section shall become operative January 1, 1995.

SEC. 14. Section 2653 of the Unemployment Insurance Code is amended to read:

2653. Except as provided in Sections 708 and 708.5, the maximum amount of benefits payable to an individual during any one disability benefit period shall be 52 times his or her weekly benefit amount, but in no case shall the total amount of the benefits payable be more than the total wages paid to the individual during his or her disability base period. If the benefit is not a multiple of one dollar ($1) it shall be computed to the next higher multiple of one dollar ($1).

This section shall apply to periods of disability commencing on or after January 1, 1984.

SEC. 15. Section 13021 of the Unemployment Insurance Code is amended to read:

13021. (a) Every employer required to withhold any tax under Section 13020 shall for each calendar quarter, whether or not wages or payments are paid in the quarter, file a withholding return in a form prescribed by the department, and pay over the taxes so required to be withheld. Except as provided in subdivisions (b) and (c) of this section, the employer shall file a withholding return and remit the total amount of income taxes withheld during the calendar quarter on or before the last day of the month following the close of the calendar quarter.

(b) Every employer electing to file a single annual return under subdivision (d) of Section 1110 shall report and pay any taxes withheld under Section 13020 on an annual basis within the time specified in subdivision (d) of Section 1110.

(c) Whenever an employer is required, for federal income tax purposes, to remit the total amount of withheld federal income tax in accordance with Section 6302 of the Internal Revenue Code and regulations thereunder, and the accumulated amount of state income tax withheld is more than seventy-five dollars ($75), the employer shall remit the total amount of income tax withheld for state income tax purposes within the number of banking days as specified for withheld federal income taxes by Section 6302 of the Internal Revenue Code, and regulations thereunder.

(d) (1) Notwithstanding subdivisions (a) and (b), for calendar years beginning prior to January 1, 1995, if in the 12-month period

ending June 30 of the prior year the cumulative average payment made pursuant to this division or Section 1110, for eighth-monthly periods, as defined under Section 6302 of the Internal Revenue Code and regulations thereunder, was fifty thousand dollars ($50,000) or more, the employer shall remit the total amount of income tax withheld within three banking days following the close of each eighth-monthly period. For purposes of this subdivision, payment shall be made by electronic funds transfer in accordance with Section 13021.5, for one calendar year beginning on January 1. Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed complete on the date settlement occurs. The department shall, on or before October 31 of the prior year, notify all employers required to make payment by electronic funds transfer of these requirements.

(2) Notwithstanding subdivisions (a) and (b), for calendar years beginning on or after January 1, 1995, if in the 12-month period ending June 30 of the prior year, the cumulative average payment made pursuant to this division or Section 1110 for eighth-monthly periods, as defined under Section 6302 of the Internal Revenue Code and regulations thereunder, was twenty thousand dollars ($20,000) or more, the employer shall remit the total amount of income tax withheld within three banking days following the close of each eighth-monthly period. For purposes of this subdivision, payment shall be made by electronic funds transfer in accordance with Section 13021.5, for one calendar year beginning on January 1. Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed complete on the date settlement occurs. The department shall, on or before October 31 of the prior year, notify all employers required by this paragraph to make payments by electronic funds transfer of these requirements.

(e) Any employer not required to make payment pursuant to subdivision (c) of this section may elect to make payment by electronic funds transfer in accordance with Section 13021.5 under the following conditions:

(1) The election shall be made in a form, and shall contain information, as prescribed by the director, and shall be subject to approval by the department.

(2) If approved, the election shall be effective on the first day of the calendar quarter following approval of the election.

(3) The election shall be operative for one year from the effective date.

(4) Funds remitted by electronic funds transfer shall be deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement does not occur on or before the banking day following the date the transfer is initiated, payment is deemed complete on the date settlement occurs.

(f) Notwithstanding Section 1112, no interest or penalties shall be assessed against any employer who remits at least 95 percent of the amount required by subdivision (b) or (c), provided that the failure to remit the full amount is not willful and any remaining amount due is paid with the next payment. The director may allow any employer to submit the amounts due from multiple locations upon a showing that those submissions are necessary to comply with the provisions of subdivision (b) or (c).

(g) The department may, if it believes that action is necessary, require any employer to make the return required by this section and pay to it the tax deducted and withheld at any time, or from time to time but no less frequently than provided for in subdivision (a).

(h) Any employer required to withhold any tax and who is not required to make payment under subdivision (b) shall remit the total amount of income tax withheld during each month of each calendar quarter, on or before the 15th day of the subsequent month if the income tax withheld for any of the three months or, cumulatively for two or more months, is three hundred fifty dollars ($350) or more.

(i) For purposes of subdivisions (a), (b), and (g), payment is deemed complete when it is placed in a properly addressed envelope, bearing the correct postage, and it is deposited in the United States mail. For purposes of subdivision (c), payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed complete on the date settlement occurs.

SEC. 16. The Employment Development Department shall, not later than the last day of the first legislative session after which the cumulative balance of contributions for elective coverage minus disbursements equals or exceeds 20 percent of annual disbursements, submit to the Legislature an actuarial analysis evaluating the fiscal impact and advisability of increasing the benefit amount of disability insurance benefits payable to claimants covered under Sections 708 and 708.5 of the Unemployment Insurance Code to a total of 52 times the weekly benefit amount or 100 percent of a claimant's base period wages, whichever is less.

SEC. 17. The Employment Development Department shall, not later than July 1, 1994, complete a study and submit a report to the Legislature on the feasibility of allowing claimants covered under

Sections 708 and 708.5 of the Unemployment Insurance Code to elect coverage in excess of the maximum weekly benefit amount provided for in Section 2655 of the Unemployment Insurance Code at rates sufficient to cover the costs of that excess coverage.

CHAPTER 748

An act to amend Section 4904 of the Labor Code, and to amend Sections 984, 2626, 2627, 2629, 2655, and 2708 of, and to repeal Sections 2627.3, 2627.5, and 2627.7, of the Unemployment Insurance Code, relating to disability insurance, and making an appropriation therefor.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 4904 of the Labor Code is amended to read:

4904. If notice is given in writing to the insurer, or to the employer if uninsured, setting forth the nature and extent of any claim that is allowable as a lien, the claim is a lien against any amount thereafter payable as compensation, subject to the determination of the amount and approval of the lien by the appeals board. When the Employment Development Department has served an insurer or employer with a lien claim, the insurer or employer shall notify the Employment Development Department, in writing, as soon as possible, but in no event later than 15 working days after commencing disability indemnity payments. When a lien has been served on an insurer or an employer by the Employment Development Department, the insurer or employer shall notify the Employment Development Department, in writing, within 10 working days of filing an application for adjudication, a stipulated award, or a compromise and release with the appeals board. In determining the amount of lien to be allowed for unemployment compensation disability benefits under subdivision (f) of Section 4903, the appeals board shall allow the lien in the amount of benefits which it finds were paid for the same day or days of disability for which an award of compensation for any permanent disability indemnity resulting solely from the same injury or illness or temporary disability indemnity, or both, is made and for which the employer has not reimbursed the Employment Development Department pursuant to Section 2629.1 of the Unemployment Insurance Code. In determining the amount of lien to be allowed for unemployment compensation benefits and extended duration benefits under subdivision (g) of Section 4903, the appeals board shall allow the lien in the amount of benefits which it finds were paid for the same day or days for which an award of compensation for

temporary total disability is made. In the case of agreements for the compromise and release of a disputed claim for compensation, the applicant and defendant may propose to the appeals board, as part of the compromise and release agreement, an amount out of the settlement to be paid to any lien claimant claiming under subdivision (f) or (g) of Section 4903. If the lien claimant objects to the amount proposed for payment of its lien under a compromise and release settlement or stipulation, the appeals board shall determine the extent of the lien claimant's entitlement to reimbursement on its lien and make and file findings on all facts involved in the controversy over this issue in accordance with Section 5313. The appeals board may approve a compromise and release agreement or stipulation which proposes the disallowance of a lien, in whole or in part, only where there is proof of service upon the lien claimant by the defendant, not less than 15 days prior to the appeals board action, of all medical and rehabilitation documents and a copy of the proposed compromise and release agreement or stipulation. The determination of the appeals board, subject to petition for reconsideration and to the right of judicial review, as to the amount of lien allowed under subdivision (f) or (g) of Section 4903, whether in connection with an award of compensation or the approval of a compromise and release agreement, shall be binding on the lien claimant, the applicant, and the defendant, insofar as the right to benefits paid under the Unemployment Insurance Code for which the lien was claimed. The appeals board may order the amount of any lien claim, as determined and allowed by it, to be paid directly to the person entitled, either in a lump sum or in installments.

Where unemployment compensation disability benefits have been paid pursuant to the Unemployment Insurance Code while reconsideration of an order, decision, or award is pending, or has been granted, the appeals board shall determine and allow a final amount on the lien as of the date the board is ready to issue its decision denying a petition for reconsideration or affirming, rescinding, altering or amending the original findings, order, decision, or award.

The appeals board shall not be prohibited from approving a compromise and release agreement on all other issues and deferring to subsequent proceedings the determination of a lien claimant's entitlement to reimbursement if the defendant in any of these proceedings agrees to pay the amount subsequently determined to be due under the lien claim.

SEC. 2. Section 984 of the Unemployment Insurance Code is amended to read:

984. (a) (1) Each worker shall pay worker contributions at the rate determined by the director pursuant to this section with respect to wages, as defined by Sections 926, 927, and 985. On or before October 31 of each calendar year, the director shall prepare a statement, which shall be a public record, declaring the rate of worker contributions for the calendar year and shall notify promptly

all employers of employees covered for disability insurance of the rate.

(2) Except as provided in paragraph (3), the rate of worker contributions for calendar year 1987 and for each subsequent calendar year shall be 1.45 times the amount disbursed from the Disability Fund during the 12-month period ending September 30 and immediately preceding the calendar year for which the rate is to be effective, less the amount in the Disability Fund on that September 30, with the resulting figure divided by total wages paid pursuant to Sections 926, 927, and 985 during the same 12-month period, and then rounded to the nearest one-tenth of 1 percent.

(3) The rate of worker contributions shall not exceed 1.3 percent or be less than 0.1 percent. The rate of worker contributions shall not decrease from the rate in the previous year by more than two-tenths of 1 percent.

(b) Worker contributions required under Sections 708 and 708.5 shall be at a rate determined by the director to reimburse the Disability Fund for unemployment compensation disability benefits paid and estimated to be paid to all employers and self-employed individuals covered by those sections. On or before November 30th of each calendar year, the director shall prepare a statement, which shall be a public record, declaring the rate of contributions for the succeeding calendar year for all employers and self-employed individuals covered under Sections 708 and 708.5 and shall notify promptly the employers and self-employed individuals of the rate. The rate shall be determined by dividing the estimated benefits and administrative costs paid in the prior year by the product of the annual remuneration deemed to have been received under Sections 708 and 708.5 and the estimated number of persons who were covered at any time in the prior year. The resulting rate shall be rounded to the next higher one-hundredth percentage point. The rate may also be reduced or increased by a factor estimated to maintain as nearly as practicable a cumulative zero balance in the funds contributed pursuant to Sections 708 and 708.5. Estimates made pursuant to this subdivision may be made on the basis of statistical sampling, or another method determined by the director.

(c) The director's action in determining a rate under this section shall not constitute an authorized regulation.

(d) Notwithstanding subdivision (a), the director may, at his or her discretion, increase or decrease, by not to exceed 0.1 percent, the rate of worker contributions determined pursuant to subdivision (a), up to a maximum worker contribution rate of 1.3 percent, if he or she determines the adjustment is necessary to reimburse the Disability Fund for disability benefits paid or estimated to be paid to individuals covered by this section or to prevent the accumulation of funds in excess of those needed to maintain an adequate fund balance.

SEC. 3. Section 2626 of the Unemployment Insurance Code is amended to read:

2626. (a) An individual shall be deemed disabled on any day in which, because of his or her physical or mental condition, he or she is unable to perform his or her regular or customary work.

(b) For purposes of this section, "disability" or "disabled" includes:

(1) Illness or injury, whether physical or mental, including any illness or injury resulting from pregnancy, childbirth, or related medical condition.

(2) Inability to work because of a written order from a state or local health officer to an individual infected with, or suspected of being infected with, a communicable disease.

(3) Acute alcoholism being medically treated or, to the extent specified in Section 2626.1, resident status in an alcoholic recovery home.

(4) Acute drug-induced illness being medically treated or, to the extent specified in Section 2626.2, resident status in a drug-free residential facility.

(c) For purposes of this section, if an individual participates in a vocational rehabilitation plan under Article 2.6 (commencing with Section 4635) of Chapter 2 of Part 2 of Division 4 of the Labor Code, regular or customary work shall, upon completion of the plan, mean only that employment for which the individual has been retrained under the vocational rehabilitation plan.

SEC. 4. Section 2627 of the Unemployment Insurance Code is amended to read:

2627. A disabled individual is eligible to receive disability benefits equal to one-seventh of his or her weekly benefit amount for each full day during which he or she is unemployed due to a disability only if the director finds that:

(a) He or she has made a claim for disability benefits as required by authorized regulations.

(b) He or she has been unemployed and disabled for a waiting period of seven consecutive days during each disability benefit period with respect to which waiting period no disability benefits are payable.

(c) Except as provided in Sections 2626.1, 2626.2, and 2709, he or she has submitted to such reasonable examinations as the director may require for the purpose of determining his or her disability.

(d) Except as provided in Section 2708.1, he or she has filed a certificate as required by Section 2708 or 2709.

SEC. 5. Section 2627.3 of the Unemployment Insurance Code is repealed.

SEC. 6. Section 2627.5 of the Unemployment Insurance Code is repealed.

SEC. 7. Section 2627.7 of the Unemployment Insurance Code, as amended by Section 3.5 of Chapter 1134 of the Statutes of 1991, is repealed.

SEC. 8. Section 2629 of the Unemployment Insurance Code is amended to read:

2629. (a) Except as provided in this section, an individual is not eligible for disability benefits under this part for any day of unemployment and disability for which he or she has received, or is entitled to receive, "other benefits" in the form of cash payments.

(b) "Other benefits," as used in this section and Section 2629.1, means any of the following:

(1) Temporary disability indemnity under a workers' compensation law of this state or of any other state or of the federal government including, for purposes of this code and Sections 4903 and 4904 of the Labor Code, a maintenance allowance paid pursuant to Section 139.5 of the Labor Code.

(2) Temporary disability benefits under any employer's liability law of this state or of any other state or of the federal government.

(3) Permanent disability benefits for the same injury or illness under the workers' compensation law of this state, any other state, or the federal government.

(c) Except for a maintenance allowance paid pursuant to Section 139.5 of the Labor Code, if these "other benefits" are less than the amount an individual would otherwise receive as disability benefits under this part, he or she shall be entitled to receive, for that day, if otherwise eligible, disability benefits under this part reduced by the amount of these "other benefits."

(d) An individual shall be entitled to receive, for any day, if otherwise eligible, disability benefits under this part reduced by the amount of the maintenance allowance and permanent disability indemnity if both of the following conditions are met:

(1) The individual elects to receive the maximum permanent disability indemnity pursuant to paragraph (2) of subdivision (d) of Section 139.5 of the Labor Code.

(2) The sum of the maintenance allowance and permanent disability indemnity is less than the amount an individual would otherwise receive as disability benefits under this part.

SEC. 9. Section 2655 of the Unemployment Insurance Code is amended to read:

2655. (a) Except as provided in subdivisions (b) and (c), an individual's "weekly benefit amount" shall be the amount appearing in column B in the table set forth in this subdivision on the line of which in column A of the table there appears the wage bracket containing the amount of wages paid to the individual for employment by employers during the quarter of his or her disability base period in which wages were the highest.

A Amount of wages in highest quarter	B Weekly benefit amount
$75–1,149.99	$50
1,150–1,174.99	51
1,175–1,199.99	52
1,200–1,224.99	53
1,225–1,249.99	54
1,250–1,274.99	55
1,275–1,299.99	56
1,300–1,324.99	57
1,325–1,349.99	58
1,350–1,374.99	59
1,375–1,399.99	60
1,400–1,424.99	61
1,425–1,449.99	62
1,450–1,474.99	63
1,475–1,499.99	64
1,500–1,524.99	65
1,525–1,549.99	66
1,550–1,574.99	67
1,575–1,599.99	68
1,600–1,624.99	69
1,625–1,649.99	70
1,650–1,674.99	71
1,675–1,699.99	72
1,700–1,724.99	73
1,725–1,749.20	74

(b) For periods of disability commencing on or after January 1, 1990, and prior to January 1, 1991, if the amount of wages paid an individual for employment by employers during the quarter of his or her disability base period in which these wages were highest exceeds one thousand seven hundred forty-nine dollars and twenty cents ($1,749.20), the weekly benefit amount shall be 55 percent of these wages divided by 13, but not exceeding two hundred sixty-six dollars ($266) or the maximum workers' compensation temporary disability indemnity weekly benefit amount, whichever is less. If the benefit payable under this subdivision is not a multiple of one dollar ($1), it shall be computed to the next higher multiple of one dollar ($1).

(c) For periods of disability commencing on or after January 1, 1991, if the amount of wages paid an individual for employment by employers during the quarter of his or her disability base period in which these wages were highest exceeds one thousand seven hundred forty-nine dollars and twenty cents ($1,749.20), the weekly benefit amount shall be 55 percent of these wages divided by 13, but not exceeding three hundred thirty-six dollars ($336). If the benefit

payable under this subdivision is not a multiple of one dollar ($1), it shall be computed to the next higher multiple of one dollar ($1).

SEC. 10. Section 2708 of the Unemployment Insurance Code is amended to read:

2708. (a) In accordance with the director's authorized regulations, and except as provided in Sections 2708.1 and 2709, a claimant shall establish medical eligibility for each uninterrupted period of disability by filing a first claim for disability benefits supported by the certificate of a treating physician or practitioner. For subsequent periods of uninterrupted disability after the period covered by the initial certificate or any preceding continued claim, a claimant shall file a continued claim for those benefits supported by the certificate of a treating physician or practitioner. The certificate shall contain a diagnosis or diagnostic code prescribed in the International Classification of Diseases, or, where no diagnosis has yet been obtained, a detailed statement of symptoms.

The certificate shall also contain a statement of medical facts including secondary diagnoses when applicable, within the physician's or practitioner's knowledge, indicating his or her conclusion as to the claimant's disability, and a statement of his or her opinion as to the expected duration of the disability.

(b) The first and any continuing claim of an individual who obtains care and treatment outside this state, shall be supported by a certificate of a treating physician or practitioner duly licensed or certified by the state or foreign country in which the claimant is receiving the care and treatment. If a physician or practitioner licensed by and practicing in a foreign country is under investigation by the department for filing false claims and the department does not have legal remedies to conduct a criminal investigation or prosecution in that country, the department may suspend the processing of all further certifications until the physician or practitioner fully cooperates, and continues to cooperate with the investigation. A physician or practitioner licensed by and practicing in a foreign country who has been convicted of filing false claims with the department may not file a certificate in support of a claim for disability benefits for a period of five years.

(c) For purposes of this part, the term "physician" has the same meaning as it does in Section 3209.3 of the Labor Code. For purposes of this part, "practitioner" means a person duly licensed or certified in California acting within the scope of his or her license or certification who is a dentist, podiatrist, or as to normal pregnancy or childbirth, a nurse midwife or nurse practitioner.

(d) For a claimant who is hospitalized in or under the authority of a county hospital in this state, a certificate of initial and continuing medical disability, if any, shall satisfy the requirements of this section if the disability is shown by the claimant's hospital chart, and the certificate is signed by the hospital's registrar. For a claimant hospitalized in or under the care of a medical facility of the United States government, a certificate of initial and continuing medical

disability, if any, shall satisfy the requirements of this section if the disability is shown by the claimant's hospital chart, and the certificate is signed by a medical officer of the facility duly authorized to do so.

(e) Nothing in this section shall be construed to preclude the department from requesting additional medical evidence to supplement the first or any continued claim if the additional evidence can be procured without additional cost to the claimant. The department may require that the additional evidence include identification of diagnoses, symptoms, or a statement as to the facts of the claimant's disability by the physician or practitioner treating the claimant, by the registrar, authorized medical officer, or other duly authorized official of the hospital or health facility treating the claimant, or by an examining physician or other representative of the department.

CHAPTER 749

An act to amend Sections 5020.4 and 5024.6 of, and to add Chapter 1.1.5 (commencing with Section 5079) to Division 5 of, the Public Resources Code, relating to parks and recreation, and making an appropriation therefor.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 5020.4 of the Public Resources Code is amended to read:

5020.4. (a) The commission shall do all of the following:

(1) Receive and evaluate applications for, and make recommendations with respect to entries on, the National Register of Historic Places to the officer.

(2) Conduct a statewide inventory and maintain comprehensive records of historical resources pursuant to federal and state law, including, but not limited to, historical landmarks and points of historical interest.

(3) Establish criteria for the recording and preservation of historical resources, and for deletions from historical registers warranted by destruction or damage of a historical resource or other change in conditions.

(4) Develop and adopt criteria for the rehabilitation of historic structures.

(5) Establish policies and guidelines in compliance with state and federal requirements for a comprehensive statewide historical resources plan which includes, but is not limited to, architecture, history, archaeology, and folklife.

(6) Develop and update annually, based upon public hearings and

active public participation, the statewide historical resources plan.

(7) Make recommendations to the department, based upon the statewide historical resources plan, including the listing of historical resource projects on a priority basis.

(8) Oversee the administration of the California Register, receive and evaluate nominations to, and cause qualified resources to be listed in, the California Register, and adopt, as necessary, timely revisions of the California Register criteria and procedures as may be advisable.

(9) Recommend to the department the criteria and standards for acceptance of historical buildings, structures, sites, or places for registration as historical landmarks or points of historical interest.

(10) Receive and evaluate applications for registration of structures, sites, or places as historical landmarks or points of historical interest. The commission shall select and designate historical landmarks and points of historical interest that it determines meet the criteria in subdivision (a) of Section 5031. The commission shall maintain a register which identifies historical landmarks and points of historical interest by number and description.

(11) Make recommendations to the office with respect to a standard design and detail for the marker or plaque which may be erected or raised at registered historical landmarks or historical resources, and with respect to the use of the marker or plaque. The commission shall consult with cities and counties in developing design and placement standards. These standards shall not prevent a city or county from implementing its own standards if they meet the minimum criteria established by the commission.

(12) Recommend to the department the type of directional sign to be erected in connection with the registration of a point of historical interest. The commission shall consult with cities and counties in developing design and placement standards. These standards shall not prevent a city or county from implementing its own standards if they meet the minimum criteria established by the commission.

(13) Submit an annual report in January to the director and the Legislature giving an account of its activities, identifying unattained goals of historical resources plans and programs, and recommending needed legislation for the support of those programs. The director shall advise the commission of new and continuing plans, policy, and programs concerning statewide historical resources and shall receive and consider the views of the commission.

(14) Consult with, and consider the recommendation of, public agencies, civic groups, and citizens interested in historic preservation.

(15) Develop criteria and procedures based upon public hearings and active public participation for the selection of projects to be funded through the National Historic Preservation Fund, the California Heritage Fund, and other federal and state programs that

have as their primary purpose the preservation and enhancement of historical resources.

(16) Prepare, or cause to be prepared, and recommend to the director, a budget with respect to those duties and responsibilities of the commission contained in this section.

(b) The commission may adopt guidelines for the review of applications for excavation and salvage permits submitted pursuant to Section 6313 and make recommendations thereon to the State Lands Commission.

SEC. 2. Section 5024.6 of the Public Resources Code is amended to read:

5024.6. There is in the department the State Office of Historic Preservation, which is under the direction of the officer. The office shall do all of the following:

(a) Serve as the staff of the commission in carrying out its responsibilities, and as the staff of the officer in carrying out the responsibilities of that position.

(b) Recommend properties of historical significance for nomination by the commission for the National Register of Historic Places, for registration as historical landmarks and points of historical interest, and for listing in the California Register.

(c) Administer state and federal incentive programs for the preservation of historical resources, including the California Register.

(d) Provide information on federal and state benefits for preservation projects and enhancement of historical resources.

(e) Administer grant and loan programs to survey historical resources and assist the development and enhancement of these resources.

(f) Assist other state agencies by providing information and education on the economic and social benefits of utilizing historical resources.

(g) Provide public education and information on the preservation and enhancement of historical resources.

(h) Provide information and technical assistance to local, state, and national organizations to promote preservation and enhancement of historical resources by developing model ordinances, financial mechanisms, educational programs, conferences, workshops, and other materials.

(i) Cooperate with cultural and ethnic commissions, such as the Native American Heritage Commission, or other organizations or representatives when projects involve these groups' concerns.

(j) Review and comment on the impact on historical resources of publicly funded projects and programs undertaken by other governmental agencies.

(k) Review applications for excavation and salvage permits for salvage in state waters.

(*l*) Assist the State Lands Commission in administering Section 6313.

(m) Administer the California Register in accordance with procedures adopted by the commission.

(n) Administer and maintain the State Historic Resources Inventory in accordance with procedures developed by the office and adopted by the commission.

(o) Administer the California Heritage Fund created pursuant to Section 5079.10.

SEC. 3. Chapter 1.1.5 (commencing with Section 5079) is added to Division 5 of the Public Resources Code, to read:

CHAPTER 1.1.5. CALIFORNIA HERITAGE FUND

Article 1. General Provisions

5079. The Legislature hereby finds and declares all of the following:

(a) The preservation of California's historical resources is a responsibility of all citizens, and deserving of continued support through private contributions and efforts and through the use of public funds.

(b) Peoples of many cultures, backgrounds, and abilities have contributed to the economic and social diversity of the state.

(c) Increasing pressures for development, increasing public use, and deterioration through age and exposure continue to place California's historical resources at risk.

(d) Preservation of historical resources stimulates the economy, promotes energy conservation, contributes to the tourism industry, and enhances the quality of life in California.

(e) The stewardship of historical resources will further educational goals, deepen cultural and historical awareness, and advance the public's understanding of the existing human environment and institutions.

(f) Therefore, it is the policy of the state to encourage the stewardship and preservation of California's historical resources.

5079.01. As used in this chapter, the following terms have the following meanings:

(a) "California Register" means the California Register of Historic Resources.

(b) "Commission" means the State Historical Resources Commission.

(c) "Fund" means the California Heritage Fund created pursuant to Section 5079.10.

(d) "Historical landmark" and "historical resource" have the same meaning as set forth in subdivision (i) and subdivision (j), respectively, of Section 5020.1.

(e) "Historical resource preservation project" is a product, facility, or project designed to preserve an historical resource that is listed, or formally determined eligible for listing, in the National Register of Historic Places or the California Register, or designated

as a historical landmark or point of historical interest.

(f) "National Register of Historic Places" means the official federal list of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture as authorized by the National Historic Preservation Act of 1966 (16 U.S.C. Sec. 470 et seq.).

(g) "Nonprofit organization" means any private, nonprofit organization, existing under Section 501(c)(3) of the United States Internal Revenue Code, that has, among its principal charitable purposes, the preservation of historic resources for cultural, scientific, historic, educational, recreational, agricultural, or scenic opportunities.

(h) "Office" means the State Office of Historic Preservation.

(i) "Point of historical interest" has the same meaning as set forth in subdivision (o) of Section 5020.1.

(j) "Preservation" means identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, and reconstruction, or any combination of those activities.

(k) "Public agency" means a federal agency, state agency, city, county, district, association of governments, joint powers agency, or tribal organization.

(*l*) "Stewardship" means the development and implementation of programs for the proper care, interpretation, and repose of items of historic and cultural value.

Article 2. California Heritage Fund

5079.10. The California Heritage Fund is hereby created in the State Treasury and shall be administered by the office. Money in the fund shall be available, upon appropriation by the Legislature, to implement laws providing for historical resource preservation, including, but not limited to, Section 5028 and Executive Order W-26-92, under criteria developed by the office and adopted by the commission. The actual costs incurred by the office in connection with administering and implementing the services and functions authorized in this chapter shall be paid from the fund.

5079.11. Unless otherwise provided by law, all funds received by the office for the purposes of historical resource preservation shall be deposited in the fund. The office and the Controller may establish separate accounts in the fund for the purpose of separating deposits according to their origin or intended purpose.

5079.12. In addition to any public funds appropriated expressly for the purposes of this chapter, the office may apply for and accept grants, and accept gifts, donations, subventions, rents, royalties, and other financial support, or real or personal property, from private sources. All money received from private sources shall be deposited in a separate account established pursuant to Section 5079.11 and, notwithstanding Section 5079.10, are hereby continuously

appropriated to the office for expenditure for historical resources preservation projects pursuant to this chapter after notification to, and project approval by, the Department of Finance.

5079.13. The office shall deposit the proceeds from any lease, rental, sale, exchange, or transfer of real property, or any interest therein or option thereon, made pursuant to Section 5079.23, in the fund, together with any other reimbursements, repayments, and income received by the office, unless otherwise provided by law.

5079.14. When a lease of real property is made to a private individual, group, or entity, the office shall annually transfer an amount not to exceed 25 percent of the gross income from the lease to the city or, if in an unincorporated area, the county in which the real property is located. Fifty percent of the funds received by the city or county shall be used for historical preservation projects, as approved by the office.

5079.15. The office may apply for and receive emergency financial support for projects and areas identified under federal and state emergency and disaster guidelines. These funds shall be available for expenditure for the purposes of this chapter and Article 2 (commencing with Section 5020) of Chapter 1 under criteria developed by the office and adopted by the commission.

Article 3. Functions of the State Office of Historic Preservation

5079.20. (a) Pursuant to the Property Acquisition Law (Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code), the State Public Works Board may acquire, on behalf of the office, fee title, or any lesser interest, in any real property whose preservation is required to meet the policies and objectives of the California Register, including any interest required to provide public access to cultural or historical resources.

(b) The office may accept gifts or dedications of real property in order to meet the purposes of this chapter.

(c) The office may enter into an option to purchase real property in order to meet the purposes of this chapter.

5079.21. The office may acquire and hold historical resources, artifacts, or objects, or any interest therein, that are required to provide public access to cultural or historical resources. These items may be acquired by purchase, option to purchase, gift, exchange, dedication, or any combination thereof.

5079.22. The office may, in order to carry out historic preservation projects for purposes of Article 2 (commencing with Section 5020) of Chapter 1 and Article 2 (commencing with Section 5079.10) of this chapter, initiate, negotiate, and participate in agreements for the preservation and management of historical resources under its control with public agencies, nonprofit organizations, private entities, or individuals, and enter into any other agreements authorized by state law.

5079.23. Notwithstanding any other provision of law, the Director

of General Services, when so requested by the office, may lease, rent, sell, exchange, or otherwise transfer any real property, or interest therein or option to purchase, acquired under this chapter, provided that the Director of General Services determines that the action is in the best interests of the state. The Department of General Services shall be reimbursed for any services rendered pursuant to this section.

5079.24. The commission shall adopt, and the office shall implement, appropriate procedures to ensure that real property transactions undertaken pursuant to this chapter are carried out in the public interest and with proper notice to the public.

5079.25. Money in the fund shall be available, upon appropriation by the Legislature, for loans and grants to public agencies and nonprofit organizations to carry out the purposes of this chapter. No loan or grant shall be made except pursuant to an agreement with the office, and subject to terms and conditions approved by the commission, that ensure that the loan or grant carries out the purposes of this chapter.

5079.26. (a) The office shall encourage and support historical resource preservation through education activities, including publications and training, that further the policies set forth in Section 5079.

(b) The office may enter into contracts with public agencies, nonprofit organizations, or private entities for this purpose and may make grants to public agencies and nonprofit organizations to carry out these activities.

5079.27. The office may select and contract with other state agencies and with private entities and individuals to provide services necessary to carry out the purposes of this chapter and Section 5020.4.

5079.28. Criteria for the selection of projects shall include, but not be limited to, all of the following:

(a) The project is representative of the concerns and needs of a broad range of constituencies or an underrepresented constituency.

(b) The proposal considers aspects of the broad political, social, and economic issues of the present and their implications for the future preservation of historical resources.

(c) The project effectively links historical resources preservation issues and concerns with other public policy areas.

(d) The project strengthens and fosters the role of local communities in historical resources preservation issues.

(e) The project supports and enhances the capacity of public policy planning processes to accommodate historical resources preservation issues and concerns.

(f) The project enhances the historic preservation program of certified local governments, as defined in subdivision (b) of Section 5020.1, and is consistent with the support of the office of certified local government programs.

Article 4. Acquisition of Historical Properties or Objects

5079.35. (a) The office may acquire any interest in real property pursuant to Section 5079.20, or personal property pursuant to Section 5079.21, with historical, including archaeological, significance, or necessary for the preservation or management of any such property, in order to prevent the loss of historic integrity or imminent destruction or to otherwise secure the preservation of the historical resource.

(b) The office may undertake conservation or preservation activities for historical resources acquired under this chapter.

(c) The office shall encourage, to the greatest extent feasible, the acquisition of historical resources by other qualified purchasers, and the acquisition of the property shall only occur with the office acting as the buyer of last resort.

(d) The office shall take all feasible action to return or transfer title to the historical resources to a nonprofit organization, public agency, private entity, or individual, for all properties acquired for historical resources preservation under this chapter.

(e) Prior to taking any action towards the acquisition of any historical property, the office shall consult as needed with the appropriate city or county in order to better assess the historical significance of the historical property.

Article 5. Historical Resources Preservation Projects

5079.40. The office shall award grants on a competitive basis to public agencies and nonprofit organizations for the preservation of historical resources. A grant made pursuant to this article may not exceed the lesser of one million dollars ($1,000,000) or 50 percent of the cost of the project. A grant may be awarded on a noncompetitive basis for emergency purposes only.

5079.41. The office shall adopt guidelines, subject to the approval of the commission, for determination of the amount of matching funds required, if any, for a grant.

5079.42. A public agency may enter into an agreement with a nonprofit organization for the purpose of carrying out a historical resource preservation project funded by a grant made pursuant to this article.

5079.43. After completion of the historical resource preservation project, the grant recipient shall return to the office the amount of the grant that exceeds the eligible project costs.

5079.44. The office shall consult as needed with the appropriate city or county in order to assess the historical significance of historical resources in connection with an historical resource preservation project proposed pursuant to this article by a nonprofit organization.

Article 6. Historical Resource Management Projects

5079.50. The office shall award grants to public agencies and nonprofit organizations to improve the management of California's historical resources which, because of natural events or human activities, have suffered impairment or loss of historic integrity. Grants made pursuant this section shall not be available to acquire public facilities, except to the extent the acquisition is incidental to the historical resource management project.

5079.51. After the approval of a proposed historical resource management project, the office may expend funds to prepare a plan for the protection and enhancement of the historical resource.

5079.52. The office shall consult as needed with the appropriate city or county in order to assess the historical significance of historical resources in connection with an historical resource management project proposed pursuant to this article by a nonprofit organization.

Article 7. Preservation of Significant Archaeological Resource Areas and Associated Artifacts

5079.60. The Legislature hereby finds and declares that California's archaeological resources are endangered by urban development and population growth and by natural forces. The Legislature further finds and declares that these resources need to be preserved in order to illuminate and increase public knowledge concerning the historic and prehistoric past of California.

5079.61. The office may award grants to public agencies and nonprofit organizations for historical resource preservation projects that include the acquisition of significant archaeological resource areas and artifacts associated with those sites.

5079.62. (a) The amount of the grant shall not exceed the cost of the project.

(b) The amount of the grant and the amount of matching funds required, if any, shall be determined by the office, based on the financial resources available to the grant applicant, the urgency of the project relative to other archaeological projects, the extent to which the project furthers program objectives, and other factors identified by the office and approved by the commission that further the purposes of this chapter.

5079.63. The office may loan funds to a nonprofit organization for the temporary acquisition of an archaeological resource that will be subsequently acquired by a public agency.

5079.64. Not more than 25 percent of any grant made pursuant to the article may be expended for archaeological survey and reports, special salvage excavation, and artifact preservation activities in conformance with accepted curation standards. No funds shall be expended for the survey or excavation of any site that the owner intends to resell for commercial gain.

5079.65. The office shall consult as needed with the appropriate

city or county in order to assess the historical significance of historical resources in connection with an historical resource preservation project proposed pursuant to this article by a nonprofit organization.

CHAPTER 750

An act to add Section 104.16 to the Streets and Highways Code, relating to highways, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 104.16 is added to the Streets and Highways Code, to read:

104.16. (a) Any airspace under a freeway, or real property acquired for highway purposes, in the City and County of San Francisco, which is not excess property, may be leased by the department to the city and county or another political subdivision or a state agency for purposes of an emergency shelter or feeding program.

(b) The lease shall be for one dollar ($1) per month. The lease amount may be paid in advance of the term covered in order to reduce the administrative costs associated with the payment of the monthly rental fee. The lease shall require the payment of an administrative fee not to exceed five hundred dollars ($500) per year, unless the department determines that a higher administrative fee is necessary, for the department's cost of administering the lease.

(c) The Legislature finds and declares that the lease of real property pursuant to this section serves a public purpose.

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 that this act may take effect at the earliest opportunity in order to protect the public health and welfare, it is necessary that this act take effect immediately.

CHAPTER 751

An act to amend Sections 2872 and 2891.1 of the Public Utilities Code, relating to telephones.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 2872 of the Public Utilities Code is amended to read:

2872. (a) The connection of automatic dialing-announcing devices to a telephone line is subject to this article and to the jurisdiction, control, and regulation of the commission.

(b) No person shall operate an automatic dialing-announcing device except in accordance with this article. The use of such a device by any person, either individually or acting as an officer, agent, or employee of a person or corporation operating automatic dialing-announcing devices, is subject to this article.

(c) No person shall operate an automatic dialing-announcing device in this state to place a call which is received by a telephone in this state during the hours between 9 p.m. and 9 a.m. California time.

(d) This article does not prohibit the use of an automatic dialing-announcing device by any person exclusively on behalf of any of the following:

(1) A school for purposes of contacting parents or guardians of pupils regarding attendance.

(2) An exempt organization under the Bank and Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code) for purposes of contacting its members.

(3) A privately owned or publicly owned cable television system for purposes of contacting customers or subscribers regarding the previously arranged installation of facilities on the premises of the customer or subscriber.

(4) A privately owned or publicly owned public utility for purposes of contacting customers or subscribers regarding the previously arranged installation of facilities on the premises of the customer or subscriber or for purposes of contacting employees for emergency actions or repairs required for public safety or to restore services.

(5) A petroleum refinery, chemical processing plant, or nuclear powerplant for purposes of advising residents, public service agencies, and the news media in its vicinity of an actual or potential life-threatening emergency.

(e) This article does not prohibit law enforcement agencies, fire protection agencies, public health agencies, public environmental

health agencies, city or county emergency services planning agencies, or any private for-profit agency operating under contract with, and at the direction of, one or more of these agencies, from placing calls through automatic dialing-announcing devices, if those devices are used for any of the following purposes:

(1) Providing public service information relating to public safety.

(2) Providing information concerning police or fire emergencies.

(3) Providing warnings of impending or threatened emergencies.

These calls shall not be subject to Section 2874.

(f) This article does not apply to any automatic dialing-announcing device which is not used to randomly or sequentially dial telephone numbers but which is used solely to transmit a message to an established business associate, customer, or other person having an established relationship with the person using the automatic dialing-answering device to transmit the message, or to any call generated at the request of the recipient.

(g) The commission may determine any question of fact arising under this section.

SEC. 2. Section 2891.1 of the Public Utilities Code is amended to read:

2891.1. (a) Notwithstanding Section 2891, a telephone corporation selling or licensing lists of residential subscribers shall not include the telephone number of any subscriber assigned an unlisted or unpublished access number.

(b) A subscriber may waive all or part of the protection provided by this section through written notice to the telephone corporation.

(c) This section does not apply to the provision of telephone numbers to the following parties for the purposes indicated:

(1) To a collection agency, to the extent disclosures made by the agency are supervised by the commission, exclusively for the collection of unpaid debts.

(2) (A) To any law enforcement agency, fire protection agency, public health agency, public environmental health agency, city or county emergency services planning agency, or private for-profit agency operating under contract with, and at the direction of, one or more of these agencies, for the exclusive purpose of responding to a 911 call or communicating an imminent threat to life or property.

(B) Any information or records provided to a private for-profit agency pursuant to this subdivision shall be held in confidence by that agency and by any individual employed by or associated with that agency. This information or these records shall not be open to examination for any purpose not directly connected with the administration of the services specified in subdivision (e) of Section 2872 or paragraph (2).

(3) To a lawful process issued under state or federal law.

(4) To a telephone corporation providing service between service areas for the provision to the subscriber of telephone service between service areas, or to third parties for the limited purpose of providing billing services.

(5) To the commission pursuant to its jurisdiction and control over telephone and telegraph corporations.

(d) Every deliberate violation of this section is grounds for a civil suit by the aggrieved subscriber against the organization or corporation and its employees responsible for the violation.

(e) For purposes of this section, "unpublished or unlisted access number" means a telephone, telex, teletex, facsimile, computer modem, or any other code number which is assigned to a subscriber by a telephone or telegraph corporation for the receipt of communications initiated by other telephone or telegraph customers and which the subscriber has requested that the telephone or telegraph corporation keep in confidence.

(f) No telephone corporation, nor any official or employee thereof, shall be subject to criminal or civil liability for the release of customer information as authorized by this section.

CHAPTER 752

An act to add Part 2 (commencing with Section 1720) to Division 6 of the Harbors and Navigation Code, relating to ports.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. The Legislature finds and declares that the purpose of this act is to promote the timely and economical construction of port facilities. In order to facilitate port expansion, it is desirable that state resource and regulatory agencies, in approving port expansion projects, favorably consider not just wetlands restoration and enhancement, but deep water mitigation and other in-water alternatives that provide appropriate and adequate mitigation.

SEC. 2. Part 2 (commencing with Section 1720) is added to Division 6 of the Harbors and Navigation Code, to read:

PART 2. HARBORS AND PORTS MITIGATION PROJECTS

1720. Any public agency with authority to approve or deny port projects that result in the filling of subtidal habitats within the ocean ports of California or habitats in the water of inland ports of California shall approve, as mitigation for those fill projects, any subtidal or in-water mitigation project proposed by the port authority that the public agency determines provides appropriate and adequate mitigation for the adverse impacts on the affected subtidal or in-water habitat in a manner consistent with other law that is then existing.

CHAPTER 753

An act to amend Section 30620 of the Public Resources Code, relating to coastal resources.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 30620 of the Public Resources Code is amended to read:

30620. (a) By January 30, 1977, the commission shall, consistent with this chapter, prepare interim procedures for the submission, review, and appeal of coastal development permit applications and of claims of exemption. These procedures shall include, but are not limited to, the following:

(1) Application and appeal forms.

(2) Reasonable provisions for notification to the commission and other interested persons of any action taken by a local government pursuant to this chapter, in sufficient detail to ensure that a preliminary review of that action for conformity with this chapter can be made.

(3) Interpretive guidelines designed to assist local governments, the commission, and persons subject to this chapter in determining how the policies of this division shall be applied in the coastal zone prior to the certification of local coastal programs. However, the guidelines shall not supersede, enlarge, or diminish the powers or authority of the commission or any other public agency.

(b) Not later than May 1, 1977, the commission shall, after public hearing, adopt permanent procedures that include the components specified in subdivision (a) and shall transmit a copy of those procedures to each local government within the coastal zone and make them readily available to the public. The commission may thereafter, from time to time, and, except in cases of emergency, after public hearing, modify or adopt additional procedures or guidelines that the commission determines to be necessary to better carry out this division.

(c) The commission may require a reasonable filing fee and the reimbursement of expenses for the processing by the commission of any application for a coastal development permit under this division and, except for local coastal program submittals, for any other filing, including, but not limited to, a request for revocation, categorical exclusion, or boundary adjustment, submitted for review by the commission.

(d) With respect to any appeal of an action taken by a local government pursuant to Section 30602 or 30603, the executive director shall, within five working days of receipt of an appeal from any person other than members of the commission or any public

agency, determine whether the appeal is patently frivolous. If the executive director determines that an appeal is patently frivolous, the appeal shall not be filed until a filing fee in the amount of three hundred dollars ($300) has been deposited with the commission. If the commission subsequently finds that the appeal raises a substantial issue, the filing fee shall be refunded.

CHAPTER 754

An act to amend Section 2941 of, and to amend, and add Section 2934a of, the Civil Code, relating to real property, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 2934a of the Civil Code is amended to read:

2934a. (a) (1) The trustee under a trust deed upon real property or an estate for years therein given to secure an obligation to pay money and conferring no other duties upon the trustee than those which are incidental to the exercise of the power of sale therein conferred, may be substituted by the recording in the county in which the property is located of a substitution executed and acknowledged by all of the beneficiaries under the trust deed, or their successors in interest, and the substitution shall be effective notwithstanding any contrary provision in any trust deed executed on or after January 1, 1968.

(2) The substitution shall contain the date of recordation of the trust deed, the name of the trustor, the book and page or instrument number where the trust deed is recorded, and the name of the new trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority, and title granted and delegated to the trustee named in the deed of trust. A substitution may be accomplished, with respect to multiple deeds of trust which are recorded in the same county in which the substitution is being recorded and which all have the same trustee and beneficiary or beneficiaries, by recording a single document, complying with the requirements of this section, substituting trustees for all those deeds of trust.

(3) As an alternative, a substitution may be accomplished, with respect to multiple deeds of trust which are recorded in the same county in which the substitution is being recorded and which all have the same trustee and beneficiary or beneficiaries, by recording a single document without the necessity of (A) setting forth the names of all trustors and (B) the recording information and dates of recording for all the deeds of trust for which a substitution of trustee

is being made. However, no notice of default shall be valid unless a substitution complying with paragraph (2) has first been recorded.

(b) If the substitution is effected after a notice of default has been recorded but prior to the giving of the notice of sale, the beneficiary or beneficiaries shall cause a copy of the substitution to be mailed, prior to the recording thereof, in the manner provided in Section 2924b, to all persons to whom a copy of the notice of default would be required to be mailed by the provisions of Section 2924b, and shall also give a copy of the substitution to the trustee then of record. In those cases, the substitution shall contain an acknowledgment signed and acknowledged by the trustee then of record of a receipt of a copy, or an affidavit of personal service of a copy, or of publication of notice of it in accordance with Section 6061 of the Government Code (showing also that a copy of the substitution had been mailed to the trustee at the trustee's last known address), and an affidavit shall be attached to the substitution that notice has been given to those persons and in the manner required by this subdivision.

(c) Notwithstanding any provision of this section or any provision in any deed of trust, unless a new notice of sale containing the name, street address, and telephone number of the substituted trustee is given pursuant to Section 2924f, any sale conducted by the substituted trustee shall be void.

(d) This section shall remain in effect only until January 1, 1998, and shall have no force or effect on or after that date, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 1.5. Section 2934a of the Civil Code is amended to read:

2934a. (a) (1) The trustee under a trust deed upon real property or an estate for years therein given to secure an obligation to pay money and conferring no other duties upon the trustee than those which are incidental to the exercise of the power of sale therein conferred, may be substituted by the recording in the county in which the property is located of a substitution executed and acknowledged by all of the beneficiaries under the trust deed, or their successors in interest, and the substitution shall be effective notwithstanding any contrary provision in any trust deed executed on or after January 1, 1968.

(2) The substitution shall contain the date of recordation of the trust deed, the name of the trustor, the book and page or instrument number where the trust deed is recorded, and the name of the new trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority, and title granted and delegated to the trustee named in the deed of trust. A substitution may be accomplished, with respect to multiple deeds of trust which are recorded in the same county in which the substitution is being recorded and which all have the same trustee and beneficiary or beneficiaries, by recording a single document, complying with the requirements of this section, substituting trustees for all those deeds of trust.

(3) As an alternative, a substitution may be accomplished with respect to multiple deeds of trust which are recorded in the same county in which the substitution is being recorded and which all have the same trustee and beneficiary or beneficiaries, by recording a single document without the necessity of (A) setting forth the names of all trustors and (B) the recording information and dates of recording for all the deeds of trust for which a substitution of trustee is being made. However, no notice of default shall be valid unless a substitution complying with paragraph (2) has first been recorded.

(b) If the substitution is effected after a notice of default has been recorded but prior to the recording of the notice of sale, the beneficiary or beneficiaries shall cause a copy of the substitution to be mailed, prior to the recording thereof, in the manner provided in Section 2924b, to the trustee then of record and to all persons to whom a copy of the notice of default would be required to be mailed by the provisions of Section 2924b. An affidavit shall be attached to the substitution that notice has been given to those persons and in the manner required by this subdivision.

(c) Notwithstanding any provision of this section or any provision in any deed of trust, unless a new notice of sale containing the name, street address, and telephone number of the substituted trustee is given pursuant to Section 2924f, any sale conducted by the substituted trustee shall be void.

(d) This section shall remain in effect only until January 1, 1998, and shall have no force or effect after that date, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 2. Section 2934a is added to the Civil Code, to read:

2934a. (a) (1) The trustee under a trust deed upon real property or an estate for years therein given to secure an obligation to pay money and conferring no other duties upon the trustee than those which are incidental to the exercise of the power of sale therein conferred, may be substituted by the recording in the county in which the property is located of a substitution executed and acknowledged by all of the beneficiaries under the trust deed, or their successors in interest, and the substitution shall be effective notwithstanding any contrary provision in any trust deed executed on or after January 1, 1968.

(2) The substitution shall contain the date of recordation of the trust deed, the name of the trustor, the book and page or instrument number where the trust deed is recorded, and the name of the new trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority, and title granted and delegated to the trustee named in the deed of trust. A substitution may be accomplished, with respect to multiple deeds of trust which are recorded in the same county in which the substitution is being recorded and which all have the same trustee and beneficiary or beneficiaries, by recording a single document, complying with the requirements of this section, substituting

trustees for all those deeds of trust.

(3) As an alternative, a substitution may be accomplished, with respect to multiple deeds of trust which are recorded in the same county in which the substitution is being recorded and which all have the same trustee and beneficiary or beneficiaries, by recording a single document without the necessity of (A) setting forth the names of all trustors and (B) the recording of the dates for all the deeds of trust for which a substitution of trustee is being made. However, no notice of default shall be valid unless a substitution complying with paragraph (2) has first been recorded.

(b) If the substitution is effected after a notice of default has been recorded but prior to the giving of the notice of sale, the beneficiary or beneficiaries shall cause a copy of the substitution to be mailed, prior to the recording thereof, in the manner provided in Section 2924b, to all persons to whom a copy of the notice of default would be required to be mailed by the provisions of Section 2924b, and shall also give a copy of the substitution to the trustee then of record. In those cases, the substitution shall contain an acknowledgment signed and acknowledged by the trustee then of record of a receipt of a copy, or an affidavit of personal service of a copy, or of publication of notice of it in accordance with Section 6061 of the Government Code (showing also that a copy of the substitution had been mailed to the trustee at the trustee's last known address), and an affidavit shall be attached to the substitution that notice has been given to those persons and in the manner required by this subdivision.

(c) Notwithstanding any provision of this section or any provision in any deed of trust, unless a new notice of sale containing the name, street address, and telephone number of the substituted trustee is given pursuant to Section 2924f, any sale conducted by the substituted trustee shall be void.

(d) This section shall become operative on January 1, 1998.

SEC. 2.5. Section 2934a is added to the Civil Code, to read:

2934a. (a) (1) The trustee under a trust deed upon real property or an estate for years therein given to secure an obligation to pay money and conferring no other duties upon the trustee than those which are incidental to the exercise of the power of sale therein conferred, may be substituted by the recording in the county in which the property is located of a substitution executed and acknowledged by all of the beneficiaries under the trust deed, or their successors in interest, and the substitution shall be effective notwithstanding any contrary provision in any trust deed executed on or after January 1, 1968.

(2) The substitution shall contain the date of recordation of the trust deed, the name of the trustor, the book and page or instrument number where the trust deed is recorded, and the name of the new trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority, and title granted and delegated to the trustee named in the deed of trust. A substitution may be accomplished, with respect to multiple deeds of

trust which are recorded in the same county in which the substitution is being recorded and which all have the same trustee and beneficiary or beneficiaries, by recording a single document, complying with the requirements of this section, substituting trustees for all those deeds of trust.

(3) As an alternative, a substitution may be accomplished with respect to multiple deeds of trust which are recorded in the same county in which the substitution is being recorded and which all have the same trustee and beneficiary or beneficiaries, by recording a single document without the necessity of (A) setting forth the names of all trustors and (B) the recording of the dates for all the deeds of trust for which a substitution of trustee is being made. However, no notice of default shall be valid unless a substitution complying with paragraph (2) has first been recorded.

(b) If the substitution is effected after a notice of default has been recorded but prior to the recording of the notice of sale, the beneficiary or beneficiaries shall cause a copy of the substitution to be mailed, prior to the recording thereof, in the manner provided in Section 2924b, to the trustee then of record and to all persons to whom a copy of the notice of default would be required to be mailed by the provisions of Section 2924b. An affidavit shall be attached to the substitution that notice has been given to those persons and in the manner required by this subdivision.

(c) Notwithstanding any provision of this section or any provision in any deed of trust, unless a new notice of sale containing the name, street address, and telephone number of the substituted trustee is given pursuant to Section 2924f, any sale conducted by the substituted trustee shall be void.

(d) This section shall become operative on January 1, 1998.

SEC. 3. Section 2941 of the Civil Code is amended to read:

2941. (a) Within 30 days after any mortgage has been satisfied, the mortgagee or the assignee of the mortgagee shall execute a certificate of the discharge thereof, as provided in Section 2939, and shall record or cause to be recorded, except as provided in subdivision (c), in the office of the county recorder in which the mortgage is recorded. The mortgagee shall then deliver, upon the written request of the mortgagor or the mortgagor's heirs, successors, or assignees, as the case may be, the original note and mortgage to the person making the request.

(b) (1) When the obligation secured by any deed of trust has been satisfied, the beneficiary or the assignee of the beneficiary shall execute and deliver to the trustee the original note, deed of trust, request for a full reconveyance, and such other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of trust.

(A) The trustee shall execute the full reconveyance and shall record or cause it to be recorded, except as provided in subdivision (c), in the office of the county recorder in which the deed of trust is recorded within 21 calendar days after receipt by the trustee of the original note, deed of trust, request for a full reconveyance, the fee

that may be charged pursuant to subdivision (e), recorder's fees, and such other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of trust.

(B) The trustee shall deliver a copy of the reconveyance to the beneficiary, its successor in interest, or its servicing agent, if known.

(C) Following execution and recordation of the full reconveyance, upon receipt of a written request by the trustor or the trustor's heirs, successors, or assignees, the trustee shall then deliver the original note and deed of trust to the person making that request.

(2) If the trustee has failed to execute and record, or cause to be recorded, the full reconveyance within 60 calendar days of satisfaction of the obligation, the beneficiary, upon receipt of a written request by the trustor or trustor's heirs, successor in interest, agent, or assignee, shall execute and acknowledge a document pursuant to Section 2934a substituting itself or another as trustee and issue a full reconveyance.

(3) If a full reconveyance has not been executed and recorded pursuant to either paragraph (1) or paragraph (2) within 75 calendar days of satisfaction of the obligation, then a title insurance company may prepare and record a release of the obligation. However, at least 10 days prior to the issuance and recording of a full release pursuant to this paragraph, the title insurance company shall mail by first-class mail with postage prepaid, the intention to release the obligation to the trustee, trustor, and beneficiary of record, or their successor in interest of record, at the last known address.

(A) The release shall set forth:

(i) The name of the beneficiary.

(ii) The name of the trustor.

(iii) The recording reference to the deed of trust.

(iv) A recital that the obligation secured by the deed of trust has been paid in full.

(v) The date and amount of payment.

(B) The release issued pursuant to this subdivision shall be entitled to recordation and, when recorded, shall be deemed to be the equivalent of a reconveyance of a deed of trust.

(4) Where an obligation secured by a deed of trust was paid in full prior to July 1, 1989, and no reconveyance has been issued and recorded by October 1, 1989, then a release of obligation as provided for in paragraph (3) may be issued.

(5) Paragraphs (2) and (3) do not excuse the beneficiary or the trustee from compliance with paragraph (1). Paragraph (3) does not excuse the beneficiary from compliance with paragraph (2).

(6) In addition to any other remedy provided by law, a title insurance company preparing or recording the release of the obligation shall be liable to any party for damages, including attorneys' fees, which any person may sustain by reason of the issuance and recording of the release, pursuant to paragraphs (3) and (4).

(c) The mortgagee or trustee shall not record or cause the

certificate of discharge or full reconveyance to be recorded when any of the following circumstances exists:

(1) The mortgagee or trustee has received written instructions to the contrary from the mortgagor or trustor, or the owner of the land, as the case may be, or from the owner of the obligation secured by the deed of trust or his or her agent, or escrow.

(2) The certificate of discharge or full reconveyance is to be delivered to the mortgagor or trustor, or the owner of the land, as the case may be, through an escrow to which the mortgagor, trustor, or owner is a party.

(3) When the personal delivery is not for the purpose of causing recordation and when the certificate of discharge or full reconveyance is to be personally delivered with receipt acknowledged by the mortgagor or trustor or owner of the land, as the case may be, or their agent if authorized by mortgagor or trustor or owner of the land.

(d) The violation of any provision of this section shall make the violator liable to the person affected by the violation for all damages which that person may sustain by reason of the violation, and shall require that the violator forfeit to that person the sum of three hundred dollars ($300).

(e) (1) The trustee, beneficiary, or mortgagee may charge a reasonable fee to the trustor or mortgagor, or the owner of the land, as the case may be, for all services involved in the preparation, execution, and recordation of the full reconveyance, including, but not limited to, document preparation and forwarding services rendered to effect the full reconveyance, and, in addition, may collect official fees. This fee may be made payable no earlier than the opening of a bona fide escrow or no more than 60 days prior to the full satisfaction of the obligation secured by the deed of trust or mortgage.

(2) If the fee charged pursuant to this subdivision does not exceed sixty-five dollars ($65), the fee is conclusively presumed to be reasonable. This paragraph shall only be operative until January 1, 1998.

SEC. 3.5. Sections 1.5 and 2.5 of this bill incorporate changes to Section 2934a of the Civil Code proposed by both this bill and AB 1219. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill affects Section 2934a of the Civil Code, and (3) this bill is enacted after AB 1219, in which case Section 2934a of the Civil Code, as amended by Section 1 of this bill, shall remain operative only until the effective date of AB 1219, at which time Sections 1.5 and 2.5 of this bill shall become operative as specified therein, and Section 1 shall cease to be operative and Section 2 shall not become operative.

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

In order to make necessary, technical changes reflecting current practices in the procedures for the substitution of trustees under a deed of trust upon real property or an estate for years therein, and to extend the conclusive presumption respecting fees for a reconveyance in connection with the satisfaction of a mortgage or the obligation secured by a deed of trust, it is necessary that this act take effect immediately.

CHAPTER 755

An act to amend Section 1950.5 of the Civil Code, and to amend Section 1174 of the Code of Civil Procedure, relating to property.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 1950.5 of the Civil Code is amended to read:

1950.5. (a) The provisions of this section shall apply to security for a rental agreement for residential property, that is, property used as the dwelling of the tenant.

(b) As used in this section, "security" means any payment, fee, deposit or charge, including, but not limited to, an advance payment of rent, used or to be used for any purpose, including, but not limited to, any of the following:

(1) The compensation of a landlord for a tenant's default in the payment of rent.

(2) The repair of damages to the premises, exclusive of ordinary wear and tear, caused by the tenant or by a guest or licensee of the tenant.

(3) The cleaning of the premises upon termination of the tenancy.

(4) To remedy future defaults by the tenant in any obligation under the rental agreement to restore, replace or return personal property or appurtenances, exclusive of ordinary wear and tear, if the security deposit is authorized to be applied thereto by the rental agreement.

(c) A landlord may not demand or receive security, however denominated, in an amount or value in excess of an amount equal to two months' rent, in the case of unfurnished residential property, and an amount equal to three months' rent in the case of furnished residential property, in addition to any rent for the first month paid on or before initial occupancy.

This subdivision does not prohibit an advance payment of not less than six months' rent where the term of the lease is six months or longer.

This subdivision does not preclude a landlord and a tenant from entering into a mutual agreement for the landlord, at the request of

the tenant and for a specified fee or charge, to make structural, decorative, furnishing, or other similar alterations, if the alterations are other than cleaning or repairing for which the landlord may charge the previous tenant as provided by subdivision (e).

(d) Any security shall be held by the landlord for the tenant who is party to the lease or agreement. The claim of a tenant to the security shall be prior to the claim of any creditor of the landlord.

(e) The landlord may claim of the security only those amounts as are reasonably necessary for the purposes specified in subdivision (b). The landlord may not assert a claim against the tenant or the security for damages to the premises or any defective conditions that preexisted the tenancy, for ordinary wear and tear or the effects thereof, whether the wear and tear preexisted the tenancy or occurred during the tenancy, or for the cumulative effects of ordinary wear and tear occurring during any one or more tenancies.

(f) Within three weeks after the tenant has vacated the premises, the landlord shall furnish the tenant, by personal delivery or by first-class mail, postage prepaid, a copy of an itemized statement indicating the basis for, and the amount of, any security received and the disposition of the security and shall return any remaining portion of the security to the tenant.

(g) Upon termination of the landlord's interest in the dwelling unit in question, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or the landlord's agent shall, within a reasonable time, do one of the following acts, either of which shall relieve the landlord of further liability with respect to the security held:

(1) Transfer the portion of the security remaining after any lawful deductions made under subdivision (e) to the landlord's successor in interest. The landlord shall thereafter notify the tenant by personal delivery or by first-class mail, postage prepaid, of the transfer, of any claims made against the security, of the amount of the security deposited, and of the names of the successors in interest, their address, and their telephone number. If the notice to the tenant is made by personal delivery, the tenant shall acknowledge receipt of the notice and sign his or her name on the landlord's copy of the notice.

(2) Return the portion of the security remaining after any lawful deductions made under subdivision (e) to the tenant, together with an accounting as provided in subdivision (f).

(h) Prior to the voluntary transfer of a landlord's interest in a dwelling unit the landlord shall deliver to the landlord's successor in interest a written statement indicating the following:

(1) The security remaining after any lawful deductions are made.

(2) An itemization of any lawful deductions from any security received.

(3) His or her election under paragraph (1) or (2) of subdivision (g).

Nothing in this subdivision shall affect the validity of title to the

real property transferred in violation of the provisions of this subdivision.

(i) In the event of noncompliance with subdivision (g), the landlord's successors in interest shall be jointly and severally liable with the landlord for repayment of the security, or that portion thereof to which the tenant is entitled, when and as provided in subdivisions (e) and (f). A successor in interest of a landlord may not require the tenant to post any security to replace that amount not transferred to the tenant or successors in interest as provided in subdivision (g), unless and until the successor in interest first makes restitution of the initial security as provided in paragraph (2) of subdivision (g) or provides the tenant with an accounting as provided in subdivision (f).

Nothing in this subdivision shall preclude a successor in interest from recovering from the tenant compensatory damages that are in excess of the security received from the landlord previously paid by the tenant to the landlord.

Notwithstanding the provisions of this subdivision, if upon inquiry and reasonable investigation, a landlord's successor in interest has a good faith belief that the lawfully remaining security deposit is transferred to him or her or returned to the tenant pursuant to subdivision (g), he or she shall not be liable for damages as provided in subdivision (k), or any security not transferred pursuant to subdivision (g).

(j) Upon receipt of any portion of the security under paragraph (1) of subdivision (g), the landlord's successors in interest shall have all of the rights and obligations of a landlord holding the security with respect to the security.

(k) The bad faith claim or retention by a landlord or the landlord's successors in interest of the security or any portion thereof, in violation of this section or the bad faith demand of replacement security in violation of subdivision (i), may subject the landlord or the landlord's successors in interest to statutory damages of up to six hundred dollars ($600), in addition to actual damages. The court may award damages for bad faith whenever the facts warrant such an award, regardless of whether the injured party has specifically requested relief. In any action under this section, the landlord or the landlord's successors in interest shall have the burden of proof as to the reasonableness of the amounts claimed or the authority pursuant to this section to demand additional security deposits.

(*l*) No lease or rental agreement shall contain any provision characterizing any security as "nonrefundable."

(m) Any action under this section may be maintained in small claims court if the damages claimed, whether actual or statutory or both, are within the jurisdictional amount allowed by Section 116.2 of the Code of Civil Procedure.

(n) Proof of the existence of and the amount of a security deposit may be established by any credible evidence, including, but not limited to, a canceled check, a receipt, a lease indicating the

requirement of a deposit as well as the amount, prior consistent statements or actions of the landlord or tenant, or a statement under penalty of perjury which satisfies the credibility requirements set forth in Section 780 of the Evidence Code.

(o) The amendments to this section made during the 1985 portion of the 1985–86 Regular Session of the Legislature which are set forth in subdivision (e) are declaratory of existing law.

SEC. 2. Section 1174 of the Code of Civil Procedure is amended to read:

1174. (a) If upon the trial, the verdict of the jury, or, if the case be tried without a jury, the findings of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the possession of the premises; and if the proceedings be for an unlawful detainer after neglect, or failure to perform the conditions or covenants of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of that lease or agreement if the notice required by Section 1161 states the election of the landlord to declare the forfeiture thereof, but if that notice does not so state that election, the lease or agreement shall not be forfeited.

Except as provided in Section 1166a, in any action for unlawful detainer brought by a petroleum distributor against a gasoline dealer, possession shall not be restored to the petroleum distributor unless the court in the unlawful detainer action determines that the petroleum distributor had good cause under Section 20999.1 of the Business and Professions Code to terminate, cancel, or refuse to renew the franchise of the gasoline dealer.

In any action for unlawful detainer brought by a petroleum distributor against the gasoline dealer, the court may, at the time of request of either party, require the tenant to make rental payments into the court, for the lessor, at the contract rate, pending the resolution of the action.

(b) The jury or the court, if the proceedings be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and find the amount of any rent due, if the alleged unlawful detainer be after default in the payment of rent. If the defendant is found guilty of forcible entry, or forcible or unlawful detainer, and malice is shown, the plaintiff may be awarded statutory damages of up to six hundred dollars ($600), in addition to actual damages, including rent found due. The trier of fact shall determine whether actual damages, statutory damages, or both, shall be awarded, and judgment shall be entered accordingly.

(c) When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, and the notice required by Section 1161 has not stated the election of the landlord to declare the forfeiture thereof, the court may, and, if the lease or agreement is in writing, is for a term of more than one year, and does not contain

a forfeiture clause, shall order that a writ shall not be issued to enforce the judgment until the expiration of five days after the entry of the judgment, within which time the tenant, or any subtenant, or any mortgagee of the term, or any other party interested in its continuance, may pay into the court, for the landlord, the amount found due as rent, with interest thereon, and the amount of the damages found by the jury or the court for the unlawful detainer, and the costs of the proceedings, and thereupon the judgment shall be satisfied and the tenant be restored to the tenant's estate. If payment as provided in this subdivision is not made within five days, the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately.

(d) Subject to subdivision (c), the judgment for possession of the premises may be enforced as provided in Division 3 (commencing with Section 712.010) of Title 9 of Part 2.

(e) Personal property remaining on the premises which the landlord reasonably believes to have been lost shall be disposed of pursuant to Article 1 (commencing with Section 2080) of Chapter 4 of Title 6 of Part 4 of Division 3 of the Civil Code. The landlord is not liable to the owner of any property which is disposed of in this manner. If the appropriate police or sheriff's department refuses to accept that property, it shall be deemed not to have been lost for the purposes of this subdivision.

(f) The landlord shall give notice pursuant to Section 1983 of the Civil Code to any person (other than the tenant) reasonably believed by the landlord to be the owner of personal property remaining on the premises unless the procedure for surrender of property under Section 1965 of the Civil Code has been initiated or completed.

(g) The landlord shall store the personal property in a place of safekeeping until it is either released pursuant to subdivision (h) or disposed of pursuant to subdivision (i).

(h) The landlord shall release the personal property pursuant to Section 1965 of the Civil Code or shall release it to the tenant or, at the landlord's option, to a person reasonably believed by the landlord to be its owner if the tenant or other person pays the costs of storage as provided in Section 1990 of the Civil Code and claims the property not later than the date specified in the writ of possession before which the tenant must make his or her claim or the date specified in the notice before which a person other than the tenant must make his or her claim.

(i) Personal property not released pursuant to subdivision (h) shall be disposed of pursuant to Section 1988 of the Civil Code.

(j) Where the landlord releases personal property to the tenant pursuant to subdivision (h), the landlord is not liable with respect to that property to any person.

(k) Where the landlord releases personal property pursuant to subdivision (h) to a person (other than the tenant) reasonably

believed by the landlord to be its owner, the landlord is not liable with respect to that property to:

(1) The tenant or to any person to whom notice was given pursuant to subdivision (f); or

(2) Any other person, unless that person proves that, prior to releasing the property, the landlord believed or reasonably should have believed that the person had an interest in the property and also that the landlord knew or should have known upon reasonable investigation the address of that person.

(*l*) Where personal property is disposed of pursuant to Section 1988 of the Civil Code, the landlord is not liable with respect to that property to:

(1) The tenant or to any person to whom notice was given pursuant to subdivision (f); or

(2) Any other person, unless that person proves that, prior to disposing of the property pursuant to Section 1988 of the Civil Code, the landlord believed or reasonably should have believed that the person had an interest in the property and also that the landlord knew or should have known upon reasonable investigation the address of that person.

(m) For the purposes of subdivisions (e), (f), (h), (k), and (*l*), the terms "owner," "premises," and "reasonable belief" have the same meaning as provided in Section 1980 of the Civil Code.

CHAPTER 756

An act to repeal Section 25225 of, and to repeal Chapter 7.3 (commencing with Section 25630) of Division 15 of, the Public Resources Code, relating to energy resources.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 25225 of the Public Resources Code is repealed.

SEC. 2. Chapter 7.3 (commencing with Section 25630) of Division 15 of the Public Resources Code is repealed.

CHAPTER 757

An act to amend Section 2144 of, and to add Section 3051.6 to, the Civil Code, and to amend Sections 34510 and 40001 of, and to add Section 35559 to, the Vehicle Code, relating to transportation.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 2144 of the Civil Code is amended to read:

2144. A carrier has a lien for (a) freightage and for services rendered at request of shipper or consignee in and about the transportation of the property, (b) care and preservation of the property, (c) money advanced at request of shipper or consignee to discharge a prior lien, and (d), subject to the limitations specified in Section 3051.6, any fines, penalties, costs, expenses, and interest arising from the provision of false or erroneous certifications of gross cargo weight as required by Section 508 of Title 49 of the United States Code. The carrier's rights to this lien are regulated by the title on liens.

SEC. 2. Section 3051.6 is added to the Civil Code, to read:

3051.6. (a) Except as provided in subdivision (b), a carrier has a lien on freight in its possession for the total amount owed to the carrier by the owner or beneficial owner of the cargo being shipped for the aggregate amount of any fines, penalties, costs, expenses, or interest incurred by the carrier resulting from the inclusion of false or erroneous information as to gross cargo weight in a written or electronic certification provided by the owner, beneficial owner, or person responsible for making the certification pursuant to Section 508 of Title 49 of the United States Code.

(b) This section does not apply to any of the following freight:

(1) Perishable goods.

(2) Freight shipped by a means involving other than intermodal transportation, as that term is defined by Section 508 of Title 49 of the United States Code.

(3) Freight shipped by loaded containers or trailers having a gross projected cargo weight, including packing material and pallets, of less than 10,000 pounds.

(c) Any sale to foreclose a lien specified in this section shall be conducted in accordance with Section 3052, except that (1) the lien sale shall not take place for at least 35 days from the date that possession of the property is delivered to the carrier, but the notice period specified in Section 3052 may run concurrently with this 35-day period and (2), in addition to the notices required by Section 3052, at least 10 days prior to the sale of the property the lienholder shall notify the shipper and consignee of the property of the date, time, and place of the intended sale. This notice shall contain the

names of the shipper and consignee and shall generally describe the property to be sold.

SEC. 3. Section 34510 of the Vehicle Code is amended to read:

34510. (a) Persons operating vehicles, or combinations of vehicles, in the transportation of hazardous material and subject to this division, shall carry in the vehicle while en route any shipping papers required to accompany the vehicle in accordance with regulations adopted pursuant to Section 2402. The bill of lading or other shipping paper shall be displayed upon demand of any member of the California Highway Patrol or any police officer of a city who is on duty for the exclusive or main purpose of enforcing the provisions of this code.

(b) Persons operating vehicles, or combinations of vehicles, in intermodal transportation of a container or trailer having an actual gross cargo weight of more than 10,000 pounds, shall carry, in the vehicle while en route, a certification of actual gross cargo weight and a reasonable description of the contents of the container or trailer issued in accordance with Section 508 of Title 49 of the United States Code. The certification shall be displayed upon demand and open to inspection by any member of the California Highway Patrol or any police officer of a city who is on duty for the exclusive or main purpose of enforcing the provisions of this code. It is a rebuttable presumption that the certification carried in the vehicle is a true and accurate copy of the original certification tendered for intermodal transportation pursuant to Section 508 of Title 49 of the United States Code.

(c) Upon the request of any person engaged in the loading of a container or trailer, having an actual gross cargo weight of more than 10,000 pounds, with agricultural products at a field or packing shed for transport in intermodal transportation, the vehicle operator shall provide the person with the tare weight of the tractor, container, or trailer to be loaded.

SEC. 4. Section 35559 is added to the Vehicle Code, to read:

35559. Whenever a person, charged with a violation of this chapter, shows to the satisfaction of the court that the person conducted his or her activities pursuant to a gross cargo weight verification issued in accordance with Section 508 of Title 49 of the United States Code and that the verification specifies a stated gross cargo weight which could be lawfully transported by the equipment on which the cargo was loaded, the court shall, on request of the person so charged, take appropriate steps to make the party which issued the verification a codefendant. In the event the court finds that the party which issued the verification misrepresented the gross cargo weight and that party is held solely responsible and found guilty, the court may dismiss the charges against the person who received the gross cargo weight verification.

SEC. 5. Section 40001 of the Vehicle Code is amended to read:

40001. (a) It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to cause

the operation of the vehicle upon a highway in any manner contrary to law.

(b) It is unlawful for an owner to request, cause, or permit the operation of any vehicle:

(1) Which is not registered or for which any fee has not been paid under this code.

(2) Which is not equipped as required in this code.

(3) Which does not comply with the size, weight, or load provisions of this code.

(4) Which does not comply with the regulations promulgated pursuant to this code, or with applicable city or county ordinances adopted pursuant to this code.

(5) Which is not in compliance with the provisions of Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code and the rules and regulations of the State Air Resources Board.

(c) Whenever a violation is chargeable to the owner or lessee of a vehicle pursuant to subdivision (a) or (b), the driver shall not be arrested or cited for the violation unless the vehicle is registered in a state or country other than California, or unless the violation is for an offense that is clearly within the responsibility of the driver. The Department of the California Highway Patrol shall report to the Legislature on or before January 1, 1988, concerning the effects of this subdivision.

(d) Whenever the owner, or lessee, or any other person is prosecuted for a violation pursuant to this section, the court may, on the request of the defendant, take appropriate steps to make the driver of the vehicle, or any other person who directs the loading, maintenance or operation of the vehicle, or any other person who gives false or erroneous information in a written certification of actual gross weight, a codefendant. However, the court may make the driver a codefendant only if the driver is the owner or lessee of the vehicle, or the driver is an employee or a contractor of the defendant who requested the court to make the driver a codefendant. If the codefendant is held solely responsible and found guilty, the court may dismiss the charge against the defendant.

(e) In any prosecution under this section, it is a rebuttable presumption that any person who gives false or erroneous information in a written certification of actual gross cargo weight has directed, requested, caused, or permitted the operation of a vehicle in a manner contrary to law in violation of subdivision (a) or (b), or both.

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

Notwithstanding Section 17580 of the Government Code, unless

otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 758

An act to amend Section 4992.3 of, and to repeal Section 4996.21 of, the Business and Professions Code, to amend, repeal, and add Sections 8801, 8802, 8804, 8808, and 8814 of, to repeal and add Sections 8502, 8539, 8621, 8622, 8801.3, 8801.5, 8801.7, 8814.5, and 8815 of, and to repeal Section 8620 of, the Family Code, relating to adoption.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 4992.3 of the Business and Professions Code is amended to read:

4992.3. The board may refuse to issue a registration or a license, or may suspend or revoke the license or registration of any registrant or licensee if the applicant, licensee, or registrant has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter is a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application

for licensure or registration.

(c) Administering to himself or herself any controlled substance or using of any of the dangerous drugs specified in Section 4211, or of any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license, or the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof. The board shall deny an application for a registration or license or revoke the license or registration of any person who uses or offers to use drugs in the course of performing clinical social work. This provision does not apply to any person also licensed as a physician and surgeon under Chapter 5 (commencing with Section 2000) or the Osteopathic Act who lawfully prescribes drugs to a patient under his or her care.

(d) Gross negligence or incompetence in the performance of clinical social work.

(e) Violating, attempting to violate, or conspiring to violate this chapter or any regulation adopted by the board.

(f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity. For purposes of this subdivision, this misrepresentation includes, but is not limited to, misrepresentation of the person's qualifications as an adoption service provider pursuant to Section 8502 of the Family Code.

(g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee, allowing any other person to use his or her license or registration.

(h) Aiding or abetting any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

(i) Intentionally or recklessly causing physical or emotional harm to any client.

(j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

(k) Engaging in sexual relations with a client, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a clinical social worker.

(*l*) Performing, or holding one's self out as being able to perform,

or offering to perform or permitting, any registered associate clinical social worker or intern under supervision to perform any professional services beyond the scope of the license authorized by this chapter.

(m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client which is obtained from tests or other means.

(n) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

(p) Advertising in a manner which is false, misleading, or deceptive.

(q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

(r) Any conduct in the supervision of any registered associate clinical social worker or intern by any licensee that violates this chapter or any rules or regulations adopted by the board.

SEC. 2. Section 4996.21 of the Business and Professions Code, as amended by Section 1 of Chapter 219 of the Statutes of 1993, is repealed.

SEC. 2.5. Section 8502 of the Family Code, as added by Section 183 of Chapter 219 of the Statutes of 1993, is repealed.

SEC. 3. Section 8502 is added to the Family Code, to read:

8502. "Adoption service provider" means any of the following:

(a) A licensed private adoption agency.

(b) An individual who has presented satisfactory evidence to the department that he or she is a licensed clinical social worker who also has a minimum of five years' experience providing professional social work services while employed by a licensed California adoption agency or the department.

(c) In a state other than California, an adoption agency licensed or otherwise approved under the laws of that state, or an individual who is licensed or otherwise certified as a clinical social worker under the laws of that state.

(d) This section shall become operative on January 1, 1995.

SEC. 3.5. Section 8539 of the Family Code, as added by Section 184 of Chapter 219 of the Statutes of 1993, is repealed.

SEC. 4. Section 8539 is added to the Family Code, to read:

8539. "Place for adoption" means, in the case of an independent adoption, the selection of a prospective adoptive parent or parents for a child by the birth parent or parents and the completion of an adoptive placement agreement on a form prescribed by the department by the birth parent or parents placing the child with prospective adoptive parents.

This section shall become operative on January 1, 1995.

SEC. 5. Section 8620 of the Family Code, as added by Section 186 of Chapter 219 of the Statutes of 1993, is repealed.

SEC. 5.5. Section 8621 of the Family Code, as added by Section 187 of Chapter 219 of the Statutes of 1993, is repealed.

SEC. 6. Section 8621 is added to the Family Code, to read:

8621. The department shall adopt regulations regarding the provision of adoption services by the department, licensed adoption agencies and other adoption service providers, and shall monitor the provision of those services by licensed adoption agencies and other adoption providers. The department shall report violations of regulations to the appropriate licensing authority.

This section shall become operative on January 1, 1995.

SEC. 6.1. Section 8622 of the Family Code, as added by Section 188 of Chapter 219 of the Statutes of 1993, is repealed.

SEC. 6.2. Section 8622 is added to the Family Code, to read:

8622. A licensed private adoption agency whose services are limited to a particular target population shall inform all birth parents and prospective adoptive parents of its service limitations before commencing any services, signing any documents or agreements, or accepting any fees.

This section shall become operative on January 1, 1995.

SEC. 6.3. Section 8801 of the Family Code, as amended by Section 191 of Chapter 219 of the Statutes of 1993, is amended to read:

8801. (a) The selection of a prospective adoptive parent or parents shall be personally made by the child's birth parent or parents and may not be delegated to an agent. The act of selection by the birth parent or parents shall be based upon his, her, or their personal knowledge of the prospective adoptive parent or parents.

(b) "Personal knowledge" as used in this section includes, but is not limited to, substantially correct knowledge of all of the following regarding the prospective adoptive parents: their full legal names, ages, religion, race or ethnicity, employment, whether other children or adults reside in their home, any health conditions curtailing their normal daily activities or reducing their normal life expectancies, and their general area of residence or, upon request, their address.

(c) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which

is enacted on or before January 1, 1995, deletes or extends that date.

SEC. 6.4. Section 8801 is added to the Family Code, to read:

8801. (a) The selection of a prospective adoptive parent or parents shall be personally made by the child's birth parent or parents and may not be delegated to an agent. The act of selection by the birth parent or parents shall be based upon his, her, or their personal knowledge of the prospective adoptive parent or parents.

(b) "Personal knowledge" as used in this section includes, but is not limited to, substantially correct knowledge of all of the following regarding the prospective adoptive parents: their full legal names, ages, religion, race or ethnicity, length of current marriage and number of previous marriages, employment, whether other children or adults reside in their home, whether there are other children who do not reside in their home and the child support obligation for these children and any failure to meet these obligations, any health conditions curtailing their normal daily activities or reducing their normal life expectancies, any convictions for crimes other than minor traffic violations, any removals of children from their care due to child abuse or neglect, and their general area of residence or, upon request, their address.

(c) This section shall become operative on January 1, 1995.

SEC. 6.5. Section 8801.3 of the Family Code, as added by Section 192 of Chapter 219 of the Statutes of 1993, is repealed.

SEC. 7. Section 8801.3 is added to the Family Code, to read:

8801.3. A child shall not be considered to have been placed for adoption unless each of the following is true:

(a) Each birth parent placing the child for adoption has been advised of his or her rights, and if desired, has been counseled pursuant to Section 8801.5.

(b) The adoption service provider, each prospective adoptive parent, and each birth parent placing the child have signed an adoption placement agreement on a form prescribed by the department. The signing of the agreement shall satisfy all of the following requirements:

(1) Each birth parent shall have been advised of his or her rights at least 10 days before signing the agreement.

(2) The agreement may not be signed by either the birth parents or the prospective adoptive parents until the time of discharge of the birth mother from the hospital. However, if the birth mother remains hospitalized for a period longer than the hospitalization of the child, the agreement may be signed by all parties at the time of or after the child's discharge from the hospital but prior to the birth mother's discharge from the hospital if her competency to sign is verified by her attending physician and surgeon before she signs the agreement.

(3) The birth parents and prospective adoptive parents shall sign the agreement in the presence of an adoption service provider.

(4) The adoption service provider who witnesses the signatures shall keep the original of the adoption placement agreement and

immediately forward it and supporting documentation as required by the department to the department or delegated county adoption agency.

(5) The child is not deemed to be placed for adoption with the prospective adoptive parents until the adoption placement agreement has been signed and witnessed.

(6) If the birth parent is not physically present in this state, the adoption placement agreement shall be signed before the adoption service provider who advised the birth parent of his or her rights or a notary or other person authorized to perform notarial acts in the state where the birth parent is present.

(c) The adoption placement agreement form shall include all of the following:

(1) A statement that the birth parent received the advisement of rights and the date upon which it was received.

(2) A statement that the birth parent understands that the placement is for the purpose of adoption and that if the birth parent takes no further action, on the 121st day after signing the adoption placement agreement, the agreement shall become a permanent and irrevocable consent to the adoption.

(3) A statement that the birth parent signs the agreement having personal knowledge of certain facts regarding the prospective adoptive parents as provided in Section 8801.

(4) A statement that the adoptive parents have been informed of the basic health and social history of the birth parents.

(5) A consent to the adoption that may be revoked as provided by Section 8814.5.

(d) The adoption placement agreement shall also meet the requirements of the Interstate Compact on the Placement of Children in Section 7901.

(e) This section shall become operative on January 1, 1995.

SEC. 7.5. Section 8801.5 of the Family Code, as added by Section 193 of Chapter 219 of the Statutes of 1993, is repealed.

SEC. 8. Section 8801.5 is added to the Family Code, to read:

8801.5. (a) Each birth parent placing a child for adoption shall be advised of his or her rights by an adoption service provider, or in the case of a birth parent who is neither a resident of, nor physically present in, this state, by a representative of an agency licensed or authorized to accept consents to adoption in the state in which the birth parent resides or is physically present for a purpose unrelated to an adoption.

(b) The birth parent shall be advised of his or her rights in a face-to-face meeting in which the birth parent may ask questions and have questions answered, as soon as possible and in no case later than 10 days before the signing of the adoption placement agreement as provided by Section 8801.3.

(c) The department shall prescribe the format and process for advising birth parents of their rights, the content of which shall include, but not be limited to, the following:

(1) The alternatives to adoption.

(2) The alternative types of adoption, including a description of the full procedures and timeframes involved in each type.

(3) The full rights and responsibilities of the birth parent with respect to adoption, including the need to keep the department informed of his or her current address in case of a medical emergency requiring contact and of providing a full health history.

(4) The right to separate legal counsel paid for by the prospective adoptive parents upon the request of the birth parent, as provided for by Section 8800.

(5) The right to a minimum of three separate counseling sessions, each to be held on different days, to be paid for by the prospective adoptive parents upon the request of the birth parents, as provided for by subdivision (d).

(d) Each person advised pursuant to this section shall be offered at least three separate counseling sessions, to be held on different days. Each counseling session shall be not less than 50 minutes in duration. The counseling may be provided by an adoption service provider or by a licensed psychotherapist, as defined by Section 1010 of the Evidence Code, as elected by the person.

(e) The counselor owes a duty of care to the birth parent being counseled, similar to the duty of care established by a psychotherapist-patient relationship, regardless of who pays the fees of the counselor. No counselor shall have a contractual relationship with the adoptive parents, an attorney for the adoptive parents, or any other individual or an organization performing any type of services for the adoptive parents and for which the adoptive parents are paying a fee, except as relates to payment of the birth parents' fee.

(f) The advisement and counseling fees shall be paid by the prospective adoptive parents at the request of the birth parent.

(g) This section shall become operative on January 1, 1995.

SEC. 8.5. Section 8801.7 of the Family Code, as added by Section 194 of Chapter 219 of the Statutes of 1993, is repealed.

SEC. 9. Section 8801.7 is added to the Family Code, to read:

8801.7. (a) An adoption service provider shall also witness the signature of the adoption placement agreement and offer to interview the birth parent after the placement of the child with prospective adoptive parents. The interview shall occur within 10 working days after the placement of the child for adoption and shall include a consideration of any concerns or problems the birth parent has with the placement, a readvisement of the rights of the birth parent, and the taking of the health and social history of the birth parent, if not taken previously.

(b) The adoption service provider shall immediately notify the department or delegated county adoption agency if the birth parent is not interviewed as provided in subdivision (a) or if there are any concerns regarding the placement. If the birth parent wishes to revoke the consent, the adoption service provider shall assist the

birth parent in obtaining the return of the child.

(c) The adoption service provider owes a very high duty of care to the birth parent being advised, regardless of who pays the provider's fees. The duty of care specifically does not include a duty to investigate information provided by the birth parents, prospective adoptive parents, or their attorneys or agents. No adoption service provider shall have a contractual relationship with prospective adoptive parents, an attorney or representative for prospective adoptive parents, or any individual or organization providing services of any type to prospective adoptive parents for which the adoptive parents are paying a fee, except as relates to the payment of the fees for the advising and counseling of the birth parents.

(d) This section shall become operative on January 1, 1995.

SEC. 9.1. Section 8802 of the Family Code, as amended by Section 195 of Chapter 219 of the Statutes of 1993, is amended to read:

8802. (a) A person desiring to adopt a child may, for that purpose, file a petition in the county in which the petitioner resides. The court clerk shall immediately notify the department at Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(b) The petition shall contain an allegation that the petitioners will file promptly with the department or delegated county adoption agency information required by the department in the investigation of the proposed adoption. The omission of the allegation from a petition does not affect the jurisdiction of the court to proceed or the validity of an adoption order or other order based on the petition.

(c) The caption of the adoption petition shall contain the names of the petitioners, but not the child's name. The petition shall state the child's sex and date of birth and the name the child had before adoption.

(d) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioners shall notify the court of any petition for guardianship or temporary guardianship filed after the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(e) The order of adoption shall contain the child's adopted name, but not the name the child had before adoption.

(f) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1995, deletes or extends that date.

SEC. 9.2. Section 8802 is added to the Family Code, to read:

8802. (a) A grandparent, aunt, uncle, sibling, legal guardian who has been the child's legal guardian for more than three years, person named in the will of a deceased parent as an intended adoptive parent where the child has no other parent, or person with whom a child has been placed for adoption, who desires to adopt a child may, for that purpose, file a petition in the county in which the petitioner

resides. If the child has been placed for adoption, a copy of the adoptive placement agreement shall be attached to the petition. The court clerk shall immediately notify the department at Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(b) The petition shall contain an allegation that the petitioners will file promptly with the department or delegated county adoption agency information required by the department in the investigation of the proposed adoption. The omission of the allegation from a petition does not affect the jurisdiction of the court to proceed or the validity of an adoption order or other order based on the petition.

(c) The caption of the adoption petition shall contain the names of the petitioners, but not the child's name. The petition shall state the child's sex and date of birth and the name the child had before adoption.

(d) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioners shall notify the court of any petition for guardianship or temporary guardianship filed after the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(e) The order of adoption shall contain the child's adopted name, but not the name the child had before adoption.

(f) This section shall become operative on January 1, 1995.

SEC. 9.5. Section 8804 of the Family Code, as amended by Section 196 of Chapter 219 of the Statutes of 1993, is amended to read:

8804. (a) If the petitioners move to withdraw the adoption petition or to dismiss the proceeding, the court clerk shall immediately notify the department at Sacramento of the action. The department or delegated county adoption agency shall file a full report with the court recommending a suitable plan for the child in every case where the petitioners move to withdraw the adoption petition or where the department or agency recommends that the adoption petition be denied and shall appear before the court for the purpose of representing the child.

(b) Notwithstanding the petitioners' withdrawal or dismissal, the court may retain jurisdiction over the child for the purpose of making any order for the child's custody that the court deems to be in the child's best interest.

(c) If a birth parent has refused to give the required consent, or the reason or cause for the withdrawal of the petition, or dismissal of the proceeding, is the withdrawal of the consent of the birth parent or parents, at the hearing the court shall order the child restored to the care and custody of the birth parent or parents.

(d) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1995, deletes or extends that date.

SEC. 10. Section 8804 is added to the Family Code, to read:

8804. (a) Whenever the petitioners move to withdraw the petition for the adoption or to dismiss the proceeding, the clerk of the court in which the proceeding is pending shall immediately notify the department at Sacramento of the action. The department or the delegated county adoption agency shall file a full report with the court recommending a suitable plan for the child in every case where the petitioners move to withdraw the petition for the adoption or where the department or delegated county adoption agency recommends that the petition for adoption be denied and shall appear before the court for the purpose of representing the child.

(b) Notwithstanding the withdrawal or dismissal of the petition, the court may retain jurisdiction over the child for the purposes of making any order for the child's custody that the court deems to be in the child's best interest.

(c) If a birth parent who did not place a child for adoption as specified in Section 8801.3 has refused to give the required consent, or a birth parent revokes consent as specified in Section 8814.5, the court shall order the child restored to the care and custody of the birth parent or parents.

(d) This section shall become operative on January 1, 1995.

SEC. 10.5. Section 8808 of the Family Code, as amended by Section 197 of Chapter 219 of the Statutes of 1993, is amended to read:

8808. The department or a delegated county adoption agency shall interview the petitioners and all persons whose consent is required and whose addresses are known as soon as possible and, in the case of residents of this state, 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 with the court, the petitioners shall file with the district office of the department or with the delegated county adoption agency responsible for the investigation of the adoption, a copy of the petition together with the names, addresses, and telephone numbers of all parties to be interviewed, if known.

This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1995, deletes or extends that date.

SEC. 11. Section 8808 is added to the Family Code, to read:

8808. The department or delegated 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 this state, within 45 working days, excluding legal holidays, after the filing of the adoption petition. The interview with the placing parent or parents shall include, but not be limited to, discussion of any concerns or problems that the parent has with the placement and, if the placing parent was not interviewed as provided in Section 8801.7, the content required in that interview. At the interview, the agency shall give the parent an opportunity to sign either a statement revoking the consent, or a waiver of the right to

revoke consent, as provided in Section 8814.5. In order to facilitate these interviews, at the same time the petition is filed with the court, the petitioners shall file with the district office of the department or with the delegated county adoption agency responsible for the investigation of the adoption, a copy of the petition together with the names, addresses, and telephone numbers of all parties to be interviewed, if known.

This section shall become operative on January 1, 1995.

SEC. 11.5. Section 8814 of the Family Code, as amended by Section 198 of Chapter 219 of the Statutes of 1993, is amended to read:

8814. (a) The consent of the birth parent or parents to the adoption by the petitioners shall be signed in the presence of an agent of the department or of a delegated county adoption agency on a form prescribed by the department and shall be filed with the clerk of the superior court in the county of the petitioner's residence.

(b) The consent described in subdivision (a), when reciting that the person giving it is entitled to the sole custody of the child and when acknowledged before that agent, is prima facie evidence of the right of the person making it to the sole custody of the child and that person's sole right to consent.

(c) If the birth parent of a child to be adopted is outside this state at the time of signing the consent, the consent may be signed before a notary or other person authorized to perform notarial acts, and in that case the consent of the department or of the delegated county adoption agency is also necessary.

(d) A birth parent who is a minor has the right to sign a consent for the adoption of the birth parent's child and the consent is not subject to revocation by reason of minority.

(e) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1995, deletes or extends that date.

SEC. 12. Section 8814 is added to the Family Code, to read:

8814. (a) The consent of the birth parent or parents who did not place the child for adoption as described in Section 8801.3 to the adoption shall be signed in the presence of an agent of the department or of a delegated county adoption agency on a form prescribed by the department. The consent shall be filed with the clerk of the appropriate superior court.

(b) The consent described in subdivision (a), when reciting that the person giving it is entitled to the sole custody of the child and when acknowledged before that agent, is prima facie evidence of the right of the person making it to the sole custody of the child and that person's sole right to consent.

(c) If the birth parent of a child to be adopted resides outside this state or is outside this state for an extended period of time unrelated to the adoption at the time of signing the consent, the consent may be signed before a notary or other person authorized to perform notarial acts, and in that case the consent of the department or of the delegated county adoption agency is also necessary.

(d) A birth parent who is a minor has the right to sign a consent for the adoption of the birth parent's child and the consent is not subject to revocation by reason of minority.

(e) This section shall become operative on January 1, 1995.

SEC. 12.5. Section 8814.5 of the Family Code, as added by Section 199 of Chapter 219 of the Statutes of 1993, is repealed.

SEC. 13. Section 8814.5 is added to the Family Code, to read:

8814.5. (a) After a consent to the adoption is signed by the birth parent or parents pursuant to Section 8801.3 or 8814, the birth parent or parents signing the consent shall have 120 days to take one of the following actions:

(1) Sign and deliver to the department or delegated county adoption agency a written statement revoking the consent and requesting the child to be returned to the birth parent or parents.

(2) Sign a waiver of the right to revoke consent on a form prescribed by the department in the presence of a representative of the department or delegated county adoption agency or, if the parent is not physically present in California, then before a notary or other person authorized to perform notarial acts in the state in which the birth parent resides or is present for a purpose unrelated to an adoption. The waiver of the right to revoke consent may not be signed until an interview has been completed by the department or delegated county adoption agency. Within 10 working days of a request made after the department or delegated county adoption agency has received a copy of the petition for the adoption and the names and addresses of the persons to be interviewed, the department or delegated county adoption agency shall interview, at the department or agency office, any birth parent requesting to be interviewed.

(3) Allow the consent to become a permanent consent on the 121st day after signing.

(b) The consent may not be revoked after a waiver of the right to revoke consent has been signed or after 120 days beginning on the date the consent was signed, whichever occurs first.

(c) This section shall become operative on January 1, 1995.

SEC. 14. Section 8815 of the Family Code, as added by Section 201 of Chapter 219 of the Statutes of 1993, is repealed.

SEC. 15. Section 8815 is added to the Family Code, to read:

8815. (a) Consent of a birth parent to the adoption of the child by the prospective adoptive parent or parents may not be withdrawn except with court approval. Request for that approval may be made by motion, or a birth parent seeking to withdraw consent may file with the clerk of the court where the adoption petition is pending, a petition for approval of withdrawal of consent, without the necessity of paying a fee for filing the petition. The motion or petition shall be in writing and shall set forth the reasons for withdrawal of consent, but otherwise may be in any form.

(b) The court clerk shall set the matter for hearing and shall give notice thereof to the department, to the prospective adoptive parent

or parents, and to the birth parent or parents by certified mail, return receipt requested, to the address of each as shown in the proceeding, at least 10 days before the time set for hearing.

(c) The department or delegated county adoption agency shall, before the hearing of the motion or petition for withdrawal, file a full report with the court and shall appear at the hearing to represent the interests of the child.

(d) At the hearing, the parties may appear in person or with counsel. The hearing shall be held in chambers, but the court reporter shall report the proceedings and, on court order, the fee therefor shall be paid from the county treasury. If the court finds that withdrawal of the consent to adoption is reasonable in view of all the circumstances and that withdrawal of the consent is in the child's best interest, the court shall approve the withdrawal of the consent. Otherwise, the court shall withhold its approval. Consideration of the child's best interest shall include, but is not limited to, an assessment of the child's age, the extent of bonding with the prospective adoptive parent or parents, the extent of bonding or the potential to bond with the birth parent or parents, and the ability of the birth parent or parents to provide adequate and proper care and guidance to the child. If the court approves the withdrawal of consent, the adoption proceeding shall be dismissed.

(e) A court order granting or withholding approval of a withdrawal of consent to an adoption may be appealed in the same manner as an order of the juvenile court declaring a person to be a ward of the juvenile court.

(f) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1995, deletes or extends that date.

SEC. 16. Section 8815 is added to the Family Code, to read:

8815. (a) Once the revocable consent to adoption has become permanent as provided in Section 8814.5, the consent to the adoption by the prospective adoptive parents may not be withdrawn.

(b) Before the time when the revocable consent becomes permanent as provided in Section 8814.5, the birth parent or parents may request return of the child. In such a case the child shall immediately be returned to the birth parent or parents so requesting.

(c) If the person or persons with whom the child has been placed have concerns that the birth parent or parents requesting return of the child are unfit or present a danger of harm to the child, that person's or those persons' only option is to report their concerns to the investigating adoption agency and the appropriate child welfare agency. These concerns shall not be a basis for failure to immediately return the child.

(d) This section shall become operative on January 1, 1995.

SEC. 17. (a) Section 1 of this act shall not become operative until January 1, 1995.

(b) The provisions of this act that are operative on January 1, 1995,

shall apply to all petitions for independent adoption filed on or after January 1, 1995. Petitions filed prior to, and pending on, that date shall be governed by the law in effect on December 31, 1994.

CHAPTER 759

An act to add Section 8610.3 to, and to repeal and add Section 8610.5 of, the Government Code, and to repeal and add Chapter 6.99 (commencing with Section 25572) of Division 20 of the Health and Safety Code, relating to nuclear radiation.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 8610.3 is added to the Government Code, to read:

8610.3. The Legislature hereby finds and declares as follows:

(a) The Office of Emergency Services, in consultation with the State Department of Health Services and affected counties, investigated the consequences of a serious nuclear powerplant accident for each of the nuclear powerplants in California with a generating capacity of 50 megawatts or more.

(b) This study culminated in the establishment of emergency planning zones for direct exposure and ingestion radiation pathways.

(c) All state and local government nuclear powerplant emergency response plans have been revised to reflect the information provided in the study.

SEC. 2. Section 8610.5 of the Government Code is repealed:

SEC. 3. Section 8610.5 is added to the Government Code, to read:

8610.5. (a) It is the intent of the Legislature that state and local costs which are not reimbursed by federal funds shall be borne by utilities operating nuclear powerplants with a generating capacity of 50 megawatts or more. The Public Utilities Commission shall develop and transmit to the Office of Emergency Services an equitable method of assessing the utilities operating the powerplants for their reasonable pro rata share of state agency costs. Each local government involved shall submit a statement of its costs, as required, to the Office of Emergency Services. Upon each utility's notification by the Office of Emergency Services, from time to time, of the amount of its share of the actual or anticipated state and local agency costs, the utility shall pay this amount to the Controller for deposit in the Nuclear Planning Assessment Special Account, which is hereby created in the General Fund for allocation by the Controller, upon appropriation by the Legislature, to carry out activities pursuant to this section and Chapter 6.99 (commencing with Section 25572) of Division 20 of the Health and Safety Code. The

Controller shall pay from this account the state and local costs relative to carrying out this section and Chapter 6.99 (commencing with Section 25572) of Division 20 of the Health and Safety Code, upon certification thereof by the Office of Emergency Services.

(b) (1) The total annual reimbursement of state costs from the utilities operating the nuclear powerplants within the state for activities pursuant to this section and Chapter 6.99 (commencing with Section 25572) of Division 20 of the Health and Safety Code, shall not exceed the lesser of the actual costs or the maximum funding levels, previously established by Section 1 of Chapter 1607 of the Statutes of 1988 as of December 31, 1993, subject to subdivisions (d), (e), (f), and (g), to be shared equally among the utilities.

(2) Of the initial amount of five hundred eighty-five thousand dollars ($585,000) for state costs, as determined in paragraph (1), for the period from January 1, 1994, to June 30, 1994, inclusive, the sum of three hundred fifty thousand five hundred dollars ($350,500) shall be in support of the Office of Emergency Services for activities pursuant to this section and Chapter 6.99 (commencing with Section 25572) of Division 20 of the Health and Safety Code, and the sum of two hundred thirty-four thousand five hundred dollars ($234,500) shall be in support of the State Department of Health Services for activities pursuant to this section and Chapter 6.99 (commencing with Section 25572) of Division 20 of the Health and Safety Code.

(3) Of the initial annual amount of one million two hundred seventeen thousand dollars ($1,217,000) for state costs, as determined in paragraph (1), for the 1994–95 fiscal year, the sum of seven hundred twenty-nine thousand dollars ($729,000) shall be in support of the Office of Emergency Services for activities pursuant to this section and Chapter 6.99 (commencing with Section 25572) of Division 20 of the Health and Safety Code, and the sum of four hundred eighty-eight thousand dollars ($488,000) shall be in support of the State Department of Health Services for activities pursuant to this section and Chapter 6.99 (commencing with Section 25572) of Division 20 of the Health and Safety Code.

(c) (1) The total reimbursement for the period from January 1, 1994, to June 30, 1994, inclusive of local costs from the utilities shall not exceed the lesser of the actual costs or the maximum funding levels, on a site basis, previously established on a per reactor basis by Section 1 of Chapter 1607 of the Statutes of 1988 as of December 31, 1993, in support of activities pursuant to this section and Chapter 6.99 (commencing with Section 25572) of Division 20 of the Health and Safety Code. The maximum initial annual amount available for reimbursement of local costs, subject to subdivisions (d), (e), (f), and (g) of this section shall be three hundred twelve thousand dollars ($312,000) for the Diablo Canyon site and four hundred sixty-eight thousand dollars ($468,000) for the San Onofre site.

(2) The total annual fiscal year reimbursement commencing July 1, 1994, of local costs from the utilities shall not exceed the lesser of the actual costs or the maximum funding levels, on a site basis,

previously established on a per reactor basis by Section 1 of Chapter 1607 of the Statutes of 1988, in support of activities pursuant to this section and Chapter 6.99 (commencing with Section 25572) of Division 20 of the Health and Safety Code. The maximum initial annual amount available for reimbursement of local costs, subject to subdivisions (d), (e), (f), and (g) of this section, shall be seven hundred thousand dollars ($700,000) for the Diablo Canyon site and nine hundred seventy-four thousand dollars ($974,000) for the San Onofre site.

(3) The amounts paid by the utilities under this section shall be allowed for ratemaking purposes by the Public Utilities Commission.

(d) The amounts available for reimbursement of state and local costs as specified in this section shall be adjusted each fiscal year by the percentage increase in the California Consumer Price Index of the previous calendar year.

(e) Through the date specified in subdivision (g), the amounts available for reimbursement of state and local costs as specified in this section shall be cumulative biennially. Any unexpended funds from the 1994–95 fiscal year shall be carried over to the 1995–96 fiscal year, and any unexpended funds from the 1996–97 fiscal year shall be carried over to the 1997–98 fiscal year.

(f) For the Diablo Canyon site, beginning July 1, 1996, the maximum annual amount for reimbursement of local costs determined pursuant to subdivision (d) shall be increased by an additional seventy-five thousand dollars ($75,000).

(g) This section shall become inoperative on July 1, 1999, and, as of January 1, 2000, is repealed, unless a later enacted statute, which becomes effective on or before July 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

(h) Upon inoperation of this section, any amounts remaining in the special account shall be refunded pro rata to the utilities contributing thereto.

SEC. 4. The Task Force on California Nuclear Emergency Response was established by Senate Resolution 48 of 1986, to "formulate a report on the State of California's present medical and emergency response capacity in the event a major nuclear facility accident, including recommendations as to how the state might improve this capacity and limit damage from, or minimize exposure to, radiation in the event of such an accident."

In 1987, the task force reviewed emergency response plans for the state's nuclear power facilities, heard testimony at public hearings held near each of the state's three nuclear power facilities, and reviewed data emerging from the Chernobyl nuclear accident.

SEC. 5. Chapter 6.99 (commencing with Section 25572) of Division 20 of the Health and Safety Code is repealed.

SEC. 6. Chapter 6.99 (commencing with Section 25572) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 6.99. THE RADIATION PROTECTION ACT OF 1993

Article 1. General Provisions

25572. (a) As used in this chapter:

(1) "Office" means the Office of Emergency Services.

(2) "Department" means the State Department of Health Services.

(3) "Emergency planning zone" means a zone identified in state and local government emergency plans where immediate decisions for effective public protective action may be necessary.

(4) "Ingestion pathway zone" means the 50-mile radius around each of the state's nuclear powerplants in which protective actions may be required to protect the food chain in the event of an emergency.

(5) "Site" means the location of a nuclear powerplant and its surrounding emergency planning zone.

(6) "Plume emergency phase" means the period beginning at the onset of an emergency at a nuclear powerplant when immediate decisions for public protective actions are needed.

(7) "Ingestion pathway phase" means the period beginning after any release of radioactive material from a nuclear powerplant accident when the plume emergency phase has ceased, and reliable environmental measurements are available for making decisions on additional protective actions to protect the food chain. The main concern is to prevent exposure from ingestion of contaminated water or food, such as milk, fresh vegetables, or aquatic foodstuffs.

(8) "Recovery and reentry phase" means the period when actions designed to reduce radiation levels in the environment to acceptable levels for unrestricted use are commenced, and ending when all recovery actions have been completed.

(9) "Local government" means a city or county that provides emergency response for a nuclear powerplant emergency.

(10) "Local jurisdiction" means an entity that provides emergency response for a nuclear powerplant emergency in accordance with the plans of a local government.

(11) "Interjurisdictional Planning Committee" means the planning committee, comprised of representatives of the Counties of Orange and San Diego, the Cities of Dana Point, San Clemente, San Juan Capistrano, the Camp Pendleton Marine Corps Base, the State Department of Parks and Recreation, and the Southern California Edison Company, established as a mechanism for coordinating integrated preparedness and response in the event of an emergency at the San Onofre Nuclear Generating Station.

25573. The Legislature hereby finds and declares as follows:

(a) Existing law requires the development of a nuclear powerplant emergency response program by state and local jurisdictions based on federal and state criteria.

(b) The office, in consultation with the department and the

counties, has investigated the consequences of a serious nuclear powerplant accident and has established emergency planning zones for direct plume exposure and ingestion radiation pathways. These zones imply mutually supportive emergency planning and preparedness arrangements by all levels of government.

(c) An integrated emergency planning program is necessary for the benefit of the citizens within the planning zones.

(d) It is the intent of the Legislature that the office should be responsible for the coordination and integration of all emergency planning programs and response plans. The department has the lead technical role in the ingestion pathway and recovery and reentry phases. The office will coordinate the department's support to local government. The state provides support to local government during the plume emergency phase and has the lead role in the ingestion pathway and recovery and reentry phases.

(e) It is the intent of the Legislature that local government shall be responsible for developing and maintaining an organization capable of implementing protective actions which safeguard public health and safety. Local government has the lead role in the plume emergency phase, and supports the state in the ingestion pathway and recovery and reentry phases.

(f) It is further the intent of the Legislature that nothing in this chapter shall limit the activities of any government carrying out its general responsibilities pertaining to the public health and safety aspects of emergency response.

Article 2. Responsibilities of the Office of Emergency Services

25574. (a) The office shall be responsible for the coordination and integration of all emergency planning programs and response plans. The office shall also coordinate resources and activities to implement protective measures for safeguarding public health and safety.

(b) The office shall perform the following duties and functions:

(1) Coordinate the activities of all state agencies relating to preparation and implementation of the State Nuclear Powerplant Emergency Response Plan. The office shall be the focal point for coordinating nuclear powerplant emergency preparedness activities with local jurisdictions, other state agencies, federal agencies and other organizations.

(2) Exercise explicit, ultimate authority for allocating funds from the Nuclear Planning Assessment Special Account to local jurisdictions.

(3) Participate in exercises of the state's nuclear emergency response plan at least biennially to ensure that state personnel are adequately trained to respond in the event of an actual emergency. The exercises shall include the department and other relevant state agencies, and the office shall activate the State Operations Center of the office for each exercise.

(4) Perform an independent accident assessment, at the time of an emergency, in conjunction with the department. The office shall also review protective action recommendations given to local jurisdiction representatives in the dose assessment center.

(5) Coordinate planning guidance to state agencies and local jurisdictions.

(6) Develop and maintain the State Nuclear Powerplant Emergency Response Plan and procedures necessary to carry out those responsibilities and review and approve state agency plans in draft prior to publication.

(7) Exercise discretionary authority regarding the formation of interagency agreements with state agencies having local emergency responsibilities. The purpose of the interagency agreement is to ensure state agencies have updated emergency plans and trained emergency response personnel to respond during the plume emergency phase.

(8) Annually prepare and submit a report to any joint committee and Senate and Assembly policy committee with jurisdiction over emergency and disaster services which includes all of the following:

(A) A description of the purpose of all nuclear emergency response exercises in the state involving local and state authorities.

(B) A description of state and local government roles in each exercise.

(C) An accounting of revenues from each utility and a description of expenditures of special account funds by each jurisdiction and the state.

(D) A description of all nuclear emergency response training and education efforts undertaken by the state and local agencies, and identification of any additional training and educational needs.

(E) Recommendations consistent with this chapter.

(9) Conduct a study similar to that described in Section 8610.3 of the Government Code, for any nuclear powerplant with a generating capacity of 50 megawatts or more that is proposed for certification in this state.

Article 3. The State Department of Health Services

25575. (a) The department shall have the lead technical role in the ingestion pathway and recovery and reentry phases of a nuclear powerplant emergency. The department shall ensure that its ingestion pathway and recovery and reentry plan is prepared, and shall provide guidelines for local government ingestion pathway and recovery and reentry plans.

(b) The department shall maintain plans for communicating public health information during the ingestion pathway and recovery and reentry emergency phases. The department shall also maintain a radiation emergency screening team, and shall maintain designation of medical facilities to care for any casualties.

(c) The department shall perform the following duties and

functions:

(1) Act as the responsible entity for ensuring that ingestion pathway and recovery and reentry plans are maintained and ready to be implemented, including necessary training and exercises, in coordination with affected counties and the office.

(2) Establish protective action guidelines for ingestion pathway and recovery and reentry operations with due regard for compatibility with the recommendations of the Environmental Protection Agency.

(3) Establish criteria for, coordinate development and maintenance by counties of, and annually review an information catalogue of food, water, and animal resources for the 50-mile ingestion pathway zone around the San Onofre and Diablo Canyon nuclear generating stations.

(4) Establish measurement standards and procedures to assess radioactivity in exposure pathways, including, but not limited to, food, water, and animals, which are compatible with the Environmental Protection Agency's standards and procedures.

(5) Support local government nuclear emergency planning, training, exercises, and response in coordination with the office.

(6) Maintain plans for coordinating the dissemination of public health information during the recovery and reentry phase of a nuclear powerplant emergency.

(7) Maintain a Radiation Emergency Screening Team, also known as the Radiological Advisory Team and develop guidelines for the team. The team shall not be authorized to make decisions within the jurisdiction of emergency planning and response organizations. The guidelines for the team shall meet, but not be limited to, the following requirements:

(A) The team shall include individuals with expertise in medicine, radiation biology, radiation casualty management, emergency preparedness and disaster response, public health, and government and responsibilities.

(B) The team shall be available to advise the department on its nuclear powerplant emergency planning.

(C) The team shall be available for immediate response, 24 hours a day, during the emergency phase of a nuclear powerplant accident. Upon the request of the department, the team shall provide advice and counsel regarding initial patient management and casualty evacuation, and shall provide radiation exposure medical advice to field and hospital medical care providers. Activation of the department's emergency "call-down" list will provide the method of notification.

(D) Individuals shall be designated to serve as backup for members of the team who are unable to immediately respond to a radiation emergency.

(8) Maintain guidelines for the designation for one or more medical facilities which would be capable of managing and caring for casualties caused by a nuclear radiation accident.

(A) The facilities shall have the capability to provide the following:

(i) Provide radiologic and microbiologic isolation, as prescribed by the department, for 10 to 25 casualties.

(ii) Perform radioactivity measurements.

(iii) To quickly mobilize and augment the treatment staff to care for a sudden influx of casualties.

(B) In maintaining the team guidelines, the department shall consider input from other relevant groups or organizations, such as the California Conference of Local Health Officers, the California Medical Association, the California Association of Hospitals, and the University of California medical facilities.

(C) The department shall consider geographic location and critical and supportive care available when developing guidelines.

(D) The department shall designate facilities in accordance with the guidelines developed pursuant to subparagraph (A) of paragraph (8) of subdivision (c), and shall maintain a list of designated facilities.

25576. It is the intent of the Legislature to provide necessary funding for medical facilities designated by the department to enable each facility to be effective in receiving casualties from a nuclear radiation accident.

Article 4. Local Jurisdictions

25577. The Legislature finds and declares that Article 10 (commencing with Section 8610) of Chapter 8 of Title 2 of Division 1 of the Government Code authorizes local governments to create disaster councils for emergency planning and response. The local governmental entities control their own emergency response organizations and resources. Local jurisdictions implement protective measures associated with the plume phase of nuclear radiation accidents.

25578. Local governments shall perform the following duties and functions:

(a) Local governments and nuclear facility operators shall develop and maintain radiological emergency response and preparedness plans to safeguard safety around a nuclear powerplant.

(b) Responsibilities of local jurisdictions within an emergency planning zone include, but are not limited to, the following:

(1) Preemergency preparedness includes developing, maintaining, and enhancing radiological emergency response plans and procedures; maintaining emergency management organizations and operations and field response organizations; in conjunction with utilities, providing public information and education; maintaining essential communications systems; other preemergency preparedness measures, as required in accordance with plans and procedures.

(2) Plume phase emergency includes overall management of

offsite plume phase emergency actions; providing available resources for emergency response; a notifying of emergency workers and the public; providing emergency public information; making protective action decisions and taking protective action response, providing public health support in conjunction with the utility and state, providing radiologic exposure control; procuring additional resources and taking other actions needed for emergency response.

(3) Ingestion pathway and recovery phase includes providing support to the pathway and recovery and reentry actions; providing local input into ingestion pathway and recovery decisions, continuing emergency public information in conjunction with state and federal organizations; providing support for security of evacuated areas.

(4) The Interjurisdictional Planning Committee shall identify a discussion leader to facilitate protective action decisions during a nuclear powerplant emergency at the San Onofre Nuclear Generation Station.

(5) A jurisdiction within an emergency planning zone may request services from a jurisdiction outside the emergency planning zone that are necessary to support an evacuated emergency planning zone population. Services requested by a jurisdiction within the emergency planning zone may include, but are not limited to, public information, congregate care, traffic management, radiological monitoring or decontamination of evacuees, and interjurisdictional coordination.

Article 5. Responsibilities of Entities Providing Utilities

25579. Entities providing utilities shall perform the following duties and functions:

(a) Any public or private utility that operates a nuclear generating facility shall have a response organization which can be integrated with federal, state, and local jurisdiction emergency response resources during a radiological accident.

(b) Nuclear utilities shall have the primary responsibility for planning and implementing emergency measures within their facility boundaries and for accident assessment, including evaluation of any potential risk to the public health and safety, and preparation of appropriate protective action recommendations for the consideration of the responsible offsite decisionmakers.

(c) The utilities shall also provide information to the appropriate state and local agencies in support of their independent assessment of offsite radiological conditions relevant to protective action decisions.

(d) Utilities are bound by federal regulation to share responsibility for nuclear powerplant emergency response planning, training, drills and exercises, and public education information with appropriate state and local jurisdictions.

Article 6. Responsibilities of Other Agencies

25580. (a) The Department of Transportation shall include within its criteria for funding, repair, and construction projects, the need for adequate emergency evacuation routes.

(b) State and local law enforcement agencies shall ensure that traffic flow plans for areas outside the emergency planning zones adequately reflect the possible evacuation of residents outside the emergency planning zones.

(c) State and local law enforcement agencies shall ensure that traffic flow plans take into consideration that some evacuation routes may be impassible under certain weather conditions and should have plans for designating alternative routes.

(d) State law enforcement agencies shall ensure that officers who may be needed to respond during a nuclear powerplant emergency receive the necessary training, including refresher courses at least once per year.

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 760

An act to amend Section 1349.2 of, and to add and repeal Section 1349.3 of, the Health and Safety Code, relating to health care service plans.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 1349.2 of the Health and Safety Code is amended to read:

1349.2. (a) A health care service plan operated by any city, county, city and county, public entity, or political subdivision that satisfies all of the following criteria is exempt from Section 1349:

(1) Provides services only to its employees, their dependents, and retirees, but not to the general public.

(2) Provides funding for the program.

(3) Provides that providers are not at risk in contracting arrangements, that is, that the reimbursement system is on a fee-for-service basis.

(b) The Senate Office of Research shall conduct a study of the factors that should be considered by the Legislature in determining whether to create an exemption, and the scope of the exemption, under this chapter for public entities and political subdivisions operating a health care service plan for their employees, retired employees, and their dependents which satisfies all of the conditions set forth in subdivision (a). The study shall include, but not be limited to, evaluation of all of the following:

(1) An estimate of the number of public entity and political subdivision plans that would be affected by an exemption.

(2) The fiscal impact of licensure on public entities and political subdivisions and upon the regulatory authority, including any increase in public entity or regulatory authority employees needed to comply with licensure.

(3) The impact, if any, on services offered by the plan due to costs associated with regulation, including any unintended results of creating barriers to health care.

(4) Any potential concomitant increase in taxes in order for public entities and political subdivisions to provide health care services.

(5) If the plans are not licensed and monitored, any risks of financial insolvency, inadequate benefit packages, inadequate education of enrollees of plans concerning available benefits and services, appeal rights, or of economic stability of the plan; and any adverse impact on the ability of enrollees of plans to obtain quality health care, including barriers to accessibility and claims payment practices.

(6) The impact on the private sector, including physicians, allied health providers, and hospitals.

(7) The impact on health care service plans from any increase in enrollee assessments to fund the regulatory authority's efforts in licensing public entities and political subdivisions.

(8) The impact and effect of competition on private sector plans from licensed public entities and political subdivisions.

(9) Any constitutional barriers precluding the operation of a health care service plan by a joint exercise of powers agreement pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code.

In conducting the study, the Senate Office of Research shall seek assistance and input from all interested parties. The study shall be completed and submitted to the Legislature no later than December 31, 1991.

(c) It is the intent of the Legislature that the Senate Office of Research study shall provide relevant factual and legal information that may assist the Legislature in determining whether, and to what extent, a permanent exemption for public entity and political

subdivision employee plans would be in the public interest and not detrimental to the protection of subscribers, enrollees, or persons regulated under this chapter, and the extent to which regulation of those plans is not essential to the purposes of this chapter.

It is therefore the intent of the Legislature that the temporary exemption in subdivision (a) is to alleviate the necessity for the Department of Corporations to commence enforcement actions against those plans solely because they are unlicensed during this period.

(d) During the time period of temporary exemption, any public entity or political subdivision operating a health care service plan pursuant to subdivision (a) shall not engage in any actions that are contrary to Sections 1378 and 1379 and shall not reduce or change current benefits except in accordance with collective bargaining agreements.

(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. 2. Section 1349.3 is added to the Health and Safety Code, to read:

1349.3. (a) A health care service plan operated by a joint labor management trust governed by a board of trustees shall be exempt from Section 1349 if all of the following apply:

(1) At least one-half of the trustees are management level personnel appointed by their participating city, county, city and county, public entity, or political subdivision.

(2) All of the remaining trustees are public entity or political subdivision employees and employees of the participating, recognized employee organizations, who are selected by the employees of the participating public entity or entities and political subdivision through their participating, recognized employee organizations.

(3) The plan was one of the following:

(A) In existence and doing business on or before January 1, 1993.

(B) In its organizational stages prior to January 1, 1993, and came into existence and commenced doing business between January 1, 1993, and January 1, 1994.

(4) The plan provides services only to the following:

(A) The employees and their dependents, and retirees and their dependents, of the public entity or entities and political subdivisions that participate in the joint labor management trust pursuant to a collective bargaining agreement.

(B) Employees, retirees, and their dependents of a participating, recognized employee organization and joint labor management trust who were members of the joint labor management trust plan prior to June 30, 1993.

(C) Not to the general public.

(5) Funding for the plan shall be the responsibility of the public entity or entities and political subdivisions that participate in the

joint labor management trust pursuant to a collective bargaining agreement.

(6) The plan provides that providers are not at risk in contracting arrangements, that is, that the reimbursement system is on a fee-for-service basis.

(b) The Assembly Office of Research shall conduct a study of the factors that should be considered by the Legislature in determining whether to create an exemption, and the scope of the exemption, under this chapter for joint labor management trusts that operate a health care service plan satisfying all the conditions set forth in subdivision (a). In conducting the study, the Assembly Office of Research shall seek assistance and input from all interested parties. The study shall be completed and submitted to the Legislature no later than January 1, 1995. The study shall include, but not be limited to, evaluation of all of the following:

(1) An estimate of the number of joint labor management trust plans and public entities and political subdivisions that would be affected by an exemption.

(2) The characteristics of joint labor management trusts, including how and why they were created, their financial condition, and the methods by which they are funded, operated, and administered.

(3) The relationship between the public entities and political subdivisions and their joint labor management trusts, including the amount and manner of control or supervision the public entity or entities and political subdivisions have on the joint labor management trusts.

(4) The enrollment requirements for each joint labor management trust health care service plan, whether enrollment is limited to public entity and political subdivision employees and their dependents, or whether union employees, trust employees, or other persons may also enroll in the health plan.

(5) The health benefits provided by each joint labor management trust health care service plan, including copayments, deductibles, and any other forms of enrollee cost sharing.

(6) The annual premiums paid by employees to each joint labor management trust for enrollment in its health care service plan.

(7) The health claims paid annually by each joint labor management trust for health services provided to its health care service plan enrollees.

(8) The financial condition of each joint labor management trust health care service plan, as stated in the trust's annual audited financial statement, and information concerning what recourse providers and enrollees may have in the event that the health care service plan fails to make any payment or timely payment of health care services.

(9) The costs and other related impacts that each joint labor management trust would incur if required to do one or both of the following:

(A) Secure a certificate issued by the Commissioner of Insurance pursuant to Section 700 of the Insurance Code.

(B) Secure a license from the Commissioner of Corporations pursuant to Section 1349 of the Health and Safety Code.

(10) The enrollee services provided by each joint labor management trust health care service plan, including education of enrollees, appeal rights, and coordination of benefits.

(c) It is the intent of the Legislature that the Assembly Office of Research study shall provide relevant factual and legal information that may assist the Legislature in determining whether, and to what extent, a permanent exemption for public entity and political subdivision employee plans provided by joint labor management trusts would be in the public interest and not detrimental to the protection of subscribers, enrollees, or persons regulated under this chapter, and the extent to which regulation of those plans is not essential to the purposes of this chapter.

It is therefore the intent of the Legislature that the temporary exemption in subdivision (a) is to alleviate the necessity for the Department of Corporations to commence enforcement actions against those plans solely because they are unlicensed during this period.

(d) During the time period of temporary exemption, any joint labor management trust operating a health care service plan pursuant to subdivision (a) shall not engage in any actions that are contrary to Sections 1378 and 1379 and shall not reduce or change current benefits except in accordance with collective bargaining agreements.

(e) The temporary exemption for health care service plans operated by joint labor management trusts authorized by subdivision (a) is conditioned on both of the following:

(1) A declaration filed by the joint labor management trust with the Assembly Office of Research by February 1, 1994, that it operates a health care service plan as defined by subdivision (a), and declaring that the trust is qualified for the exemption from Section 1349. For the purposes of this subdivision, a declaration shall conform to Section 2015.5 of the Code of Civil Procedure.

(2) Cooperation with the Assembly Office of Research in performing the study required by this section, including prompt and complete replies by the joint labor management trust to oral and written requests for information that is relevant to the study, and written requests for access to records that are relevant to the study.

The Assembly Office of Research shall notify the Commissioner of Insurance and the Commissioner of Corporations of any noncompliance with this subdivision that comes to its attention.

(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. 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 761

An act to amend Section 1538.5 of the Penal Code, relating to search warrants.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. It is the intent of the Legislature, in amending Section 1538.5 of the Penal Code, that this act shall not be construed or used by a party as a means to forum shop.

SEC. 2. Section 1538.5 of the Penal Code is amended to read:

1538.5. (a) A defendant may move for the return of property or to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure on either of the following grounds:

(1) The search or seizure without a warrant was unreasonable.

(2) The search or seizure with a warrant was unreasonable because (i) the warrant is insufficient on its face; (ii) the property or evidence obtained is not that described in the warrant; (iii) there was not probable cause for the issuance of the warrant; (iv) the method of execution of the warrant violated federal or state constitutional standards; (v) there was any other violation of federal or state constitutional standards.

(b) When consistent with the procedures set forth in this section and subject to the provisions of Section 170 through 170.6 of the Code of Civil Procedure, the motion should first be heard by the magistrate who issued the search warrant if there is a warrant.

(c) Whenever a search or seizure motion is made in the municipal, justice, or superior court as provided in this section, the judge or magistrate shall receive evidence on any issue of fact necessary to determine the motion.

(d) If a search or seizure motion is granted pursuant to the proceedings authorized by this section, the property or evidence shall not be admissible against the movant at any trial or other hearing unless further proceedings authorized by this section, Section 871.5, 1238, or 1466 are utilized by the people.

(e) If a search or seizure motion is granted at a trial, the property

shall be returned upon order of the court unless it is otherwise subject to lawful detention. If the motion is granted at a special hearing, the property shall be returned upon order of the court only if, after the conclusion of any further proceedings authorized by this section, Section 1238 or 1466, the property is not subject to lawful detention or if the time for initiating the proceedings has expired, whichever occurs last. If the motion is granted at a preliminary hearing, the property shall be returned upon order of court after 10 days unless the property is otherwise subject to lawful detention or unless, within that time, further proceedings authorized by this section, Section 871.5 or 1238 are utilized; if they are utilized, the property shall be returned only if, after the conclusion of the proceedings, the property is no longer subject to lawful detention.

(f) If the property or evidence relates to a felony offense initiated by a complaint, the motion shall be made in the superior court only upon filing of an information, except that the defendant may make the motion at the preliminary hearing in the municipal or justice court, but the motion in the municipal or justice court shall be restricted to evidence sought to be introduced by the people at the preliminary hearing.

(g) If the property or evidence relates to a misdemeanor complaint, the motion shall be made in the municipal or justice court before trial and heard prior to trial at a special hearing relating to the validity of the search or seizure. If the property or evidence relates to a misdemeanor filed together with a felony, the procedure provided for a felony in this section and Sections 1238 and 1539 shall be applicable.

(h) If, prior to the trial of a felony or misdemeanor, opportunity for this motion did not exist or the defendant was not aware of the grounds for the motion, the defendant shall have the right to make this motion during the course of trial in the municipal, justice, or superior court.

(i) If the property or evidence obtained relates to a felony offense initiated by complaint and the defendant was held to answer at the preliminary hearing, or if the property or evidence relates to a felony offense initiated by indictment, the defendant shall have the right to renew or make the motion in the superior court at a special hearing relating to the validity of the search or seizure which shall be heard prior to trial and at least 10 days after notice to the people, unless the people are willing to waive a portion of this time. If the offense was initiated by indictment or if the offense was initiated by complaint and no motion was made at the preliminary hearing, the defendant shall have the right to fully litigate the validity of a search or seizure on the basis of the evidence presented at a special hearing. If the motion was made at the preliminary hearing, unless otherwise agreed to by all parties, evidence presented at the special hearing shall be limited to the transcript of the preliminary hearing and to evidence that could not reasonably have been presented at the preliminary hearing, except that the people may recall witnesses

who testified at the preliminary hearing. If the people object to the presentation of evidence at the special hearing on the grounds that the evidence could reasonably have been presented at the preliminary hearing, the defendant shall be entitled to an in camera hearing to determine that issue. The superior court shall base its ruling on all evidence presented at the special hearing and on the transcript of the preliminary hearing, and the findings of the magistrate shall be binding on the superior court as to evidence or property not affected by evidence presented at the special hearing. After the special hearing is held in the superior court, any review thereafter desired by the defendant prior to trial shall be by means of an extraordinary writ of mandate or prohibition filed within 30 days after the denial of his or her motion at the special hearing.

(j) If the property or evidence relates to a felony offense initiated by complaint and the defendant's motion for the return of the property or suppression of the evidence at the preliminary hearing is granted, and if the defendant is not held to answer at the preliminary hearing, the people may file a new complaint or seek an indictment after the preliminary hearing, and the ruling at the prior hearing shall not be binding in any subsequent proceeding, except as limited by subdivision (p). In the alternative, the people may move to reinstate the complaint, or those parts of the complaint for which the defendant was not held to answer, pursuant to Section 871.5. If the property or evidence relates to a felony offense initiated by complaint and the defendant's motion for the return or suppression of the property or evidence at the preliminary hearing is granted, and if the defendant is held to answer at the preliminary hearing, the ruling at the preliminary hearing shall be binding upon the people unless, upon notice to the defendant and the court in which the preliminary hearing was held and upon the filing of an information, the people, within 15 days after the preliminary hearing, request in the superior court a special hearing, in which case the validity of the search or seizure shall be relitigated de novo on the basis of the evidence presented at the special hearing, and the defendant shall be entitled, as a matter of right, to a continuance of the special hearing for a period of time up to 30 days. The people may not request relitigation of the motion at a special hearing if the defendant's motion has been granted twice. If defendant's motion is granted at a special hearing in the superior court, the people, if they have additional evidence relating to the motion and not presented at the special hearing, shall have the right to show good cause at the trial why the evidence was not presented at the special hearing and why the prior ruling at the special hearing should not be binding, or the people may seek appellate review as provided in subdivision (o), unless the court, prior to the time the review is sought, has dismissed the case pursuant to Section 1385. If the case has been dismissed pursuant to Section 1385, or if the people dismiss the case on their own motion after the special hearing, the people may file a new complaint or seek an indictment after the special hearing, and the

ruling at the special hearing shall not be binding in any subsequent proceeding, except as limited by subdivision (p). If the property or evidence seized relates solely to a misdemeanor complaint, and the defendant made a motion for the return of property or the suppression of evidence in the municipal court or justice court prior to trial, both the people and defendant shall have the right to appeal any decision of that court relating to that motion to the superior court of the county in which the inferior court is located, in accordance with the California Rules of Court provisions governing appeals from municipal and justice courts in criminal cases. If the people prosecute review by appeal or writ to decision, or any review thereof, in a felony or misdemeanor case, it shall be binding upon them.

(k) If the defendant's motion to return property or suppress evidence is granted and the case is dismissed pursuant to Section 1385, or the people appeal in a misdemeanor case pursuant to subdivision (j), the defendant shall be released pursuant to Section 1318 if he or she is in custody and not returned to custody unless the proceedings are resumed in the trial court and he or she is lawfully ordered by the court to be returned to custody.

If the defendant's motion to return property or suppress evidence is granted and the people file a petition for writ of mandate or prohibition pursuant to subdivision (o) or a notice of intention to file such a petition, the defendant shall be released pursuant to Section 1318, unless (1) he or she is charged with a capital offense in a case where the proof is evident and the presumption great, or (2) he or she is charged with a noncapital offense defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1, and the court orders that the defendant be discharged from actual custody upon bail.

(*l*) If the defendant's motion to return property or suppress evidence is granted, the trial of a criminal case shall be stayed to a specified date pending the termination in the appellate courts of this state of the proceedings provided for in this section, Section 871.5, 1238, or 1466 and, except upon stipulation of the parties, pending the time for the initiation of these proceedings. Upon the termination of these proceedings, the defendant shall be brought to trial as provided by Section 1382, and, subject to the provisions of Section 1382, whenever the people have sought and been denied appellate review pursuant to subdivision (o), the defendant shall be entitled to have the action dismissed if he or she is not brought to trial within 30 days of the date of the order that is the last denial of the petition. Nothing contained in this subdivision shall prohibit a court, at the same time as it rules upon the search and seizure motion, from dismissing a case pursuant to Section 1385 when the dismissal is upon the court's own motion and is based upon an order at the special hearing granting the defendant's motion to return property or suppress evidence. In a misdemeanor case, the defendant shall be entitled to a continuance of up to 30 days if he or she intends to file

a motion to return property or suppress evidence and needs this time to prepare for the special hearing on the motion. In case of an appeal by the defendant in a misdemeanor case from the denial of the motion, he or she shall be entitled to bail as a matter of right, and, in the discretion of the trial or appellate court, may be released on his or her own recognizance pursuant to Section 1318.

(m) The proceedings provided for in this section, and Sections 871.5, 995, 1238, and 1466 shall constitute the sole and exclusive remedies prior to conviction to test the unreasonableness of a search or seizure where the person making the motion for the return of property or the suppression of evidence is a defendant in a criminal case and the property or thing has been offered or will be offered as evidence against him or her. A defendant may seek further review of the validity of a search or seizure on appeal from a conviction in a criminal case notwithstanding the fact that the judgment of conviction is predicated upon a plea of guilty. Review on appeal may be obtained by the defendant provided that at some stage of the proceedings prior to conviction he or she has moved for the return of property or the suppression of the evidence.

(n) Nothing contained in this section shall prohibit a person from making a motion, otherwise permitted by law, to return property, brought on the ground that the property obtained is protected by the free speech and press provisions of the Federal and State Constitutions. Nothing in this section shall be construed as altering (i) the law of standing to raise the issue of an unreasonable search or seizure; (ii) the law relating to the status of the person conducting the search or seizure; (iii) the law relating to the burden of proof regarding the search or seizure; (iv) the law relating to the reasonableness of a search or seizure regardless of any warrant that may have been utilized; or (v) the procedure and law relating to a motion made pursuant to Section 871.5 or 995, or the procedures that may be initiated after the granting or denial of such a motion.

(o) Within 30 days after a defendant's motion is granted at a special hearing in the superior court, the people may file a petition for writ of mandate or prohibition, seeking appellate review of the ruling regarding the search or seizure motion. If the trial of a criminal case is set for a date that is less than 30 days from the granting of a defendant's motion at a special hearing in the superior court, the people, if they have not filed such a petition and wish to preserve their right to file a petition, shall file in the superior court on or before the trial date or within 10 days after the special hearing, whichever occurs last, a notice of intention to file a petition and shall serve a copy of the notice upon the defendant.

(p) If a defendant's motion to return property or suppress evidence in a felony matter has been granted twice, the people may not file a new complaint or seek an indictment in order to relitigate the motion or relitigate the matter de novo at a special hearing in the superior court as otherwise provided by subdivision (j), unless the people discover additional evidence relating to the motion that was

not reasonably discoverable at the time of the second suppression hearing. Relitigation of the motion shall be heard by the same judge who granted the motion at the first hearing if the judge is available.

CHAPTER 762

An act to amend Sections 25110, 25540, and 25541 of the Corporations Code, relating to corporations.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 25110 of the Corporations Code is amended to read:

25110. It is unlawful for any person to offer or sell in this state any security in an issuer transaction (other than in a transaction subject to Section 25120), whether or not by or through underwriters, unless such sale has been qualified under Section 25111, 25112 or 25113 (and no order under Section 25140 or subdivision (a) of Section 25143 is in effect with respect to such qualification) or unless such security or transaction is exempted under Chapter 1 (commencing with Section 25100) of this part. The offer or sale of such a security in a manner that varies or differs from, exceeds the scope of, or fails to conform with either a material term or material condition of qualification of the offering as set forth in the permit or qualification order, or a material representation as to the manner of offering which is set forth in the application for qualification, shall be an unqualified offer or sale.

SEC. 2. Section 25540 of the Corporations Code is amended to read:

25540. (a) Except as provided for 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 one million dollars ($1,000,000), or imprisoned in the state prison, or in a county jail for not more than one year, or be punished by both such fine and imprisonment; but no person may be imprisoned for the violation of any rule or order if he or she proves that he or she had no knowledge of the rule or order.

(b) Any person who willfully violates Section 25400, 25401, or 25402 shall upon conviction be fined not more than ten million dollars ($10,000,000), or imprisoned in the state prison for two, three, or five years, or be punished by both such fine and imprisonment.

SEC. 2.5. Section 25540 of the Corporations Code is amended to read:

25540. (a) Except as provided for 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 one million dollars ($1,000,000), or imprisoned in the state prison, or in a county jail for not more than one year, or be punished by both such fine and imprisonment; but no person may be imprisoned for the violation of any rule or order if he or she proves that he or she had no knowledge of the rule or order.

(b) Any person who willfully violates Section 25400, 25401, 25402, or 25403 shall upon conviction be fined not more than ten million dollars ($10,000,000), or imprisoned in the state prison for two, three, or five years, or be punished by both such fine and imprisonment.

SEC. 3. Section 25541 of the Corporations Code is amended to read:

25541. Any person who willfully employs, directly or indirectly, any device, scheme, or artifice to defraud in connection with the offer, purchase, or sale of any security or willfully engages, directly or indirectly, in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person in connection with the offer, purchase, or sale of any security shall upon conviction be fined not more than ten million dollars ($10,000,000), or imprisoned in the state prison for two, three, or five years, or be punished by both such fine and imprisonment.

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.

SEC. 5. It is the intent of the Legislature that the amendments contained in Section 1 of this act are declarative of the existing law of this state.

SEC. 6. Section 2.5 of this bill incorporates amendments to Section 25540 of the Corporations Code proposed by both this bill and AB 1160. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 25540 of the Corporations Code, and (3) this bill is enacted after AB 1160, in which case Section 25540 of the Corporations Code, as amended by AB 1160, shall remain operative only until the operative date of this bill, at which time Section 2.5 of this bill shall become operative, and Section 2 of this bill shall not become operative.

CHAPTER 763

An act to add Section 4050.2 to the Business and Professions Code, relating to pharmacies.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 4050.2 is added to the Business and Professions Code, to read:

4050.2. The board shall adopt regulations that apply the same requirements or standards for oral consultation to an out-of-state pharmacy that operates pursuant to Section 4050.1 and ships, mails, or delivers any controlled substances or dangerous drugs or devices to residents of this state, as are applied to an in-state pharmacy that operates pursuant to Section 4035 when the pharmacy ships, mails, or delivers any controlled substances or dangerous drugs or devices to residents of this state. The board shall not adopt any regulations that require face-to-face consultation for a prescription that is shipped, mailed, or delivered to the patient. The regulations adopted pursuant to this section shall not result in any unnecessary delay in patients receiving their medication.

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 764

An act to add Section 65036.6 to the Government Code, relating to local agencies.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 65036.6 is added to the Government Code, to read:

65036.6. The Legislature requests the Governor to direct one or

more state agencies to examine, by January 1, 1996, the extent to which local agencies establish procedures to comply with Chapter 5 (commencing with Section 66000) and Chapter 8 (commencing with Section 66016) of Division 1 of Title 7 of the Government Code.

CHAPTER 765

An act to add Section 732 to the Business and Professions Code, relating to healing arts.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 732 is added to the Business and Professions Code, to read:

732. (a) A physician and surgeon and a dentist shall refund any amount that a patient has paid for services rendered that has subsequently been paid to the physician and surgeon or dentist by a third-party payor and that constitutes a duplicate payment. The refund shall be made as follows:

(1) If the patient requests a refund, within 30 days following the request from that patient for a refund if the duplicate payment has been received, or within 30 days of receipt of the duplicate payment if the duplicate payment has not been received.

(2) If the patient does not request a refund, within 90 days of the date the physician and surgeon or dentist knows, or should have known, of the receipt of the duplicate payment, the physician and surgeon or dentist shall notify the patient of the duplicate payment, and the duplicate payment shall be refunded within 30 days unless the patient requests that a credit balance be retained.

(b) Violation of this section shall constitute unprofessional conduct. Disciplinary proceedings shall be conducted in accordance with the Medical Practice Act (Chapter 5 (commencing with Section 2000)) or the Dental Practice Act (Chapter 4 (commencing with Section 1600)), as applicable.

CHAPTER 766

An act to amend Sections 17209, 17221, 17224, 17243, 17274, 17275, and 17277 of the Government Code, relating to state warrants.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 17209 of the Government Code is amended to read:

17209. Whenever the Controller deems that it will increase the salability or the price of registered warrants to obtain, prior to or after sale, a legal opinion as to the validity of the warrants from attorneys other than the Attorney General, the Controller may obtain a legal opinion.

SEC. 2. Section 17221 of the Government Code is amended to read:

17221. Whenever the Controller draws a warrant upon the Treasurer payable out of the General Fund in an amount in excess of the balance remaining in the unapplied money in the General Fund after first deducting from the unapplied money the amount, as estimated by the Controller, that is required by law to be earmarked, reserved, or set apart from the unapplied money for the payment of obligations of the state having priority over the obligation to which the warrant is applicable, the Controller shall upon the same day present it to the Treasurer, or seek the Treasurer's delegation to endorse the warrant as required by this section. The Treasurer shall endorse, or delegate to the Controller to endorse, upon its back the date of presentation or endorsement by the Controller; that it is not paid for want of funds; and that it bears interest at the rate fixed pursuant to law from the date of the registration to the date of maturity, or the date upon which the Treasurer advertises that it is payable upon presentation if it bears no date of maturity. Warrants so endorsed are registered warrants. The Controller shall supply the Treasurer with a daily list of the numbers of the warrants so registered.

SEC. 3. Section 17224 of the Government Code is amended to read:

17224. If the Controller presents a warrant to the Treasurer for registration, after registration, the Treasurer shall return the warrant to the Controller for distribution.

SEC. 4. Section 17243 of the Government Code is amended to read:

17243. The Controller may fix a maturity date for reimbursement warrants, and indorse upon each warrant, the date upon which it will be paid and redeemed.

SEC. 5. Section 17274 of the Government Code is amended to

read:

17274. The notice of redemption shall read substantially as follows:

"NOTICE TO HOLDERS OF STATE OF CALIFORNIA WARRANTS

State Controller's warrants number _____ to number _____, inclusive, drawn against the General Fund in the state treasury will be payable on

_____ upon presentation to the State
(redemption date)
Treasurer.

_____
(Name of State Treasurer)
State Treasurer."

SEC. 6. Section 17275 of the Government Code is amended to read:

17275. Any interest paid on any registered warrant shall accrue to the person holding the warrant on the date of redemption. A registered warrant ceases to bear interest on the first of the following dates:

(a) The maturity date indorsed on its face, if any, if on that date unapplied money or the proceeds of refunding warrants are available for its payment.

(b) The date of redemption, so long as the date is at least three days following the first day of published notice pursuant to Section 17273.

(c) The date specified in subdivision (b) of Section 17280.1.

SEC. 7. Section 17277 of the Government Code is amended to read:

17277. If it appears to the Controller that, on the maturity date on the face of any registered reimbursement warrant, there will be insufficient unapplied money in the General Fund available for its payment he or she may issue a refunding warrant, with the written approval of the Treasurer.

CHAPTER 767

An act to add Section 44261.2 to the Education Code, relating to teacher credentialing.

[Approved by Governor October 2, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 44261.2 is added to the Education Code, to read:

44261.2. (a) The Legislature finds and declares the following:

(1) The role of parents and guardians in the education of pupils and the development of children and youth is critically important.

(2) Active partnerships among parents, guardians, and professional educators are essential features of effective education.

(3) Recent and anticipated changes in the conditions of childhood and adolescence, including, but not limited to, the changing family structure and ethnic and cultural diversity, make it more critical than before that partnerships among parents, guardians, and professional educators be effective.

It is the intent of the Legislature that prospective teachers and certificated educators acquire needed perspectives to serve as active partners with parents and guardians in the education of pupils.

(b) The commission shall adopt standards and requirements pursuant to paragraphs (3) and (4) of subdivision (b) of Section 44259, Section 44265, Sections 44266 to 44270.1, inclusive, and Section 44372 that emphasize the preparation of prospective teachers and other certificated educators to serve as active partners with parents and guardians in the education of pupils. The standards shall address, through appropriate instruction and field experiences, the roles of parents and guardians in the educational process, strategies for involving and working with parents and guardians, and the changing conditions of childhood and adolescence, including, but not limited to, the changing family structure and ethnic and cultural diversity.

(c) An institution meets the standards set forth in subdivision (b) with the incorporation of appropriate content within existing professional preparation courses.

(d) The implementation of subdivision (b) as it applies to paragraphs (3) and (4) of Section 44259 shall occur in conjunction with the review of requirements for earning and renewing multiple and single subject teaching credentials, as required by subdivisions (a) and (b) of Section 44259.2.

(e) The standards and requirements developed pursuant to subdivision (b) and the conditions described in subdivision (d) of this section shall not apply to any person holding a valid credential on December 31, 1993.

(f) The commission shall not, by regulation, revoke or restrict in

any way a credential that was valid prior to the effective date of this section unless the commission issues the holder of the credential a valid substitute credential. The authorization of the substitute credential shall not be more restrictive than that of the former credential. The definition of the term "authorization," in subdivision (d) of Section 44203 of Article 1 of Chapter 2 of Part 25 of the Education Code, applies to this subdivision.

CHAPTER 768

An act to amend Sections 664.6, 1141.18, 1282, and 1286.2 of, and to add Section 1141.19.5 to, the Code of Civil Procedure, relating to arbitration.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 664.6 of the Code of Civil Procedure is amended to read:

664.6. If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally on the record before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

SEC. 2. Section 1141.18 of the Code of Civil Procedure is amended to read:

1141.18. (a) Arbitrators shall be retired judges or members of the State Bar, and shall sit individually. A judge may also serve as an arbitrator without compensation. People who are not attorneys may serve as arbitrators upon the stipulation of all parties.

(b) The Judicial Council rules shall provide for the compensation, if any, of arbitrators, except that no compensation shall be paid prior to the filing of the award by the arbitrator, or prior to the settlement of the case by the parties. Compensation for arbitrators shall, unless waived in whole or in part, be one hundred fifty dollars ($150) per case, or one hundred fifty dollars ($150) per day, whichever is greater, except that the board of supervisors of a county or a city and county may set a higher level of compensation for that county or city and county.

(c) The board of governors of the State Bar shall provide by rule for the method of selection of arbitrators after consulting with administrative committees established pursuant to Rule 1603 of the Judicial Arbitration Rules for Civil Cases and with county bar associations in counties where there are no administrative

committees. These rules shall provide for specialized panels and shall become operative upon approval of the Judicial Council.

(d) Any party may request the disqualification of the arbitrator selected for his or her case on the grounds and by the procedures specified in Section 170.1 or 170.6. A request for disqualification of an arbitrator on grounds specified in Section 170.6 shall be made within five days of the naming of the arbitrator. An arbitrator shall disqualify himself or herself, upon demand of any party to the arbitration made before the conclusion of the arbitration proceedings on any of the grounds specified in Section 170.1.

SEC. 3. Section 1141.19.5 is added to the Code of Civil Procedure, to read:

1141.19.5. In any arbitration proceeding under this chapter, no party may require the production of evidence specified in subdivision (a) of Section 3295 of the Civil Code at the arbitration, unless the court enters an order permitting pretrial discovery of that evidence pursuant to subdivision (a) of Section 3295 of the Civil Code.

SEC. 4. Section 1282 of the Code of Civil Procedure is amended to read:

1282. Unless the arbitration agreement otherwise provides, or unless the parties to the arbitration otherwise provide by an agreement which is not contrary to the arbitration agreement as made or as modified by all of the parties thereto:

(a) The arbitration shall be by a single neutral arbitrator.

(b) If there is more than one arbitrator, the powers and duties of the arbitrators, other than the powers and duties of a neutral arbitrator, may be exercised by a majority of them if reasonable notice of all proceedings has been given to all arbitrators.

(c) If there is more than one neutral arbitrator:

(1) The powers and duties of a neutral arbitrator may be exercised by a majority of the neutral arbitrators.

(2) By unanimous agreement of the neutral arbitrators, such powers and duties may be delegated to one of their number but the power to make or correct the award may not be so delegated.

(d) If there is no neutral arbitrator, the powers and duties of a neutral arbitrator may be exercised by a majority of the arbitrators.

(e) An arbitrator shall disqualify himself or herself, upon demand of any party to the arbitration agreement made before the conclusion of the arbitration proceedings, on any of the grounds specified in Section 170.1 for disqualification of a judge. However, this subdivision does not apply to arbitration proceedings conducted under a collective agreement between employers and employees or between their respective representatives.

SEC. 5. Section 1286.2 of the Code of Civil Procedure is amended to read:

1286.2. Subject to Section 1286.4, the court shall vacate the award if the court determines any of the following:

(a) The award was procured by corruption, fraud or other undue

means.

(b) There was corruption in any of the arbitrators.

(c) The rights of the party were substantially prejudiced by misconduct of a neutral arbitrator.

(d) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.

(e) The rights of the party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefor or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this title.

(f) An arbitrator making the award was subject to disqualification upon grounds specified in subdivision (e) of Section 1282, but failed upon receipt of timely demand to disqualify himself or herself as required by those provisions. However, this subdivision does not apply to arbitration proceedings conducted under a collective agreement between employers and employees or between their respective representatives.

CHAPTER 769

An act to amend Sections 82018, 82035, 84200.5, 84202.3, and 89503 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 82018 of the Government Code is amended to read:

82018. (a) Except as provided in subdivisions (b), (c), and (d), "cumulative amount" means the amount of contributions received or expenditures made in the calendar year.

(b) For a filer required to file a campaign statement or independent expenditure report in one year in connection with an election to be held in another year, the period over which the cumulative amount is calculated shall end on the closing date of the first semiannual statement filed after the election.

(c) For a filer required to file a campaign statement in connection with the qualification of a measure which extends into two calendar years, the period over which the cumulative amount is calculated shall end on December 31 of the second calendar year.

(d) For a person filing a campaign statement with a period modified by the provisions of this section, the next period over which the cumulative amount is calculated shall begin on the day after the closing date of the statement.

SEC. 2. Section 82035 of the Government Code is amended to read:

82035. "Jurisdiction" means the state with respect to a state agency and, with respect to a local government agency, the region, county, city, district or other geographical area in which it has jurisdiction. Real property shall be deemed to be "within the jurisdiction" with respect to a local government agency if the property or any part of it is located within or not more than two miles outside the boundaries of the jurisdiction or within two miles of any land owned or used by the local government agency.

SEC. 3. Section 84200.5 of the Government Code is amended to read:

84200.5. In addition to the campaign statements required by Section 84200, elected officers, candidates, and committees shall file preelection statements as follows:

(a) During an even-numbered year, all candidates for elective state office being voted upon on the first Tuesday after the first Monday in June or November, their controlled committees, and committees primarily formed to support or oppose an elected state officer or a state candidate being voted upon on the first Tuesday after the first Monday in June or November and all elected state officers who, during the reporting periods covered by Section 84200.7, contribute to any committee required to report receipts, expenditures, or contributions pursuant to this title, or make an independent expenditure, shall file the preelection statements specified in Section 84200.7. However, a candidate who is not being voted upon in the November election, his or her controlled committee, and any committee primarily formed to support or oppose that candidate is not required to file statements in connection with the November election pursuant to subdivision (b) of Section 84200.7, unless, during the reporting periods covered by Section 84200.7, the candidate, his or her controlled committee, or any committee primarily formed to support or oppose that candidate contributes to any committee required to report receipts, expenditures, or contributions pursuant to this title or makes independent expenditures.

(b) During an even-numbered year, all candidates not specified in subdivision (a) who are being voted upon on the first Tuesday after the first Monday in June or November, their controlled committees, and committees primarily formed to support or oppose those candidates or a measure being voted upon on the first Tuesday after the first Monday in June or November of an even-numbered year shall file the preelection statements specified in subdivision (a) of Section 84200.7 in the case of a June election, or subdivision (b) of Section 84200.7 in the case of a November election.

(c) All candidates being voted upon on a date other than the first Tuesday after the first Monday in June or November of an even-numbered year, their controlled committees, and committees primarily formed to support or oppose a candidate or a measure

being voted upon on a date other than the first Tuesday after the first Monday in June or November of an even-numbered year shall file the preelection statements specified in Section 84200.8.

(d) During an even-numbered year, state and county general purpose committees formed pursuant to subdivision (a) of Section 82013 shall file the statements specified in Section 84200.7 if they make contributions or independent expenditures totaling five hundred dollars ($500) or more during the period covered by the preelection statement. State and county general purpose committees formed pursuant to subdivision (b) or (c) of Section 82013 are not required to file the statements specified in Section 84200.7.

(e) City general purpose committees shall file statements as follows:

(1) City general purpose committees in a city which has an election on the first Tuesday after the first Monday in June or November of an even-numbered year shall file the statements specified in subdivision (a) or (b) of Section 84200.7 for the six-month period in which the city election is held, if they make contributions or independent expenditures totaling five hundred dollars ($500) or more during the period covered by the preelection statement.

(2) City general purpose committees in a city which has an election on a date other than the first Tuesday after the first Monday in June or November of an even-numbered year shall file the preelection statements specified in Section 84200.8 if they make contributions or independent expenditures totaling five hundred dollars ($500) or more during the period covered by the preelection statement.

SEC. 4. Section 84202.3 of the Government Code is amended to read:

84202.3. (a) In addition to the campaign statements required by Section 84200, committees pursuant to subdivision (a) of Section 82013 that are primarily formed to support or oppose the qualification, passage, or defeat of a measure and proponents of a state ballot measure who control a committee formed or existing primarily to support the qualification, passage, or defeat of a state ballot measure, shall file campaign statements on the following dates:

(1) No later than April 30 for the period January 1 through March 31.

(2) No later than October 31 for the period July 1 through September 30.

(b) This section shall not apply to a committee during any semiannual period in which the committee is required to file preelection statements pursuant to subdivision (a), (b), or (c) of Section 84200.5.

(c) This section shall not apply to a committee following the election at which the measure is voted upon unless the committee makes contributions or expenditures to support or oppose the

qualification or passage of another ballot measure.

SEC. 5. Section 89503 of the Government Code is amended to read:

89503. (a) No member of a state board or commission, and no designated employee of a state agency, shall accept an honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

(b) Subdivisions (b), (c), (d), and (e) of Section 89502 shall apply to this section.

(c) Every state agency shall amend its conflict of interest code in accordance with this section no later than December 31, 1991.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 7. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 770

An act to add Section 502.8 to the Penal Code, and to add Section 2892.3 to the Public Utilities Code, relating to cellular telephones.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 502.8 is added to the Penal Code, to read:

502.8. (a) Any person who uses a telecommunications device intending to avoid the payment of any lawful charge for service to the device is guilty of a misdemeanor.

(b) Any person found guilty of violating subdivision (a), who has previously been convicted of the same offense, shall be guilty of a felony, punishable by imprisonment in state prison, a fine of up to fifty thousand dollars ($50,000), or both.

(c) Any person who possesses a telecommunications device with

intent to sell or offer to sell to another, intending to avoid the payment of any lawful charge for service to the device is guilty of a misdemeanor punishable by one year in a county jail or imprisonment in state prison or a fine of up to ten thousand dollars ($10,000), or both.

(d) Any person who possesses 10 or more telecommunications devices with intent to sell or offer to sell to another, intending to avoid payment of any lawful charge for service to the device, is guilty of a felony, punishable by imprisonment in state prison, a fine of up to fifty thousand dollars ($50,000), or both.

(e) Any person who manufactures 10 or more telecommunications devices and intends to sell them to others intending to avoid the payment of any lawful charge for service to the device is guilty of a felony punishable by imprisonment in state prison or a fine of up to fifty thousand dollars ($50,000), or both.

(f) For purposes of this section a telecommunications device is any type of instrument, device, machine, or equipment that is designed for or capable of transmitting or receiving wireless communications within the radio spectrum allocated to cellular radio telephony.

SEC. 2. Section 2892.3 is added to the Public Utilities Code, to read:

2892.3. (a) The commission shall require cellular telephone service providers to report to the commission, within a year after enactment of this section, and thereafter as specified by the commission, on activities associated with customer fraud.

(b) Each report shall include a description of the types of fraud occurring, the amount of revenues that have been uncollectible because of fraud, and the actions undertaken by the service provider to combat fraud.

(c) The commission shall require cellular telephone service providers to provide their subscribers with a notice, to be reviewed by the commission, warning subscribers about problems associated with fraud, and informing them about ways to protect against fraud.

SEC. 3. (a) The Legislature finds and declares both of the following:

(1) Monitoring of the cellular telephone industry and the effect of cellular fraud provides valuable information for the commission to determine appropriate regulatory policy and protect the public interest.

(2) Cellular companies contend that some of the information the commission may request in order to monitor the fraud issue would be proprietary and confidential.

(b) It is the intent of the Legislature that the Public Utilities Commission should give proper consideration to the claims of confidentiality.

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 771

An act to amend Section 20017.79 of the Government Code, relating to the Public Employees' Retirement System, and making an appropriation therefor.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 20017.79 of the Government Code is amended to read:

20017.79. (a) "State safety member" shall also include officers and employees of the Board of Prison Terms, the Department of Corrections, the Department of the Youth Authority, or the Prison Industry Authority in the following classifications:

Classification Code	Classification
0617	Prison Industries Superintendent II (agriculture)
0648	Industrial Supervisor, Prison Industries (crop farm)
0679	Prison Industries Superintendent I (agriculture)
0682	Industrial Supervisor, Prison Industries (dairy)
0683	Assistant Dairy Operator
2303	Supervisor of Correctional Education Programs
2370	Supervisor of Vocational Instruction
2384	Supervisor of Commercial Diver Training
2311	Youth Authority Teacher
2429	Vocational Instructor (fire science) (correctional facility)
2433	Vocational Instructor (heavy equipment repair) (correctional facility)

1575	Prison Canteen Manager I
1576	Prison Canteen Manager II
7158	Prison Industries Administrator
7157	Prison Industries Manager (general)
7156	Production Manager I, Prison Industries
7154	Prison Industries Superintendent II (maintenance and repair)
7162	Product Engineering Technician, Prison Industries
7163	Prison Industries Manager (wood products)
7164	Prison Industries Manager (metal products)
7165	Prison Industries Manager (textile products)
7170	Prison Industries Superintendent II (detergent)
7172	Prison Industries Superintendent II (wood products)
7175	Prison Industries Superintendent I (wood products)
7178	Industrial Supervisor, Prison Industries (wood products)
7179	Industrial Supervisor, Prison Industries (upholstery)
7190	Prison Industries Superintendent II (metal products)
7189	Prison Industries Superintendent I (metal products)
7191	Industrial Supervisor, Prison Industries (metal fabrication)
7192	Industrial Supervisor, Prison Industries (tool and die)
7195	Prison Industries Superintendent II (fabric products)
7196	Prison Industries Superintendent II (mattress and bedding)
7198	Industrial Supervisor, Prison Industries (fabric products)
7201	Tobacco Factory Superintendent
7205	Prison Industries Superintendent II (shoe manufacturing)
7206	Industrial Supervisor, Prison Industries (shoes and boots, lasting to packing)
7207	Industrial Supervisor, Prison Industries (shoe manufacturing)
7209	Prison Industries Superintendent II

	(knitting mill)
7210	Industrial Supervisor, Prison Industries (knitting mill)
7211	Industrial Supervisor, Prison Industries (knit goods finishing)
7214	Prison Industries Superintendent II (printing)
7215	Industrial Supervisor, Prison Industries (maintenance and repair)
7216	Industrial Supervisor, Prison Industries (printing)
7218	Industrial Supervisor, Prison Industries (bindery)
2108	Prison Industries Superintendent II (laundry)
2109	Industrial Supervisor, Prison Industries (laundry)
8215	Senior Medical Technical Assistant
9908	Supervising Social Worker II, Youth Authority
9910	Supervising Social Worker I, Youth Authority
9911	Social Worker, Youth Authority
0716	Supervising Groundskeeper II (correctional facility)
0718	Lead Groundskeeper I (correctional facility)
0720	Lead Groundskeeper (correctional facility)
0743	Groundskeeper (correctional facility)
2004	Janitor Supervisor II (correctional facility)
2005	Janitor Supervisor I (correctional facility)
2006	Janitor (correctional facility)
2044	Supervising Housekeeper I (correctional facility)
2077	Seamer (correctional facility)
2080	Assistant Seamer (correctional facility)
2084	Barbershop Manager (correctional facility)
2086	Barber (correctional facility)
2111	Laundry Supervisor II (correctional facility)
2114	Laundry Supervisor I (correctional facility)
2117	Laundry Worker (correctional facility)

2150	Food Manager (correctional facility)
2147	Food Administrator II (correctional facility)
2153	Food Administrator I (correctional facility)
2182	Supervising Cook II (correctional facility)
2183	Supervising Cook I (correctional facility)
2186	Cook II (correctional facility)
2187	Cook I (correctional facility)
2221	Baker II (correctional facility)
2224	Baker I (correctional facility)
2245	Butcher—Meat Cutter II (correctional facility)
2195	Food Service Worker II (correctional facility)
2196	Food Service Worker I (correctional facility)
2305	Supervisor of Academic Instruction (correctional facility)
2284	Teacher (high school-arts and crafts) (correctional facility)
2285	Teacher (high school-business education) (correctional facility)
2287	Teacher (elementary -multiple subjects) (correctional facility)
2290	Teacher (high school-general education) (correctional facility)
2297	Teacher (ethnic studies) (correctional facility)
2291	Teacher (high school-home economics) (correctional facility)
2298	Teacher (librarian) (correctional facility)
2286	Teacher (cerebral palsied children) (correctional facility)
2295	Teacher (high school-physical education) (correctional facility)
2294	Teacher (high school-music) (correctional facility)
2371	Teacher (speech development and correction) (correctional facility)
2373	Teacher (hearing impaired) (correctional facility)
2292	Teacher (mentally retarded children) (correctional facility)
2288	Teacher (emotionally/learning handicapped) (correctional facility)

2289	Teacher (family life education) (correctional facility)
2423	Vocational Instructor (dog grooming and handling) (correctional facility)
2665	Vocational Instructor (powerplant mechanics) (correctional facility)
2387	Vocational Instructor (airframe mechanics) (correctional facility)
2396	Vocational Instructor (auto body and fender repair) (correctional facility)
2398	Vocational Instructor (auto mechanics) (correctional facility)
2399	Vocational Instructor (baking) (correctional facility)
2400	Vocational Instructor (bookbinding) (correctional facility)
2417	Vocational Instructor (carpentry) (correctional facility)
2420	Vocational Instructor (cosmetology) (correctional facility)
2422	Vocational Instructor (culinary arts) (correctional facility)
2628	Vocational Instructor (merchandising) (correctional facility)
2425	Vocational Instructor (drycleaning works) (correctional facility)
2426	Vocational Instructor (electrical work) (correctional facility)
2428	Vocational Instructor (electronics) (correctional facility)
2431	Vocational Instructor (furniture refinishing and repair) (correctional facility)
2432	Vocational Instructor (garment making) (correctional facility)
2597	Vocational Instructor (household appliance repair) (correctional facility)
2598	Vocational Instructor (industrial arts) (correctional facility)
2599	Vocational Instructor (instrument repair) (correctional facility)
2600	Vocational Instructor (janitorial service) (correctional facility)
2601	Vocational Instructor (landscape gardening) (correctional facility)
2611	Vocational Instructor (laundry work)

	(correctional facility)
2614	Vocational Instructor (machine shop practice) (correctional facility)
2615	Vocational Instructor (masonry) (correctional facility)
2619	Vocational Instructor (meat cutting) (correctional facility)
2627	Vocational Instructor (mechanical drawing) (correctional facility)
2630	Vocational Instructor (mill and cabinet work) (correctional facility)
2640	Vocational Instructor (offset printing) (correctional facility)
2644	Vocational Instructor (painting) (correctional facility)
2661	Vocational Instructor (plumbing) (correctional facility)
2666	Vocational Instructor (printing) (correctional facility)
2667	Vocational Instructor (radiologic technology) (correctional facility)
2668	Vocational Instructor (refrigeration and air-conditioning repair) (correctional facility)
2669	Vocational Instructor (sewing machine repair) (correctional facility)
2670	Vocational Instructor (sheet metal work) (correctional facility)
2671	Vocational Instructor (shoemaking) (correctional facility)
2672	Vocational Instructor (silk screening process) (correctional facility)
2673	Vocational Instructor (storekeeping and warehousing) (correctional facility)
2674	Vocational Instructor (office machine repair) (correctional facility)
2675	Vocational Instructor (upholstering) (correctional facility)
2419	Vocational Instructor (commercial diver training) (correctional facility)
2677	Vocational Instructor (welding) (correctional facility)
2676	Vocational Instructor (vocational nursing) (correctional facility)
2853	Vocational Instructor (animal husbandry) (correctional facility)

2854	Vocational Instructor (building maintenance) (correctional facility)
2855	Vocational Instructor (computer and related technologies) (correctional facility)
2856	Vocational Instructor (diesel mechanics) (correctional facility)
2857	Vocational Instructor (drywall installer/taper) (correctional facility)
2858	Vocational Instructor (floor cover layer) (correctional facility)
2849	Vocational Instructor (office services and related technologies) (correctional facility)
2850	Vocational Instructor (roofer) (correctional facility)
2851	Vocational Instructor (small engine repair) (correctional facility)
2945	Senior Librarian (correctional facility)
2952	Librarian (correctional facility)
6216	Building Maintenance Worker (correctional facility)
6221	Warehouse Worker (correctional facility)
1502	Warehouse Manager II (correctional facility)
1504	Warehouse Manager I (correctional facility)
1505	Materials and Stores Supervisor II (correctional facility)
1508	Materials and Stores Supervisor I (correctional facility)
6379	Heavy Truck Driver (correctional facility)
6382	Truck Driver (correctional facility)
6392	Automotive Equipment Operator II (correctional facility)
6394	Automotive Equipment Operator I (correctional facility)
6471	Carpenter III (correctional facility)
6483	Carpenter I (correctional facility)
6521	Painter III (correctional facility)
6524	Painter II (correctional facility)
6474	Carpenter II (correctional facility)
6528	Painter I (correctional facility)
6534	Electrician III (correctional facility)
6538	Electrician II (correctional facility)
6544	Electrician I (correctional facility)

6545	Plumber III (correctional facility)
6550	Plumber I (correctional facility)
6557	Steamfitter Supervisor (correctional facility)
6617	Mason (correctional facility)
6941	Maintenance Mechanic (correctional facility)
6643	Locksmith I (correctional facility)
6699	Chief Engineer I (correctional facility)
6713	Stationary Engineer (correctional facility)
6718	Stationary Engineer Apprentice (four-year program) (correctional facility)
6715	Refrigeration Engineer (correctional facility)
6724	Water and Sewage Plant Supervisor (correctional facility)
6748	Chief of Plant Operation III (correctional facility)
6751	Chief of Plant Operation II (correctional facility)
6754	Chief of Plant Operation I (correctional facility)
6763	Supervisor of Building Trades (correctional facility)
6865	Equipment Maintenance Supervisor (correctional facility)
6867	Lead Automobile Mechanic (correctional facility)
6868	Automobile Mechanic (correctional facility)
6893	Automotive Pool Manager I (correctional facility)
6916	Electronics Technician (correctional facility)
8217	Medical Technical Assistant (correctional facility)
2645	Vocational Instructor (Plastering) (correctional facility)
7200	Dry Cleaning Plant Supervisor
6772	Utility Shops Supervisor (correctional facility)
6801	Machinist (correctional facility)
6826	Heavy Equipment Mechanic (correctional facility)
2688	Vocational Instructor (eyewear manufacturing) (correctional facil-

	ity)
2940	Supervising Librarian (correctional facility)
6594	Plumber II (correctional facility)
7194	Prison Industries Superintendent I (fabric products)
7197	Industrial Supervisor, Prison Industries (mattress and bedding)
7217	Prison Industries Superintendent II (bindery)
2000	Janitor Supervisor III (correctional facility)
6955	Fusion Welder (correctional facility)
6211	Skilled Laborer (correctional facility)
2156	Assistant Food Manager (correctional facility)
4132	Construction Supervisor (correctional facility)
6628	Glazier (correctional facility)
7145	Quality Assurance Manager
7146	Chief, Quality Assurance
4110	Chief, Day Labor Programs (correctional facility)
4109	Construction Supervisor III (correctional facility)
4108	Construction Supervisor II (correctional facility)
4107	Construction Supervisor I (correctional facility)
2015	Chief Assistant General Manager, Prison Industries
4302	Assistant General Manager, Operations
7199	Pest Control Technician (correctional facility)
7208	Correctional Business Manager I, Department of Corrections
4744	Correctional Business Manager II, Department of Corrections
7204	Industrial Supervisor, Prison Industries (dental laboratory)
7321	Industrial Supervisor, Prison Industries (silkscreen)
7109	Prison Industries Superintendent I (coffee roasting and grinding)
7203	Prison Industries Superintendent I (dental laboratory)
7350	Prison Industries Superintendent I

	(egg production)
7351	Prison Industries Superintendent I (fiberglass products)
7352	Prison Industries Superintendent I (furniture refurbishing)
7320	Prison Industries Superintendent I (silkscreen)
7202	Prison Industries Superintendent II (dental laboratory)
7319	Prison Industries Superintendent II (silkscreen)
2869	Vocational Instructor (dental technology) (correctional facility)
5415	Vocational Instructor (telemarketing/customer service) (correctional facility)
1793	Property Controller I (correctional facility)
1794	Property Controller II (correctional facility)
4760	Procurement and Services Officer I (correctional facility)
4761	Procurement and Services Officer II (correctional facility)
6303	Correctional Plant Supervisor, Department of Corrections
6304	Correctional Plant Manager I, Department of Corrections
6305	Correctional Plant Manager II, Department of Corrections
3080	Quality Control Technician, Prison Industries (cleaning products)
3082	Substitute Academic Teacher (correctional facility)
2727	Language, Speech and Hearing Specialist
3073	Teacher (adaptive physical education) (correctional facility)
3074	Teacher (high school-English/language arts) (correctional facility)
3075	Teacher (English language development) (correctional facility)
3076	Teacher (high school-foreign language) (correctional facility)
3077	Teacher (high school-mathematics) (correctional facility)
3078	Teacher (high school-science) (correctional facility)
3079	Teacher (high school-social science)

	(correctional facility)
2734	Resource Specialist, Special Education
9854	School Psychologist
6400	Teaching Assistant (correctional facility)
8152	Coordinator, Urban Search and Rescue
8153	Senior Coordinator, Urban Search and Rescue
9344	Chief Dentist (correctional facility)
9267	Chief Physician and Surgeon (correctional facility)
9279	Clinical Dietician (correctional facility)
9293	Clinical Laboratory Technologist (correctional facility)
9296	Dental Assistant (correctional facility)
9298	Dental Hygienist (correctional facility)
9299	Dental Laboratory Technician (correctional facility)
9268	Dentist (correctional facility)
9307	Hospital Aid (correctional facility)
9265	Laboratory Assistant (correctional facility)
9273	Nurse Anesthetist (correctional facility)
9353	Nurse Instructor (correctional facility)
9278	Nurse Practitioner (correctional facility)
9280	Occupational Therapist (correctional facility)
9281	Physical Therapist I (correctional facility)
9342	Physical Therapist II (correctional facility)
9269	Physician and Surgeon (correctional facility)
9282	Psychiatric Social Worker (correctional facility)
9283	Psychologist—Clinical (correctional facility)
9284	Psychology Associate (correctional facility)
9354	Psychology Internship Director (correctional facility)

9285	Psychometrist (correctional facility)
9274	Public Health Nurse I (correctional facility)
9345	Public Health Nurse II (correctional facility)
9315	Radiologic Technologist (correctional facility)
9286	Recreation Therapist (correctional facility)
9275	Registered Nurse (correctional facility)
9316	Respiratory Care Practitioner (correctional facility)
9348	Senior Clinical Laboratory Technologist (correctional facility)
9266	Senior Laboratory Assistant (correctional facility)
9346	Senior Occupational Therapist (correctional facility)
9270	Senior Psychiatrist (specialist) (correctional facility)
9271	Senior Psychiatrist (supervisor) (correctional facility)
9287	Senior Psychologist (specialist) (correctional facility)
9288	Senior Psychologist (supervisor) (correctional facility)
9289	Senior Psychologist (correctional facility)
9350	Senior Radiologic Technologist (specialist) (correctional facility)
9351	Senior Radiologic Technologist (supervisor) (correctional facility)
9272	Staff Psychiatrist (correctional facility)
9290	Staff Psychologist—Clinical (correctional facility)
9349	Supervising Clinical Laboratory Technologist (correctional facility)
9276	Supervising Psychiatric Nurse (correctional facility)
9291	Supervising Psychiatric Social Worker I (correctional facility)
9292	Supervising Psychiatric Social Worker II (correctional facility)
9317	Supervising Registered Nurse I (correctional facility)
9318	Supervising Registered Nurse II (correctional facility)

9319	Supervising Registered Nurse III (correctional facility)
9277	Surgical Nurse I (correctional facility)
9329	Surgical Nurse II (correctional facility)
5447	Assistant Warden, Psychiatric Services (correctional facility)
7547	Chief Medical Officer (correctional facility)
7612	Chief Psychiatrist (correctional facility)
9859	Chief Psychologist (correctional facility)
4910	Correctional Health Services Administrator I (correctional facility)
4912	Correctional Health Services Administrator II (correctional facility)
2578	Chief Deputy, Clinical Services (correctional facility)
7971	Optometrist (correctional facility)

(b) In addition, "state safety member" shall also include officers and employees of the Department of Corrections, the Department of the Youth Authority, or the Prison Industry Authority in any classification of vocational instructor, industrial supervisor, industrial superintendent, assistant industrial superintendent, or production manager II (prison industries) that is established on or after January 1, 1984, if the Department of Personnel Administration and the State Personnel Board approve the inclusion of the classification.

(c) "State safety member" shall also include officers and employees in parenthetical specialty classes when the core class has already been expressly included in the state safety membership category if the Department of Personnel Administration and the State Personnel Board approve the inclusion of the classifications. The inclusion shall not be effective until notice of the inclusion has been received by the Board of Administration.

(d) Any of these officers or employees in employment on the operative date of an amendment to this section and who becomes a state safety member as a result of that amendment, may elect by a writing filed with the board prior to 90 days after notification by the board, to be restored to his or her previous status as a state industrial member. Upon the filing of the election the member shall cease to be a state safety member, and his or her rights and obligations shall be restored prospectively and retroactively to the operative date of that amendment.

CHAPTER 772

An act to amend Section 12157 of the Fish and Game Code, and to add Section 21856 to the Food and Agricultural Code, relating to forfeitures, and making an appropriation therefor.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 12157 of the Fish and Game Code is amended to read:

12157. (a) Except as provided in subdivision (b), the judge before whom any person is tried for a violation of any provision of this code, or regulation adopted pursuant thereto, may, in his or her discretion, upon the conviction of the person tried, order the forfeiture of any device or apparatus that is designed to be, or is capable of being, used to take birds, mammals, fish, reptiles, or amphibia and which was used in committing the offense charged.

(b) The judge shall, if the offense is punishable under Section 12008 of this code or subdivision (c) of Section 597 of the Penal Code, order the forfeiture of any device or apparatus that is used in committing the offense, including, but not limited to, any vehicle which is used or intended for use in delivering, importing, or exporting any unlawfully taken, imported, or purchased species.

(c) The judge may, for conviction of a violation of Section 2000 relating to deer, elk, antelope, feral pigs, European wild boars, black bears, and brown or cinnamon bears, order forfeiture of any device or apparatus that is used in committing the offense, including, but not limited to, any vehicle used or intended for use in committing any of those offenses.

In considering an order of forfeiture under this subdivision, the court shall take into consideration the nature, circumstances, extent, and gravity of the prohibited act committed, the degree of culpability of the violator, the property proposed for forfeiture, and other criminal or civil penalties imposed on the violator under other provisions of law for that offense. The court shall impose lesser forfeiture penalties under this subdivision for those acts that have little significant effect upon natural resources or the property of another and greater forfeiture penalties for those acts that may cause serious injury to natural resources or the property of another, as determined by the court.

It is the intent of the Legislature that forfeiture not be ordered pursuant to this subdivision for minor or inadvertent violations of Section 2000, as determined by the court.

(d) Any device or apparatus ordered forfeited shall be sold, used, or destroyed by the department.

(e) The proceeds from all sales under this section, after payment

of any valid liens on the forfeited property, shall be paid into the Fish and Game Preservation Fund. A lien in which the lienholder is a conspirator is not a valid lien for purposes of this subdivision.

(f) The provisions in this section authorizing or requiring a judge to order the forfeiture of a device or apparatus are also applicable to the judge, referee, or traffic hearing officer in a juvenile court action brought under Section 258 of the Welfare and Institutions Code.

(g) For purposes of this section, a plea of nolo contendere or no contest, or forfeiture of bail, constitutes a conviction.

(h) Neither the disposition of the criminal action other than by conviction nor the discretionary refusal of the judge to order forfeiture upon conviction impairs the right of the department to commence proceedings to order the forfeiture of fish nets or traps pursuant to Section 8630.

SEC. 2. Section 21856 is added to the Food and Agricultural Code, to read:

21856. (a) The judge before whom any person is tried for the wrongful taking, possessing, killing, or slaughter of cattle without the consent of the owner or the person lawfully in possession of those cattle may, upon the conviction of the person tried, order the forfeiture of any device or apparatus that is designed to be, or is capable of being, used to commit the offense charged, and which was used in committing the offense charged. "Device or apparatus" includes, but is not limited to, any vehicle that is used or intended for use in taking, possessing, harboring, or transporting the cattle.

(b) Any device or apparatus ordered forfeited shall be sold, used, or destroyed by the department.

(c) The provisions in this section authorizing a judge to order the forfeiture of a device or apparatus are also applicable to the judge, referee, or traffic hearing officer in a juvenile court action brought under Section 258 of the Welfare and Institutions Code.

(d) For purposes of this section, a plea of nolo contendere or no contest, or forfeiture of bail, constitutes a conviction.

(e) Neither the disposition of the criminal action other than by conviction nor the discretionary refusal of the judge to order forfeiture upon conviction impairs the right of the department to commence proceedings to order the forfeiture of property pursuant to any other provision of law.

CHAPTER 773

An act to add Section 13208 to the Water Code, relating to regional water quality control boards.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 13208 is added to the Water Code, to read:

13208. (a) No regional board executive officer may make, participate in making, or use his or her official position to influence, any decision of the regional board, or made on behalf of the regional board, affecting any person or entity subject to waste discharge requirements under this division if the regional board executive officer has received, during the previous two years, 10 percent or more of his or her income from that person or entity.

(b) "Income," for purposes of this section, has the same meaning as in Section 82030 of the Government Code.

CHAPTER 774

An act to repeal Sections 62000.6 and 62000.12 of the Education Code, relating to education.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 62000.6 of the Education Code is repealed.

SEC. 2. Section 62000.12 of the Education Code is repealed.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed 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 775

An act to amend Section 13401 of the Water Code, relating to water, and making an appropriation therefor.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 13401 of the Water Code is amended to read:

13401. (a) The State Water Quality Control Fund is continued in existence. The following moneys in the fund are appropriated, without regard to fiscal years, for expenditure by the state board in making loans to public agencies in accordance with this chapter:

(1) The balance of the original moneys deposited in the fund.

(2) Any money repaid to the fund.

(3) Any remaining balance of the money in the fund deposited therein after the specific appropriations for loans to the South Tahoe Public Utility District, the North Tahoe Public Utility District, the Tahoe City Public Utility District, the Truckee Sanitary District, and to any other governmental entity in the areas served by such districts have been made.

(b) Notwithstanding subdivision (a), upon the order of the state board, the money in the State Water Quality Control Fund shall be transferred to the State Water Pollution Control Revolving Fund.

CHAPTER 776

An act to add Sections 66015.1 and 66015.5 to, and to add and repeal Section 66015.7 of, the Education Code, relating to postsecondary education.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 66015.1 is added to the Education Code, to read:

66015.1. The Legislature finds and declares all of the following:

(a) The 1986 Report on Lower Division Education at the University of California stated that "lower division (education) is something of a neglected child..." and suggested steps for improving the quality of teaching and academic support services.

(b) In 1991, the "Universitywide Task Force on Faculty Rewards Report" resulted in the adoption of policies to provide a greater

emphasis on teaching. Policy revisions included broadening the range of evidence used in evaluation of teaching, peer review of teaching, and promotion policies that recognize great distinction in teaching as well as scholarship.

(c) In 1992, the University of California issued a number of "Presidential Initiatives to Protect and Improve Undergraduate Education."

(d) The Legislature, in the Supplemental Report of the 1992 Budget Act, declared its intent that University of California faculty alter the distribution of their workload by:

(1) Increasing the number of courses and sections offered that are required for normal progress toward a baccalaureate degree.

(2) Increasing the number of freshman and sophomore seminars.

(3) Increasing opportunities for undergraduate research.

(4) Reducing the size of classes when desirable.

These measures were expected to result in an increase in the average teaching load of one additional course every one to three years.

(e) The report entitled "Initiatives to Improve Undergraduate Education," prepared by the University of California in response to the 1992 Budget Act, is a commendable effort.

SEC. 2. Section 66015.5 is added to the Education Code, to read:

66015.5. (a) It is the intent of the Legislature that quality classroom instruction be continually improved and that courses required for normal progress to a baccalaureate degree be provided in sufficient numbers.

(b) It is the further intent of the Legislature that where necessary the average teaching responsibilities of tenured and tenure track faculty be sufficiently increased to meet the goals described in this section.

SEC. 3. Section 66015.7 is added to the Education Code, to read:

66015.7. (a) The Legislative Analyst shall review and analyze the March 1993 University of California report entitled "Initiatives to Improve Undergraduate Education" in the analysis of the 1994–95 Budget Bill and, notwithstanding Section 7550.5 of the Government Code, the Legislative Analyst shall annually thereafter report to the Legislature in its annual analysis of the Budget Bill on tenured and tenure track faculty teaching responsibilities. That annual report shall include, but not be limited to, a description of teaching loads and student credit hours per full-time equivalent tenured and tenure track faculty member, undergraduate versus graduate course loads, and changes in the number of courses or course sections for normal progress to a baccalaureate degree.

(b) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

CHAPTER 777

An act to amend Section 5193 of the Public Utilities Code, relating to carriers.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 5193 of the Public Utilities Code is amended to read:

5193. By the specific procedures approved by the commission in its Decision 92-05-028, any household goods carrier may charge or collect a greater rate than the maximum rate established by the commission under this chapter.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. 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 778

An act to repeal and add Chapter 3.5 (commencing with Section 5085) of Title 7 of Part 3 of the Penal Code, relating to the Robert Presley Institute of Corrections Research and Training.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Chapter 3.5 (commencing with Section 5085) of Title 7 of Part 3 of the Penal Code is repealed.

SEC. 2. Chapter 3.5 (commencing with Section 5085) is added to Title 7 of Part 3 of the Penal Code, to read:

CHAPTER 3.5. THE ROBERT PRESLEY CENTER OF CRIME AND JUSTICE STUDIES

5085. The Robert Presley Institute of Corrections Research and Training, which provides and aggregates research on youth and adult

corrections education and training, is hereby renamed the Robert Presley Center of Crime and Justice Studies and shall be transferred to the University of California. It is the intent of the Legislature that the center be maintained on the Riverside campus of the University of California.

5086. It is the intent of the Legislature that the university seek funding from federal, state, and private sources for research projects carried out by the center under the university's direction. The center shall have the following research goals:

(a) To better protect the public from crime by determining the causes of, and means of preventing, violence, crime, and criminal deviance.

(b) To identify the methods and practices necessary for the most beneficial operation of law enforcement and local and state youth and adult correctional institutions.

(c) To reduce violence and recidivism rates in prisons, jails, and youth facilities.

5087. The chancellor of the Riverside campus may appoint an advisory committee to assist in establishing research priorities. The university shall consult with the Department of Corrections, the Department of the Youth Authority, local law enforcement, probation, parole, and correctional agencies, and persons of experience or education in other higher education institutions in the field of corrections or related fields on the activities of the center. These projects shall be related to the center's goals as specified in Section 5086 and may also include, but not be limited to, applied and theoretical research in the following areas:

(a) Methods of ensuring secure, cost-effective, safe, and gang-free incarceration in California's correctional institutions, including approaches to ameliorate overcrowding in those institutions.

(b) New approaches to reduce inmate and ward recidivism and consequent victimization of California citizens.

(c) Correctional facility management, planning, design, and construction.

(d) New approaches to rehabilitate inmates and wards during and after incarceration and to integrate offenders into society after incarceration.

(e) New approaches to inmate and ward diagnosis, classification, and treatment.

(f) At-risk youth and street gang activity.

(g) Law enforcement.

5088. The university shall negotiate and approve terms, services, and costs of contracts and research projects for purposes of this chapter.

SEC. 3. For purposes of Section 2 of this act, the following shall apply:

(a) The University of California shall be successor in interest to the Robert Presley Institute of Corrections Research and Training for all items acquired by the institute at the time of the transfer,

including, but not limited to: (1) office furniture, (2) office equipment, (3) research materials, and (4) vehicles. In addition, all funding remaining from the 1993–94 Budget Act appropriation for the support of the institute also shall be transferred to the University of California for purposes of this act.

(b) It is the intent of the Legislature that continued funding for the Robert Presley Center of Crime and Justice Studies be provided to the University of California through the annual Budget Act.

(c) Any obligation or liability incurred by the Robert Presley Institute of Corrections Research and Training and identified by the Department of Finance prior to the effective date of this act shall not constitute a liability of the University of California.

SEC. 4. No provision of Section 2 or 3 of this act shall apply to the University of California except to the extent that the Regents of the University of California, by appropriate resolution, make that provision applicable.

CHAPTER 779

An act to amend Section 89753 of, and to add Sections 89702.1, 89750.5, 89760, 89761, and 89912 to, the Education Code, and to amend Section 13340 of the Government Code, relating to the California State University and making an appropriation therefor.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 89702.1 is added to the Education Code, to read:

89702.1. Any revenue from fees for health services and health facilities maintenance collected by the trustees in the 1993–94 and 1994–95 fiscal years may be deposited in the State University Facilities Revenue Fund, and is hereby appropriated during the 1993–94 and 1994–95 fiscal years to the trustees for operation of student health centers.

The Legislature declares that the authority granted to the trustees by this section is provided without prejudice to the authority of the trustees to impose a mandatory fee for health services and health facilities maintenance.

SEC. 2. Section 89750.5 is added to the Education Code, to read:

89750.5. (a) Notwithstanding Sections 948 and 965.2 of the Government Code or any other provision of law, the trustees may settle, adjust, or compromise any pending action, or final judgment, without the need for a recommendation, certification, or approval from any other state officer or entity. The Controller shall draw a warrant for the payment of any settlement, adjustment, or

compromise, or final judgment against the trustees if the trustees certify that a sufficient appropriation for the payment of the settlement, adjustment, or compromise, or final judgment exists.

(b) Notwithstanding subdivision (c) of Section 905.2 of the Government Code or any other provision of law, the trustees may pay any claim for money or damages on express contract, or for an injury for which the trustees or their officers or employees are liable without approval of the State Board of Control if the trustees determine that payment of the claim is in the best interests of the California State University and that funds are available to pay the claim. The authority of the trustees conferred by this subdivision does not alter any other requirements governing claims in the Tort Claims Act (Division 3.6 (commencing with Section 810) of Title 1 of the Government Code), except to grant the trustees authority to pay these claims.

(c) Notwithstanding Chapter 3 (commencing with Section 13940) of Part 4 of Division 3 of Title 2 of the Government Code, the trustees may discharge from accountability the sum of one thousand dollars ($1,000), or less, owing to the California State University if the trustees determine that the money is uncollectible or the amount does not justify the cost of collection. A discharge of accountability by the trustees does not release any person from the payment of any money due the California State University.

SEC. 3. Section 89753 of the Education Code is amended to read:

89753. All appropriations for the support of the California State University and the trustees shall be subject to Section 13320 of the Government Code and applicable Budget Act restrictions, with the following exceptions:

(a) The trustees may, with regard to funds appropriated for the support of the California State University, approve any transfer of funds between general fund appropriations, unless restricted by the Budget Act or any other act, and within and between any category designated in any schedule set forth for the appropriation. In addition, the trustees may authorize the augmentation of the amount available for a category designated in any schedule set forth for the appropriation by transfer from any of the other designated categories, including additional reimbursements and amounts receivable within the same schedule, and shall furnish the Joint Legislative Budget Committee and appropriate legislative fiscal committees a report of the authorizations given during the preceding quarter.

(b) The trustees may approve travel, both within and outside the state, and the payment of allowances and expenses related to travel, moving, and the relocation of employees in accordance with the allowances established by the trustees.

(c) The trustees may, within funds appropriated for the support of the California State University, establish new positions and make changes in existing positions and the position payroll roster. Any significant changes, as determined by the trustees, shall be reported

to the Department of Finance, the Joint Legislative Budget Committee, and appropriate legislative fiscal committees on an annual basis. Significant changes include, but are not limited to, the following:

(1) Permanent conversion of teaching faculty classifications to nonfaculty classifications.

(2) Permanent conversion or reclassification into, out of, or between management classes.

(3) Permanent reclassification of positions into, out of, or between executive classes.

SEC. 4. Section 89760 is added to the Education Code, to read:

89760. (a) The trustees may transfer money from one special fund to another special fund or to the general fund in order to meet the commitments of the California State University if the transferred moneys are returned to the special fund of origin in time to fulfill the purposes of the special fund. Interest shall be paid on all money transferred to another special fund or to the general fund at a rate determined by the trustees to be the current earning rate of the fund from which the money was transferred.

(b) "Special fund," as used in this section, means enterprise and trust funds of the California State University and does not include any fund subject to the State University Revenue Bond Act of 1947 (Article 2 (commencing with Section 90010) of Chapter 8 of Part 55).

SEC. 5. Section 89761 is added to the Education Code, to read:

89761. (a) The California State University shall adhere to uniform accounting standards in accordance with Generally Accepted Accounting Principles (GAAP) for institutions of higher education.

(b) In the 1993–94 fiscal year, the California State University on five campuses representing the diversity of the system in both size of student body and campus budget shall have an independent audit of all funds performed and an independent audit report prepared.

(c) The independent audit report prepared pursuant to this section and audits performed pursuant to Section 89045 shall be submitted to the Joint Legislative Audit Committee, the Joint Legislative Budget Committee, the Department of Finance, the appropriate legislative fiscal and policy committees, the trustees, and each campus of the California State University. In addition, a copy of the audit reports shall be available for public inspection in the library of each campus of the university. The California State University shall report to the Legislature and the Governor, following the completion of the independent audit pursuant to this section, on the results of the audit and on the need to fund future audits through the Budget Act on an annual basis systemwide.

(d) The costs associated with the annual independent audit and audits performed pursuant to Section 89045 shall be funded from existing resources.

SEC. 6. Section 89912 is added to the Education Code, to read:

89912. All bonds, notes, borrowings, or other evidences of

indebtedness of an auxiliary organization and interest thereon or income therefrom are exempt from all taxation in the state other than estate and generation skipping transfer taxes.

SEC. 7. Section 13340 of the Government Code is amended to read:

13340. (a) Except as provided in subdivision (b), on and after July 1, 1993, no moneys in any fund which, by any statute other than a Budget Act, is continuously appropriated without regard to fiscal years, may be encumbered unless the Legislature, by statute, specifies that the moneys in the fund are appropriated for encumbrance.

(b) Subdivision (a) does not apply to any of the following:

(1) The scheduled disbursement of any local sales and use tax proceeds to an entity of local government pursuant to Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code.

(2) The scheduled disbursement of any transactions and use tax proceeds to an entity of local government pursuant to Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code.

(3) The scheduled disbursement of any funds by a state or local agency or department which issues bonds and administers related programs for which funds are continuously appropriated as of June 30, 1993.

(4) Moneys of the California State University that are in proprietary or fiduciary funds and that are continuously appropriated without regard to fiscal years.

CHAPTER 780

An act to amend Sections 13960, 13960.5, 13961, 13961.1, 13961.2, 13962, 13963, 13963.1, 13964, 13965, and 13965.2 of, to add Section 13965.3 to, and to repeal Section 13965.1 of, the Government Code, relating to victims of crime, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 13960 of the Government Code is amended to read:

13960. As used in this article:

(a) (1) "Victim" means a resident of the State of California, a member of the military stationed in California, or a family member living with a member of the military stationed in California who sustains injury or death as a direct result of a crime.

(2)

(2) "Derivative victim" means a resident of California who is one of the following:

(A) At the time of the crime was the parent, sibling, spouse, or child a victim.

(B) At the time of the crime was living in the household of the victim or who had previously lived in the household of the victim for a period of not less than two year in a relationship substantially similar to a relationship listed in subparagraph (A).

(C) Is another family member of the victim, including the victim's fiance, and witnessed the crime.

(b) "Injury" includes physical or emotional injury, or both. However, this article does not apply to emotional injury unless that injury is incurred by a victim who also sustains physical injury or threat of physical injury. For purposes of this article, a victim of a crime committed in violation of Section 261, 270, 270a, 270c, 271, 272, 273a, 273b, 273d, 285, 286, 288, 288.1, 288a, or 289 of the Penal Code, who sustains emotional injury is presumed to have sustained physical injury.

(c) "Crime" means a crime or public offense that would constitute a misdemeanor or a felony if committed in California by a competent adult which results in injury to a resident of this state, including a crime or public offense, wherever it may take place, when the resident is temporarily absent from the state. No act involving the operation of a motor vehicle, aircraft, or water vehicle which results in injury or death constitutes a crime for the purposes of this article, except that a crime shall include any of the following:

(1) Injury or death intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle.

(2) Injury or death caused by a driver in violation of Section 20001 of the Vehicle Code.

(3) Injury or death caused by a person who is under the influence of any alcoholic beverage or drug.

(4) Injury or death caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime in which he or she knowingly and willingly participated.

For the purpose of the limitations imposed by this article, a crime shall mean one act or series of related acts arising from the same course of conduct with the same perpetrator or perpetrators.

(d) "Pecuniary loss" means the following expenses for which the victim or derivative victim has not been and will not be reimbursed from any other source:

(1) The amount of medical or medical-related expense incurred by the victim, including in-patient psychological or psychiatric expenses, and including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the commission of the crime, or the use of which became necessary as a direct result of the crime.

(2) The amount of out-patient mental health counseling related

expenses which became necessary as a direct result of the crime. These counseling services may be provided by a person licensed as a clinical social worker or a person licensed as a marriage, family, and child counselor practicing within the scope of licensure, or within the scope of his or her respective practice acts.

(3) The loss of income or support that the victim or derivative victim has incurred or will incur as a direct result of an injury or death.

(4) Pecuniary loss also includes nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.

(5) The amount of group or family psychiatric, psychological, or mental health counseling expenses provided for the successful treatment or recovery of the victim to family members of the victim, whether or not the relationships existed at the time of the crime.

(e) "Board" means the State Board of Control.

(f) "Victim centers" means those centers as specified in Section 13835.2 of the Penal Code.

(g) "Peer counselor" means a provider of mental health counseling services who has completed a specialized course in rape crisis counseling skills development, participates in continuing education in rape crisis counseling skills development, and provides rape crisis counseling in consultation with a mental health practitioner licensed within the State of California.

SEC. 2. Section 13960.5 of the Government Code is amended to read:

13960.5. (a) Notwithstanding Section 13960, "victim" shall also include nonresidents of this state who suffer injury or death as a direct result of crimes occurring within this state.

(b) This section shall be operative only during those time periods during which the board determines that federal funds are available to the state for the compensation of victims of crime.

SEC. 3. Section 13961 of the Government Code is amended to read:

13961. (a) A victim or derivative victim may file an application for assistance with the board.

(b) The board shall supply and make available an application form for this purpose. The form shall be in one part, in laymen's terms, and shall be accompanied by information including, but not limited to, the following:

(1) The eligibility of applicants, the types of claims covered, and the maximum amount payable for these claims.

(2) Information explaining the procedure to be used to evaluate an applicant's claims.

(3) Other information pertinent to the applicant as deemed necessary by the board.

(4) Information about the existence and location of local victim centers.

(c) The period prescribed for the filing of an application for

assistance shall be one year after the date of the crime or one year after the victim attains the age of 18 years, whichever is later. The board may for good cause grant an extension of this time period not to exceed three years after the date of the crime or three years after the victim attains the age of 18 years.

(d) The application for assistance shall be verified under penalty of perjury by the victim or derivative victim. If the victim or derivative victim is a minor or is incompetent, the application shall be verified under penalty of perjury on information and belief by the parent with legal custody or legal guardian of the victim or derivative victim for whom the application is made.

The application shall contain the following:

(1) A description of the date, nature, and circumstances of the crime or public offense.

(2) A complete financial statement including but not limited to the cost of medical care or burial expense and the loss of wages or support the victim or derivative victim has incurred or will incur and the extent to which the victim has been or will be indemnified for these expenses from any source.

(3) When appropriate, a statement indicating the extent of any disability resulting from the injury incurred.

(4) An authorization permitting the board or a local victim center, or both, to verify the contents of the application.

(5) Any other information as the board may require.

SEC. 4. Section 13961.1 of the Government Code is amended to read:

13961.1. (a) An emergency award shall be available for a victim or derivative victim if either of the following occur as a result of the crime:

(1) The victim or derivative 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 or derivative 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 applicant's representative may take additional 10-day periods to verify the emergency award claim and make payment.

(d) An applicant for an emergency award is not entitled to a hearing before the board to contest a denial of an emergency award.

However, the applicant may submit an application for a regular award and is entitled to a hearing pursuant to Section 13963 if that application is recommended for denial.

(e) The application for an emergency award shall notify the applicant that he or she must complete the regular application within one year of the date of the crime or certify that he or she does not anticipate claiming reimbursements in addition to those claimed in the application for an emergency award.

(f) If the applicant certifies that no expenses will be claimed beyond those claimed in the emergency award, the board shall subsequently verify the emergency award application upon receipt of the crime report and any other information as the board may require.

(g) If upon final disposition of the regular application or verification of the emergency award, it is found that the applicant is not eligible for assistance from the board, the applicant shall reimburse the board for the emergency award pursuant to an agreed upon repayment schedule. If upon a final disposition of the application, the board grants assistance to the applicant, the amount of the emergency award shall be deducted from the final award of compensation granted ; 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.

(h) 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).

(i) The emergency award application shall require only the following:

(1) The name, address, and telephone number of the victim or derivative victim on whose behalf the application is made.

(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 applicant is later found

ineligible for 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.

SEC. 5. Section 13961.2 of the Government Code is amended to read:

13961.2. A sum not to exceed 15 percent of the amount appropriated annually to pay claims pursuant to this article may be withdrawn from the Restitution Fund, to be used as a revolving fund by the board for the payment of emergency awards made pursuant to Section 13961.1.

SEC. 6. Section 13962 of the Government Code is amended to read:

13962. (a) The staff of the board shall review all applications for assistance in order to ensure that they are complete. If an application is not complete, it shall be returned to the applicant with a brief statement of the additional information required. The applicant, within 30 days of receipt thereof, may either supply the additional information or appeal the action to the board which shall review the application to determine whether or not it is complete.

(b) The board shall approve or deny applications accepted in accordance with subdivision (a) within an average of 90 calendar days. Each individual claim shall be approved or denied within 180 calendar days. These specified time periods shall operate from the date the claim is accepted by the board or local contract agency, to the date of approval or denial of the claim. Any verification of the claim which is deemed necessary shall be performed during these specified time periods. The verification process shall include sending supplemental forms to all hospitals, physicians, law enforcement officials, and other interested parties involved, verifying the treatment of the victim or derivative victim, circumstances of the crime, amounts paid or received by or for the victim or derivative victim, and other pertinent information as may be deemed necessary by the board. Verification forms shall be provided by the board and shall be returned to the board within 10 business days. All of this information shall be provided at no cost to the applicant, the board, or local victim centers. Verification forms shall require sufficient information to clearly identify the victim or derivative victim. The board shall include on the verification forms a statement certifying that a signed authorization by the applicant is retained in the applicant's file and that this certification constitutes actual authorization for the release of information, notwithstanding any other provision of law. Each request from the board to a physician for a copy or summary of medical records shall include a copy of the signed authorization for the release of information. The board shall include on the verification forms reference to this section with respect to the prompt return of the verification forms. The board,

thereupon, shall consider the application at a hearing at a time and place of its choosing. The board shall notify all interested persons not less than five days prior to the date of the hearing.

(c) The victim and the applicant, if other than the victim, shall cooperate with the staff of the board or the local victim center in the verification of the information contained in the application. Failure to cooperate shall be reported to the board, which, in its discretion, may reject the application on this ground alone.

(d) Hearings shall be held in various locations with the frequency necessary to provide for the speedy adjudication of the applications. If the applicant's presence is required at the hearing, the board shall consider convenience to the applicant in scheduling the locations. If necessary, the board shall delegate the hearing of applications to hearing examiners.

(e) The board may contract with local victim centers to provide verification of claims processed by the centers pursuant to conditions stated in subdivision (b).

SEC. 7. Section 13963 of the Government Code is amended to read:

13963. (a) The board shall grant an applicant for benefits a hearing to contest a staff recommendation to deny an application for benefits or to deny an application to submit a late claim.

(b) At the hearing, the board shall:

(1) Instruct its staff, prior to the start of the proceedings, to brief those claimants present on the rules, regulations, and any other procedures and guidelines used by the board at these hearings.

(2) Review the application for assistance and the report prepared thereon and any other evidence obtained as a result of the verification.

(3) Receive any other evidence as the board finds necessary or desirable properly to evaluate the application.

(c) If the applicant or the applicant's representative chooses not to appear at the hearing, the board may act solely upon the application for assistance, the staff's report, and any other evidence as appears in the record.

(d) The hearing shall be informal and need not be conducted according to the technical rules relating to evidence and witnesses. The board may rely on any relevant evidence if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of the evidence over objection in a civil action.

SEC. 8. Section 13963.1 of the Government Code is amended to read:

13963.1. Notwithstanding Section 11123, the board may exclude from the hearing all persons other than board members and members of its staff, the applicant for benefits, a minor applicant's parents or guardians, the applicant's representative, any witnesses, and other persons of the applicant's choice to provide assistance to

the applicant during the hearing, if the application that the board is considering is the result of either a crime against a minor or a crime of sexual assault or a crime of domestic violence.

The board may not exclude persons from a hearing to which this section applies if the applicant or applicant's representative requests that the hearing be open to the public.

SEC. 9. Section 13964 of the Government Code is amended to read:

13964. (a) After having heard the evidence relevant to the application for assistance, the board shall approve the application if a preponderance of the evidence shows that as a direct result of the crime the victim or derivative victim incurred an injury which resulted in a pecuniary loss.

(b) An application for assistance may be denied, in whole or in part, if the board finds that denial is appropriate because of the nature of the victim's or other applicant's involvement in the events leading to the crime or the involvement of the persons whose injury or death give rise to the application.

(c) No victim or other applicant shall be eligible for assistance under this article under any of the following circumstances:

(1) The board finds that the victim knowingly and willingly participated in the commission of the crime.

(2) The board finds that the victim failed to cooperate reasonably with a law enforcement agency in the apprehension and conviction of a criminal committing the crime.

(d) No application shall be denied solely because no criminal complaint has been filed, unless the complaint has not been filed for one of the reasons stated in subdivision (b) or (c). Moreover, no application shall be denied because a criminal complaint is filed, but later dismissed, if the dismissal is not for the reasons stated in subdivision (b) or (c).

(e) Once an application has been accepted by the board pursuant to subdivision (b) of Section 13962, as the application pertains to medical or medical-related expenses, the claim shall continue to be processed and either awarded or denied pursuant to this article in the event of the death of the applicant.

SEC. 10. 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) Reimburse the following persons for the expense of their out-patient mental health counseling when that mental health counseling is necessary as a direct result of the crime:

(A) A victim in an amount not to exceed ten thousand dollars ($10,000).

(B) A surviving parent, sibling, child, spouse, or fiance of a victim of a crime which directly resulted in the death of the victim in an amount not to exceed ten thousand dollars ($10,000).

(C) A derivative victim who is the custodial parent or primary caretaker of a minor victim of sexual or physical abuse whose claim is not denied or reduced pursuant to subdivision (b) or (c) of Section 13964 in a total amount not to exceed ten thousand dollars ($10,000) for not more than two derivative victims described in this subparagraph.

(D) A derivative victim in an amount not to exceed three thousand dollars ($3,000).

The board may authorize a direct cash payment to a provider of psychological or psychiatric treatment or mental health counseling services, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or to 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 directly resulting from the injury. Loss of wages shall not be paid by the board for more than two years following the crime. However, loss of wages may be extended for one additional year if the victim is either enrolled in a program of retraining or other rehabilitation approved by the board or has established to the satisfaction of the board that because of his or her

disability arising from the crime he or she is unable to participate in any retraining or rehabilitation. 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 a cash payment to a derivative victim described in subparagraphs (A) and (B) of paragraph (2) of subdivision (a) of Section 13960 who was legally dependent on the victim at the time of the crime for the loss of support incurred by that person as a direct result of the crime.

(A) Loss of support shall not be paid by the board for income lost by an adult for a period of more than two years and shall not extend more than three years following the death of the victim.

(B) Loss of support shall not be paid by the board on behalf of a minor for a period beyond the child's attaining the age of 18 years.

(C) The total amount payable to all derivative victims pursuant to this section as the result of one crime shall not exceed forty-six thousand dollars ($46,000).

(4) Authorize cash payments to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(5) 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.

(6) When a victim dies as a direct result of a crime, the board may reimburse any individual who voluntarily, and without anticipation of personal gain or of receiving reimbursement from this program, pays or assumes the obligation to pay, the medical or burial expenses incurred as a direct result of the crime for the medical or burial expenses incurred in an amount not to exceed the rates or limitations established by the board.

(7) 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.

(8) In the event that the victim requests that the board give priority to reimbursement of loss of wages, the board shall not pay medical expenses or mental health counseling expenses except upon the request of the victim or after determining that payment of these expenses will not decrease the funds available to the victim for payment of loss of wages.

(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 the victim's need, subject to the maximum limits provided in this section.

(d) The board shall pay attorney's fees representing the reasonable value of legal services rendered to the applicant, in an amount equal to 10 percent of the amount of the award, or five hundred dollars ($500), whichever is less for each primary victim and each derivative victim. An attorney receiving fees from another source may waive the right to receive fees under this section. Payments under this section shall be in addition to any amount authorized or ordered under subdivision (d) of Section 13969.1.

(e) No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under this article.

(f) The maximum cash payments authorized in 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 exceed the limits imposed by subdivisions (a) and (j).

(i) Reimbursement for any medical or medical-related services shall, if the victim's application has been approved, be paid by the board within an average of 90 days from receipt of the claim for payment. Payments to a medical or mental health provider under this subdivision or paragraph (1) of subdivision (a) shall not be discontinued prior to completion of any reevaluation. Whether or not a reevaluation is obtained, if the board determines that payments to a provider shall be discontinued, the board shall notify the provider of their discontinuance within 30 days of its determination.

(j) 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. The adoption, amendment, and repeal of these maximum rates shall not be subject to the Administrative Procedure Act under Chapter 3.5 (commencing with Section 11340) of Part 1. An informational copy of the maximum rates shall be filed with the Secretary of State upon adoption by the board. A provider who accepts payment from the program for a service shall accept the program's rates as payment in full and shall not accept any payment on account of the service from any other source if the total of payments accepted would exceed the maximum rate set by the board for that service.

To assure service limitations which are uniform and appropriate to the levels of treatment required by the victim, the board may review all claims for these services as necessary to ensure their medical necessity. The board may further require additional documentation, information, or medical review of cases of continuing treatment which are projected to exceed five thousand dollars ($5,000) to determine the need to continue treatment in excess of that amount. The board may accept or reject claims for the amount in excess of five thousand dollars ($5,000) by applying the same standards applicable to processing the initial claim or may approve a continuing treatment regimen for a specific interval or subject to periodic review as appropriate. All information requested of the treating therapist shall be provided at no cost to the applicant, the board, or to local victim centers, pursuant to subdivision (b) of Section 13962. Requests for additional information shall be made in a timely manner so as not to interfere with necessary treatment.

(k) The authority provided by this section shall not be construed to in any way diminish, enhance, or otherwise affect any authority which the board may have under current law except as explicitly provided in this section.

(*l*) The board, in its discretion, may make payments directly to providers prior to verification.

(m) Notwithstanding paragraph (1) of subdivision (a), the board may reimburse a victim for mental health counseling in excess of that authorized by that paragraph if the claim is based on dire or exceptional circumstances that require more extensive treatment, as approved by the board.

(n) Notwithstanding paragraph (1) of subdivision (a) if, as of January 1, 1994, a person receiving reimbursement for mental health counseling expenses pursuant to this article has received reimbursements in excess of one-half of the amount specified in that subdivision, the board may award, in addition to amounts already awarded, an amount equal to not more than one-half of the applicable maximum amount specified in that paragraph or any additional amounts as the board determines is necessary.

(o) The limitations on the amounts which the board may reimburse for loss of support and loss of wages pursuant to paragraphs (2) and (3) of subdivision (a) shall not apply to victims or derivative victims whose claims for loss of wages and loss of

support had been approved prior to January 1, 1994.

SEC. 11. Section 13965.1 of the Government Code is repealed.

SEC. 12. Section 13965.2 of the Government Code is amended to read:

13965.2. Whenever an 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 or derivative victim shall be notified of the name of the provider who is to perform the evaluation within 30 days of that determination.

SEC. 13. Section 13965.3 is added to the Government Code, to read:

13965.3. (a) Notwithstanding Section 13962, the board shall develop not later than April 1, 1994, a simplified and expedited procedure for paying claims of a qualified provider of mental health services to children and their families who qualify as victims of crime in need of services.

(b) A simplified and expedited procedure for paying claims specified in subdivision (a) shall include all of the following:

(1) An agreement by the provider to subject its claims to audit procedures established by the board and to request payment only for qualified services to victims who are minors and their families.

(2) An agreement by the board to pay claims on a regular and timely basis to a qualified provider for services to victims who are minors and their families, without requiring further documentation beyond that required to initially qualify the claim.

(3) Additional methods of simplifying the claims process as agreed upon between the board and the qualified provider.

(c) Simplified and expedited procedures for mental health services to victims of crime who are minors may be instituted when both of the following conditions are met:

(1) The board has determined that the crime has occurred and that the victim qualifies for restitution pursuant to this article.

(2) Services to the victim or his or her family members, or both, are being provided by a qualified provider.

(d) After April 1, 1994, a nonprofit agency may apply to the board for a determination that the nonprofit agency is a qualified provider for purposes of this section. The board shall approve or reject an application from a qualified provider for participation in an agreement pursuant to this section within 90 days of receipt of a complete application as required by the board.

(e) An agreement made pursuant to this subdivision shall not be deemed to be a contract subject to the requirements of Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

(f) For purposes of this section, "qualified provider" means a nonprofit agency with extensive experience in providing mental health services to victims of crime who are minors and their families and that has utilized reimbursement from the victim's Restitution

Fund at a significant level on a regular and constant basis. Upon request of a nonprofit agency, the board shall determine if the nonprofit agency is a qualified provider for purposes of this section.

SEC. 14. 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. 15. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to maintain the solvency of the Restitution Fund, it is necessary that this act take effect immediately as an urgency statute.

CHAPTER 781

An act to add Section 2053.3 to the Penal Code, relating to corrections.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 2053.3 is added to the Penal Code, to read:

2053.3. (a) The Director of Corrections shall implement a two-year correctional education program that increases inmate assignments through adoption of a pilot project cell study program. The program shall be implemented at three institutions, one for female inmates and two for male inmates, with the sites to be chosen by the Department of Corrections and the employee bargaining unit. Inmates shall be assigned to a classroom for three hours per day or 15 hours per week, not to exceed 20 inmates per classroom. Classroom-assigned inmates shall then be assigned to their cells for a study period of three hours per day or 15 hours per week. Inmates shall be housed contiguously to ensure appropriate educational supervision and educational assistance by an instructor and inmate teaching assistants. Cell study instruction shall be limited to 80 inmates housed contiguously where feasible to accomplish the objectives of the cell study program. The department shall adjust cell assignments to accomplish the program's intent. In implementing this program, the department shall adhere to the State Building

Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code).

(b) An inmate participating in a cell study program pursuant to this section shall demonstrate appropriate educational progress, as certified by the instructor, as a condition of any reduction in the time served pursuant to Section 2933. Appropriate educational progress shall be demonstrated based upon preprogram and postprogram testing that reflects improved literacy of the inmate.

(c) (1) The pilot project cell study program shall commence on January 1, 1994, and end on December 31, 1995.

(2) Representatives from the Department of Corrections and the employee bargaining unit shall evaluate the cell study program and submit a report to the Legislature by July 30, 1996. If there is not a consensus, then a minority opinion shall also be included with the final report.

(d) The Department of Corrections may initiate a system of negative timekeeping with regard to the participation of inmates in inmate work, training, and education assignments.

CHAPTER 782

An act to amend Section 21647 of the Business and Professions Code, and to amend Sections 21201 and 21201.2 of, and to add Chapter 3 (commencing with Section 21300) to Division 8 of, the Financial Code, relating to pawnbrokers.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 21647 of the Business and Professions Code is amended to read:

21647. (a) Whenever any peace officer has probable cause to believe that property, except coins, monetized bullion, or "commercial grade ingots" as defined in subdivision (d) of Section 21627, in the possession of a pawnbroker, secondhand dealer, or coin dealer is stolen, the peace officer may place a hold on the property for a period not to exceed 90 days. When a peace officer places a hold on the property, the peace officer shall give the pawnbroker, secondhand dealer, or coin dealer a written notice at the time the hold is placed, describing the item or items to be held. During that period the pawnbroker, secondhand dealer, or coin dealer shall not release or dispose of the property, except pursuant to a court order or upon receipt of a written authorization signed by any peace officer who is a member of the law enforcement agency of which the peace officer placing the hold on the property is a member. A pawnbroker, secondhand property dealer, or coin dealer shall not be subject to

civil liability for compliance with this section.

(b) Whenever property that is in the possession of a pawnbroker, secondhand dealer, or coin dealer is required by a peace officer in a criminal investigation, the pawnbroker, secondhand dealer, or coin dealer, upon reasonable notice, shall produce the property at reasonable times and places or may deliver the property to any peace officer upon the request of any peace officer who is a member of the law enforcement agency of which the peace officer placing the hold on the property is a member.

(c) Whenever property that is in the possession of a pawnbroker, secondhand dealer, or coin dealer is subject to a hold and the property is no longer required for the purpose of criminal investigation, the law enforcement agency that placed the hold on the property shall undertake the following:

(1) With respect to the property being held, if the law enforcement agency has no knowledge of the property on hold being reported as stolen, the property shall be released.

(2) If a law enforcement agency has knowledge that property has been reported stolen, the law enforcement agency shall give written notification to the person who reported the stolen property of the name and address of the pawnbroker, secondhand dealer, or coin dealer holding the property, authorize the release of the property to that person, and advise the person that the law neither requires nor prohibits payment of a fee or any other condition in return for the surrender of the property. A copy of the notice with the address of the claimant deleted shall be mailed to the pawnbroker, secondhand dealer, or coin dealer who is in possession of the property. The person who reported the stolen property shall present a police hold release to the pawnbroker, secondhand dealer, or coin dealer prior to the person receiving the item. Notwithstanding the foregoing, if the alleged owner does not choose to participate in the prosecution of an identified alleged thief, the alleged owner shall pay the pawnbroker, secondhand dealer, or coin dealer the "out of pocket" expenses paid in the acquisition of the allegedly stolen property in return for the surrender of the property. If no action is taken to recover the property by the person who reported the property stolen within 60 days after the date that the notice was mailed, or if the property was not placed on hold, 60 days after a law enforcement officer advised the pawnbroker, secondhand dealer, or coin dealer that the property may be stolen property, the pawnbroker, secondhand dealer, or coin dealer in possession of the property may treat the property as regularly acquired in the due course of business.

(3) If a pledgor seeks to redeem property that is subject to a hold, the pawnbroker, secondhand dealer, or coin dealer shall advise the pledgor of the name and badge number of the peace officer who placed the hold on the property and the name of the law enforcement agency of which the officer is a member. If the property is not required to be held pursuant to a criminal prosecution, the hold shall be released.

(d) Whenever information regarding allegedly lost or stolen property is entered into the Department of Justice automated property system or automated firearms system, and the property is thereafter identified and found to be in the possession of a pawnbroker, secondhand dealer, or coin dealer, and the property is thereafter placed on a hold pursuant to this section and the hold, including any additional hold, is allowed to lapse, or 60 days elapse following the delivery of the notice required to be given by this section to the person who reported the property to be lost or stolen without a claim being made by that person, whichever is later, the pawnbroker, secondhand dealer, or coin dealer may mail under a Certificate of Mailing issued by the United States Post Office, addressed to the law enforcement agency that placed the property on hold, a written request to delete the property listing from the Department of Justice automated property system or automated firearms system, as is applicable. Within 30 days after the request has been mailed, the law enforcement agency shall either cause the property listing to be deleted as requested or place a hold on the property. If no law enforcement agency takes any further action with respect to the property within 45 days after the mailing of the request, the pawnbroker, secondhand dealer, or coin dealer may presume that the property listing has been deleted as requested and may thereafter deal with the property accordingly, and shall not be subject to liability arising from the failure of the removal of the property listing from the Department of Justice automated property system or automated firearms system.

SEC. 2. Section 21201 of the Financial Code is amended to read:

21201. Every loan made by a pawnbroker for which goods are received in pledge as security shall be evidenced by a written contract, a copy of which shall be furnished to the borrower. The loan contract shall provide a four-month loan period, shall set forth the loan period and the date on which the loan is due and payable, and shall clearly inform the borrower of his or her right to redeem the pledge during the loan period.

Every loan contract shall contain the following notice, in at least 8-point bold face type and circumscribed by a box, immediately above the space for the borrower's signature:

"You may redeem the property you have pledged at any time until the close of business on _____ [fill in date four months from date loan begins]. To redeem, you must pay the amount of the loan and the applicable charges which have accrued through the date on which you redeem."

Every pawnbroker shall retain in his or her possession every article pledged to him or her for a period of four months. During such period the borrower may redeem the articles upon payment of the amount of the loan and the applicable charges.

If any pledged article is not redeemed during the four-month loan period as provided herein, and the borrower and pawnbroker do not mutually agree in writing to extend the loan period, the pawnbroker

shall notify the borrower within 30 days after expiration of the loan period. If the pawnbroker fails to notify the borrower within 30 days after the expiration of the loan period, the pawnbroker shall not charge interest from the day after the expiration of the 30-day period. The pawnbroker shall notify the borrower either by registered mail, or by certified mail, or by regular mail for which a certificate of mailing is issued by the United States Postal Service addressed to his or her last known address of the termination of the loan period, and extending the right of redemption for a period of 10 days from date of mailing of such notice.

However, the posted schedule of charges required pursuant to Section 21200.5 shall contain a notice informing the borrower that if he or she desires, the pawnbroker shall send the notice of termination of the loan period by registered or certified mail with return receipt requested, upon prepayment of the mailing costs. If any pledged article is not redeemed within the 10-day period, the pawnbroker shall become vested with all right, title, and interest of the pledgor, or his or her assigns, to the pledged article, to hold and dispose of as his or her own property. Any other provision of law relating to the foreclosure and sale of pledges shall not be applicable to any pledge the title to which is transferred in accordance with this section. The pawnbroker shall not sell any article of pledged property until he or she has become vested with the title to that property pursuant to this section. The sale of pledged property is a misdemeanor pursuant to Section 21209.

SEC. 3. Section 21201.2 of the Financial Code is amended to read:

21201.2. If the pledgor fails to redeem any pawned item during the loan period, thereby obliging the pawnbroker to mail the notice required under Section 21201, the pawnbroker may charge a fee of up to two dollars ($2) for services and costs pertaining to the preparation of the notice, in addition to any other allowed charges.

SEC. 4. Chapter 3 (commencing with Section 21300) is added to Division 8 of the Financial Code, to read:

CHAPTER 3. LICENSURE

21300. (a) The chief of police, the sheriff, or, where appropriate, the police commission, shall accept an application for and grant a license permitting the licensee to engage in the business of pawnbroker, as defined in Section 21000, at the address indicated on the application, to an applicant who has complied with the requirements of Sections 21303, 21304, and 21305 and has not been convicted of an attempt to receive stolen property or any other offense involving stolen property. Prior to the granting of a license, the licensing authority shall submit the application to the Department of Justice. If the Department of Justice does not comment on the application within 30 days thereafter, the licensing authority shall grant the applicant a license. All forms for application and licensure, and license renewal, shall be prescribed and provided

by the Department of Justice. A fee not to exceed the actual processing costs to the Department of Justice and the chief of police, the sheriff, or where appropriate, the police commission may be charged to the applicant for processing the initial license application.

(b) For the purposes of this section, "convicted" means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

(c) Notwithstanding subdivisions (a) and (b), no person shall be denied a pawnbroker's license solely on the grounds that he or she violated any provision contained in Chapter 1 (commencing with Section 21000) or Chapter 2 (commencing with Section 21200) of this division or Article 4 (commencing with Section 21625) or Article 5 (commencing with Section 21650) of Chapter 9 of Division 8 of the Business and Professions Code unless the violation demonstrates a pattern of conduct.

21301. (a) A license granted pursuant to Section 21300 shall be renewable the second year from the date of issue, and every other year thereafter, upon the filing of a renewal application and compliance with the requirements of Section 21303. The Department of Justice and the chief of police, the sheriff, or where appropriate, the police commission may charge a fee for the license renewal not to exceed the actual processing costs. The licensing authority shall collect the fee and transmit the fee and a copy of the renewed license to the Department of Justice.

(b) The license shall be subject to forfeiture by the licensing authority, and the licensee's activities as a pawnbroker shall be subject to being enjoined pursuant to Section 21302, for breach of any of the following conditions:

(1) The business shall be carried on only at the address designated on the license.

(2) The license or a copy thereof, certified by the licensing authority, shall be displayed on the premises in plain view of the public.

(3) The licensee shall not engage in any act which the licensee knows to be in violation of this article.

(4) The licensee shall not be convicted of an attempt to receive stolen property or other offense involving stolen property. For the purposes of this paragraph, "convicted" means a plea or verdict of guilty or a conviction following a plea or nolo contendere. Any action which the chief of police, the sheriff, or, where appropriate, the police commission, is permitted to take following such a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

(c) Notwithstanding subdivisions (a) and (b), no person shall have his or her renewal application for a pawnbroker's license denied, nor shall his or her pawnbroker's license be forfeited solely on the grounds that he or she violated any provision contained in

Chapter 1 (commencing with Section 21000) or Chapter 2 (commencing with Section 21200) of this division or Article 4 (commencing with Section 21625) or Article 5 (commencing with Section 21650) of Chapter 9 of Division 8 of the Business and Professions Code unless the violation demonstrates a pattern of conduct.

21302. The district attorney or the Attorney General, in the name of the people of the State of California, may bring an action to enjoin the violation or the threatened violation of any regulation made pertaining to the provisions contained in Chapter 1 (commencing with Section 21000) or Chapter 2 (commencing with Section 21200) of this division or Article 4 (commencing with Section 21625) or Article 5 (commencing with Section 21650) of Chapter 9 of Division 8 of the Business and Professions Code. Any proceeding brought hereunder shall be governed in all respects by the provisions of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

21303. (a) As a condition precedent to the issuance or renewal of a pawnbroker's license the applicant shall file a pawnbroker's two-year nonrevokable surety bond with the issuing authority, in the sum of twenty thousand dollars ($20,000). The pawnbroker's bond required by this article shall be executed by an admitted surety in favor of the State of California and shall be filed by the applicant with the licensing authority.

(b) The bond shall be for the benefit of pledgors of pledged property when the property is not available for redemption, due to the criminal negligence, criminal malfeasance, or other criminal conduct of the pawnbroker, and the pledgor has complied with the conditions precedent to redemption under the terms of the loan contract. The pledgor has the burden of establishing by clear and convincing evidence that all conditions precedent to redemption under the terms of the loan contract have been performed.

21304. (a) As a condition precedent to the issuing of a pawnbroker's license, the applicant shall file with the issuing authority a financial statement confirming that the applicant has at least one hundred thousand dollars ($100,000) in the form of liquid assets readily available for use in the business for which the application is made, not including real property. In the absence of one hundred thousand dollars ($100,000) in net assets, an applicant may post a nonrevocable surety bond in the amount of one hundred thousand dollars ($100,000). The financial statement shall be made by the applicant under penalty of perjury and signed by a California Certified Public Accountant verifying that he or she has reviewed the financial statement.

(b) This section is not applicable to any person holding a secondhand dealers license pursuant to Section 21641 or 21642 of the Business and Professions Code and who is actively engaged as a pawnbroker on the effective date of this section.

21305. A license issued pursuant to this chapter shall not be

transferred or assigned.

21306. A pawnbroker licensed under Section 21300 is exempt from the licensing requirements under Sections 21641 and 21642 of the Business and Professions Code and may engage in any transaction involving tangible personal property for which a secondhand dealers license is required under Sections 21641 and 21642 of the Business and Professions Code. Pawnbrokers operating under this license exemption are required to conform to all other requirements of secondhand dealers for which a license is required under Sections 21641 and 21642 of the Business and Professions Code.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 783

An act to amend Section 17014 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 17014 of the Revenue and Taxation Code is amended to read:

17014. (a) "Resident" includes:

(1) Every individual who is in this state for other than a temporary or transitory purpose.

(2) Every individual domiciled in this state who is outside the state for a temporary or transitory purpose.

(b) Any individual (and spouse) who is domiciled in this state shall be considered outside this state for a temporary or transitory purpose while that individual:

(1) Holds an elective office of the government of the United States, or

(2) Is employed on the staff of an elective officer in the legislative branch of the government of the United States as described in paragraph (1), or

(3) Holds an appointive office in the executive branch of the government of the United States (other than the armed forces of the United States or career appointees in the United States Foreign Service) if the appointment to that office was by the President of the United States and subject to confirmation by the Senate of the United States and whose tenure of office is at the pleasure of the President of the United States.

(c) Any individual who is a resident of this state continues to be a resident even though temporarily absent from the state.

(d) For any taxable year beginning on or after January 1, 1994, any individual domiciled in this state who is absent from the state for an uninterrupted period of at least 18 consecutive months under an employment-related contract shall be considered outside this state for other than a temporary or transitory purpose.

(1) For purposes of this subdivision, returns to this state, totaling in the aggregate not more than 45 days during a taxable year, shall be disregarded.

(2) This subdivision shall not apply to any individual who has income from stocks, bonds, notes, or other intangible personal property in excess of two hundred thousand dollars ($200,000) in any taxable year in which the employment-related contract is in effect.

(3) Any spouse who is absent from the state for an uninterrupted period of at least 18 consecutive months to accompany a spouse who, under this subdivision, is considered outside this state for other than a temporary or transitory purpose shall, for purposes of this subdivision, also be considered outside this state for other than a temporary or transitory purpose.

(4) This subdivision shall not apply to any individual if the principal purpose of the individual's absence from this state is to avoid any tax imposed by this part.

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 784

An act to amend Sections 751, 752, 763, 772, 773, and 782 of, and to repeal and add Sections 753 and 754 of, the Public Resources Code, relating to forestry.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 751 of the Public Resources Code is amended to read:

751. The purpose of this article is to declare the existence of a public interest in the management and treatment of the forest

resources and timberlands of this state and to provide for the regulation of persons who practice the profession of forestry and whose activities have an impact upon the ecology of forested landscapes and the quality of the forest environment, and through that regulation to enhance the control of air and water pollution, the preservation of scenic beauty, the protection of watersheds by flood and soil erosion control, the production and increased yield of natural resources, including timber, forage, wildlife, and water, and outdoor recreation, to meet the needs of the people.

SEC. 2. Section 752 of the Public Resources Code is amended to read:

752. (a) "Professional forester," as used in this article, means a person who, by reason of his or her knowledge of the natural sciences, mathematics, and the principles of forestry, acquired by forestry education and experience, performs services, including, but not limited to, consultation, investigation, evaluation, planning, or responsible supervision of forestry activities when those professional services require the application of forestry principles and techniques.

(b) A professional forester is licensed to perform forestry services only in those areas of expertise in which the person is fully competent as a result of training or experience. In order for a professional forester to fulfill all of his or her responsibilities with regard to a particular activity on a site, if the expertise that is prudently required exceeds the expertise possessed by the professional forester in that regard, the professional forester may need to utilize the services of other qualified experts, including, but not limited to, archaeologists, botanists, civil engineers, ecologists, fisheries biologists, geologists, hydrologists, land surveyors, landscape architects, range scientists, soil scientists, or wildlife biologists. Nothing in this article shall preclude those other environmental professionals from the application of their knowledge in their field of expertise outside the practice of forestry, as defined in Section 753.

SEC. 3. Section 753 of the Public Resources Code is repealed.

SEC. 4. Section 753 is added to the Public Resources Code, to read:

753. "Forestry," as used in this article, refers to the science and practice of managing forested landscapes and the treatment of the forest cover in general, and includes, among other things, the application of scientific knowledge and forestry principles in the fields of fuels management and forest protection, timber growing and utilization, forest inventories, forest economics, forest valuation and finance, and the evaluation and mitigation of impacts from forestry activities on watershed and scenic values, to achieve the purposes of this article. The practice of forestry applies only to those activities undertaken on forested landscapes. The professions specified in Section 772 are not practicing forestry when mitigating or recommending mitigation of impacts from previous forestry activities on related watershed or ecological values within their area

of professional expertise or when recommending those mitigations for proposed timber operations. However, public and private foresters are required to be licensed pursuant to this article when making evaluations and determinations of the appropriate overall combination of mitigations of impacts from forestry activities necessary to protect all forest resources.

SEC. 5. Section 754 of the Public Resources Code is repealed.

SEC. 6. Section 754 is added to the Public Resources Code, to read:

754. "Forested landscapes" means those tree dominated landscapes and their associated vegetation types on which there is growing a significant stand of tree species, or which are naturally capable of growing a significant stand of native trees in perpetuity, and is not otherwise devoted to nonforestry commercial, urban, or farming uses.

SEC. 7. Section 763 of the Public Resources Code is amended to read:

763. (a) The board shall establish an examining committee of at least seven members composed of the following, who shall be appointed by the board and serve at its pleasure:

(1) Two public members with one selected from the membership of the board.

(2) At least four professional foresters in good standing representing a broad cross section of employment and expertise.

(3) At least one certified specialist registered pursuant to Section 772 in good standing. If a certified specialist is not available to serve on the committee, this position shall be replaced by an additional professional forester in good standing.

(b) The examining committee shall do all of the following:

(1) Examine all applicants for registration as professional foresters and for specialty certificates.

(2) Recommend to the board applicants for the license of professional forester and applicants for specialty certificates who fulfill the requirements of this article.

(3) Review complaints, which review may include independent investigations or expert witness evaluations, and make disciplinary recommendations to the board.

(4) Establish ad hoc committees as needed with representatives of certified specialists.

(5) Recommend to the board whether an independent certification program qualifies for recognition under Section 754.

(6) Recommend adoption of the rules and regulations or changes in rules and regulations which may be needed to effect this article.

SEC. 8. Section 772 of the Public Resources Code is amended to read:

772. Instead of being registered as a professional forester, an applicant may request to be registered as a certified specialist in one or more fields of forestry. Nothing in this article shall authorize the board to certify or otherwise license wildlife biologists, fisheries

biologists, botanists, ecological restorationists, stream restorationists, hydrologists, or geologists. Registration in a specialty area does not prohibit a professional forester from providing services within that professional forester's area of expertise. Any public agency or professional society may submit for board recognition its independent certification program as full qualification without examination for the board's certificate of specialization. That certification as a specialist shall be granted provided the board determines the program fully protects the public interest in that area of practice encompassed by the program. Those certificants are subject to board registration and discipline with review by that specialty.

SEC. 9. Section 773 of the Public Resources Code is amended to read:

773. Licenses and specialty certificates issued pursuant to this article shall be valid for two years and shall expire on July 1 of each alternating year.

SEC. 10. Section 782 of the Public Resources Code is amended to read:

782. The board shall establish by regulation the amount of fees within the following ranges, and based on a determination by the board of the amount of revenues reasonably necessary to carry out this article:

(a) The application fee for registration or for each certificate of specialization shall be not less than fifty dollars ($50) and not more than two hundred dollars ($200).

(b) The registration fee and certificate of specialization fees and renewal fees shall be not less than twenty-five dollars ($25) and not more than two hundred fifty dollars ($250) per year. Every licensed person shall, on or before July 1 of the year of expiration, pay the renewal fee.

(c) The fee for the issuance of a duplicate display registration document or certificate of specialization shall be not less than five dollars ($5) and not more than twenty-five dollars ($25).

(d) The penalty fee for failure to apply for a renewal shall be not less than ten dollars ($10) and not more than twenty-five dollars ($25) for each month of delinquency. In return for the payment of the renewal fee and any applicable late fees, a renewal registration card shall be issued.

(e) A registrant or certificant may, upon written notice to the board, be granted a withdrawal period without penalty not to exceed five years. A reinstatement application shall be accompanied with a fee of not less than fifteen dollars ($15) and not more than fifty dollars ($50), for registration or each certificate of specialization.

CHAPTER 785

An act to amend Sections 1000.5, 1000.91, 1001.9, 1001.33, 1001.55, 1001.75, 13203, and 13300 of the Penal Code, relating to diversion.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 1000.5 of the Penal Code is amended to read:

1000.5. (a) Any record filed with the Department of Justice shall indicate the disposition in those cases diverted pursuant to this chapter. Upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The divertee may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a diversion program shall not, without the divertee's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(b) The divertee shall be advised that, regardless of his or her successful completion of diversion, the arrest upon which the diversion was based may be disclosed by the Department of Justice in response to any peace officer application request made within five years of the arrest, and that notwithstanding subdivision (a), this section does not relieve him or her of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830, made within five years of the arrest.

SEC. 2. Section 1000.91 of the Penal Code, as amended by Chapter 221 of the Statutes of 1993, is amended to read:

1000.91. (a) Any records filed with the Department of Justice shall indicate the disposition in those cases diverted pursuant to this chapter. Upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a diversion program shall not, without the divertee's consent, be used in any way which could result in the denial of any employment, benefit, license, or certificate.

(b) The divertee shall be advised that, regardless of his or her successful completion of diversion, the arrest upon which the diversion was based may be disclosed by the Department of Justice in response to any peace officer application request made within five

years of the arrest, and that notwithstanding subdivision (a), this section does not relieve him or her of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830, within five years of the arrest.

SEC. 3. Section 1001.9 of the Penal Code is amended to read:

1001.9. (a) Any record filed with the Department of Justice shall indicate the disposition in those cases diverted pursuant to this chapter. Upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The divertee may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a diversion program shall not, without the divertee's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(b) The divertee shall be advised that, regardless of his or her successful completion of diversion, the arrest upon which the diversion was based may be disclosed by the Department of Justice in response to any peace officer application request made within five years of the arrest, and that notwithstanding subdivision (a), this section does not relieve him or her of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830, made within five years of the arrest.

SEC. 4. Section 1001.33 of the Penal Code is amended to read:

1001.33. (a) Any record filed with the Department of Justice shall indicate the disposition in those cases diverted pursuant to this chapter. Upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The divertee may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a diversion program shall not, without the divertee's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(b) The divertee shall be advised that, regardless of his or her successful completion of diversion, the arrest upon which the diversion was based may be disclosed by the Department of Justice in response to any peace officer application request made within five years of the arrest, and that notwithstanding subdivision (a), this section does not relieve him or her of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830, made within five years of the arrest.

SEC. 5. Section 1001.55 of the Penal Code is amended to read:

1001.55. (a) Any record filed with the Department of Justice

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

(b) The divertee shall be advised that, regardless of his or her successful completion of diversion, the arrest upon which the diversion was based may be disclosed by the Department of Justice in response to any peace officer application request made within five years of the arrest, and that notwithstanding subdivision (a), this section does not relieve him or her of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830, made within five years of the arrest.

SEC. 6. Section 1001.75 of the Penal Code is amended to read:

1001.75. (a) Any record filed with the Department of Justice shall indicate the disposition in those cases diverted pursuant to this chapter. Upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The divertee may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for that offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a diversion program shall not, without the divertee's consent, be used in any way that would result in the denial of any employment, benefit, license, or certificate.

(b) The divertee shall be advised that, regardless of his or her successful completion of diversion, the arrest upon which the diversion was based may be disclosed by the Department of Justice in response to any peace officer application request made within five years of the arrest, and that notwithstanding subdivision (a), this section does not relieve him or her of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830, made within five years of the arrest.

SEC. 7. Section 13203 of the Penal Code is amended to read:

13203. (a) Any criminal justice agency may release, within five years of the arrest, information concerning an arrest or detention of a peace officer or applicant for a position as a peace officer, as defined in Section 830, which did not result in conviction, or information concerning a referral to, and participation in, any postarrest diversion program to a government agency employer of that peace officer or applicant for a position as a peace officer, as defined in Section 830.

(b) Notwithstanding subdivision (a), a criminal justice agency shall not release information under the following circumstances:

(1) Information concerning an arrest for which diversion has been ordered without attempting to determine whether diversion has been successfully completed.

(2) Information concerning an arrest or detention followed by a dismissal or release without attempting to determine whether the individual was exonerated.

(3) Information concerning an arrest without a disposition without attempting to determine whether diversion has been successfully completed or the individual was exonerated.

SEC. 8. Section 13300 of the Penal Code is amended to read:

13300. (a) As used in this section:

(1) "Local summary criminal history information" means the master record of information compiled by any local criminal justice agency pursuant to Chapter 2 (commencing with Section 13100) of Title 3 of Part 4 pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.

(2) "Local summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than that local agency, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the local agency.

(3) "Local agency" means a local criminal justice agency.

(b) A local agency shall furnish local summary criminal history information to any of the following, when needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state, as defined in Section 830.1, subdivisions (a) and (b) of Section 830.2, subdivisions (a), (b), and (j) of Section 830.3, subdivisions (a), (b), and (c) of Section 830.5, and subdivision (e) of Section 830.2.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) Probation officers of the state.

(6) Parole officers of the state.

(7) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(8) A public defender or attorney of record when representing a person in a criminal case and when authorized access by statutory or decisional law.

(9) Any agency, officer, or official of the state when the local

summary criminal history information is required to implement a statute, regulation, or ordinance that expressly refers to specific criminal conduct applicable to the subject person of the local summary criminal history information, and contains requirements or exclusions, or both, expressly based upon the specified criminal conduct.

(10) Any city, county, city and county, or district, or any officer or official thereof, when access is needed in order to assist the agency, officer, or official in fulfilling employment, certification, or licensing duties, and when the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district when the local summary criminal history information is required to implement a statute, regulation, or ordinance that expressly refers to specific criminal conduct applicable to the subject person of the local summary criminal history information, and contains requirements or exclusions, or both, expressly based upon the specified criminal conduct.

(11) The subject of the local summary criminal history information.

(12) Any person or entity when access is expressly authorized by statute when the local summary criminal history information is required to implement a statute, regulation, or ordinance that expressly refers to specific criminal conduct applicable to the subject person of the local summary criminal history information, and contains requirements or exclusions, or both, expressly based upon the specified criminal conduct.

(13) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(c) The local agency may furnish local summary criminal history information, upon a showing of a compelling need, to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) Any public utility, as defined in Section 216 of the Public Utilities Code, which operates a nuclear energy facility when access is needed to assist in employing persons to work at the facility, provided that, if the local agency supplies the information, it shall furnish a copy of this information to the person to whom the information relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To a peace officer of another country.

(4) To public officers, other than peace officers, of the United States, other states, or possessions or territories of the United States, provided that access to records similar to local summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States

when this information is needed for the performance of their official duties.

(5) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the local summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(6) The courts of the United States, other states, or territories or possessions of the United States.

(7) Peace officers of the United States, other states, or territories or possessions of the United States.

(8) To any individual who is the subject of the record requested when needed in conjunction with an application to enter the United States or any foreign nation.

(9) Any public utility, as defined in Section 216 of the Public Utilities Code, when access is needed to assist in employing persons who will be seeking entrance to private residences in the course of their employment. The information provided shall be limited to the record of convictions and any arrest for which the person is released on bail or on his or her own recognizance pending trial.

If the local agency supplies the information pursuant to this paragraph, it shall furnish a copy of the information to the person to whom the information relates.

Any information obtained from the local summary criminal history is confidential and the receiving public utility shall not disclose its contents, other than for the purpose for which it was acquired. The local summary criminal history information in the possession of the public utility and all copies made from it shall be destroyed 30 days after employment is denied or granted, including any appeal periods, except for those cases where an employee or applicant is out on bail or on his or her own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed 30 days after the case is resolved, including any appeal periods.

A violation of any of the provisions of this paragraph is a misdemeanor, and shall give the employee or applicant who is injured by the violation a cause of action against the public utility to recover damages proximately caused by the violation.

Nothing in this section shall be construed as imposing any duty upon public utilities to request local summary criminal history information on any current or prospective employee.

Seeking entrance to private residences in the course of employment shall be deemed a "compelling need" as required to be shown in this subdivision.

(10) Any city, county, city and county, or district, or any officer or official thereof, if a written request is made to a local law enforcement agency and the information is needed to assist in the screening of a prospective concessionaire, and any affiliate or associate thereof, as these terms are defined in subdivision (k) of Section 432.7 of the Labor Code, for the purposes of consenting to,

or approving of, the prospective concessionaire's application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest.

Any local government's request for local summary criminal history information for purposes of screening a prospective concessionaire and their affiliates or associates before approving or denying an application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest is deemed a "compelling need" as required by this subdivision. However, only local summary criminal history information pertaining to criminal convictions may be obtained pursuant to this paragraph.

Any information obtained from the local summary criminal history is confidential and the receiving local government shall not disclose its contents, other than for the purpose for which it was acquired. The local summary criminal history information in the possession of the local government and all copies made from it shall be destroyed not more than 30 days after the local government's final decision to grant or deny consent to, or approval of, the prospective concessionaire's application for, or acquisition of, a beneficial interest in a concession, lease, or other property interest. Nothing in this section shall be construed as imposing any duty upon a local government, or any officer or official thereof, to request local summary criminal history information on any current or prospective concessionaire or their affiliates or associates.

(d) Whenever an authorized request for local summary criminal history information pertains to a person whose fingerprints are on file with the local agency and the local agency has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) A local agency taking fingerprints of a person who is an applicant for licensing, employment, or certification may charge a fee not to exceed ten dollars ($10) to cover the cost of taking the fingerprints and processing the required documents.

(f) Whenever local summary criminal history information furnished pursuant to this section is to be used for employment, licensing, or certification purposes, the local agency shall charge the person or entity making the request a fee which it determines to be sufficient to reimburse the local agency for the cost of furnishing the information, provided that no fee shall be charged to any public law enforcement agency for local summary criminal history information furnished to assist it in employing, licensing, or certifying a person who is applying for employment with the agency as a peace officer or criminal investigator. Any state agency required to pay a fee to the local agency for information received under this section may charge the applicant a fee sufficient to reimburse the agency for the expense.

(g) Whenever there is a conflict, the processing of criminal fingerprints shall take priority over the processing of applicant fingerprints.

(h) It is not a violation of this article to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(i) It is not a violation of this article to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(j) Notwithstanding any other law, the Department of Justice or any state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting summary criminal history information record checks which are authorized by law.

(k) Any local criminal justice agency may release, within five years of the arrest, information concerning an arrest or detention of a peace officer or applicant for a position as a peace officer, as defined in Section 830, which did not result in conviction, or information concerning a referral to, and participation in, any postarrest diversion program to a government agency employer of that peace officer or applicant for a position as a peace officer, as defined in Section 830.

(*l*) Notwithstanding subdivision (k), a local criminal justice agency shall not release information under the following circumstances:

(1) Information concerning an arrest for which diversion has been ordered without attempting to determine whether diversion has been successfully completed.

(2) Information concerning an arrest or detention followed by a dismissal or release without attempting to determine whether the individual was exonerated.

(3) Information concerning an arrest without a disposition without attempting to determine whether diversion has been successfully completed or the individual was exonerated.

CHAPTER 786

An act to amend Section 6217 of the Public Resources Code, relating to public resources.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 6217 of the Public Resources Code is amended to read:

6217. With the exception of revenues derived from state school lands and from sources described in Sections 6217.6, 6301.5, 6301.6, 6855, and 8551 to 8558, inclusive, and Section 6406 (insofar as the proceeds are from property that has been distributed or escheated to the state in connection with unclaimed estates of deceased persons), the commission shall deposit in the State Treasury all revenues, moneys, and remittances received by it under this division, and under Chapter 138 of the Statutes of 1964, First Extraordinary Session, and these sums shall be applied to the following obligations in the following order:

(a) To the General Fund, the revenue necessary to provide in any fiscal year for the following:

(1) Payment of refunds, authorized by the commission and approved by the State Board of Control, out of appropriations made for that purpose by the Legislature.

(2) Payment of expenditures of the commission as provided in the annual Budget Act approved by the Legislature.

(3) Payments to cities and counties of the amounts specified in Section 6817 for the purposes specified in that section, and the revenues so deposited are appropriated for that purpose.

(4) Payments to cities and counties of the amounts agreed to pursuant to Section 6875.

(b) To the California Water Fund each fiscal year the amount of twenty-five million dollars ($25,000,000).

(c) To the Central Valley Water Project Construction Fund each fiscal year the amount of five million dollars ($5,000,000).

(d) (1) To the General Fund, the amount of five hundred twenty-five thousand dollars ($525,000) for each of the 1994–95, 1995–96, 1996–97, 1997–98, and 1998–99 fiscal years for distribution for public and private higher education for use as up to two-thirds of the local matching share for projects under the National Sea Grant College and Program Act of 1966 (P.L. 89-688) approved, upon the recommendation of the advisory panel appointed pursuant to this section, by the Secretary of the Resources Agency or his or her designee. The Secretary of the Resources Agency shall submit a report to the Legislature on or before January 1, 1993, which evaluates this program and makes recommendations on whether

changes should be made to the program or whether it should be continued. The Legislature shall consider recommendations from the Secretary of the Resources Agency and other interested parties on the benefits to the people of the State of California derived from this program and shall determine whether or not to continue similar appropriations for subsequent fiscal years.

(2) There shall be an advisory panel to the Secretary of the Resources Agency consisting of 17 members, which shall do all of the following:

(A) Identify state needs that might be met through Sea Grant research projects, including, but not limited to, such fields as living marine resources, aquaculture, ocean engineering, marine minerals, public recreation, coastal physical processes and coastal and ocean resources planning and management, and marine data acquisition and dissemination, establish priorities for those needs, and transmit those needs and priorities to the Legislature not later than January 1 of each year and include them in all announcements of proposals for grants in the following fiscal year.

(B) Review all applications for funding under this section and make recommendations based upon the priorities it establishes.

(C) Periodically review progress on Sea Grant research projects subsequent to their approval and funding under this section.

(D) Make recommendations to the Secretary of the Resources Agency with respect to the implementation of this section.

(3) The Secretary of the Resources Agency shall appoint the following members of the advisory panel, who shall serve at the pleasure of the secretary:

(A) A representative of the Department of Boating and Waterways.

(B) A representative of the Department of Conservation.

(C) A representative of the Department of Fish and Game.

(D) The Executive Director of the California Coastal Commission or his or her designee.

(E) A representative of the fish industry.

(F) A representative of the aquaculture industry.

(G) A representative of the ocean engineering industry.

(H) A representative of the University of California.

(I) A representative of the California State University.

(J) A representative of a private California institution of higher education which is participating in the National Sea Grant Program.

(K) A representative of the State Lands Commission.

(L) A representative of the Office of Environmental Health Hazard Assessment.

(M) A representative of the State Water Resources Control Board.

(N) A representative of the Office of Oil Spill Prevention and Response in the Department of Fish and Game, designated by the administrator for oil spill response.

(4) The Senate Committee on Rules shall appoint one Member of

the Senate to the panel, who shall serve at the pleasure of the Senate Committee on Rules.

(5) The Speaker of the Assembly shall appoint one Member of the Assembly to the panel, who shall serve at the pleasure of the Speaker. This member shall not be of the same political party as the member appointed by the Senate Committee on Rules.

(6) The Secretary of the Resources Agency, or the secretary's designee, shall serve as chairperson of the panel. Panel members shall serve without compensation.

(7) The Sea Grant research projects selected for state support under this subdivision shall have a clearly defined benefit to the people of the State of California. These projects, to be conducted by universities, colleges, or other institutions participating in the California Sea Grant College Program, shall be applicable to marine and coastal resources management, policy, science, and engineering issues that face the State of California now or in the reasonably foreseeable future. The Legislature hereby finds and declares that the funding provided by this subdivision is needed to stimulate the development and utilization of ocean and coastal resources by working constructively with private sector firms and individuals. The Legislature further recognizes the high productivity of the California Sea Grant College Program, the only statewide program systematically devoted to supporting fundamental research, education, and extension activities on the diversity of problems related to marine resource protection and development. Nothing in this subdivision shall be construed to preclude the application for funding of any project that would be eligible for funding under the terms of the National Sea Grant College and Program Act of 1966.

(e) To the Capital Outlay Fund for Public Higher Education for the 1984–85 fiscal year the amount of one hundred two million one hundred sixty-eight thousand dollars ($102,168,000), and for each fiscal year thereafter, the amount necessary to provide for an unencumbered balance available for appropriation on July 1 of each fiscal year of one hundred twenty-five million dollars ($125,000,000).

(f) To the Energy and Resources Fund each fiscal year, commencing with the 1985–86 fiscal year, the amount of sixty-five million dollars ($65,000,000).

(g) To the Special Account for Capital Outlay, the balance of all revenues in excess of the amount distributed under subdivisions (a), (b), (c), (d), (e), and (f).

The commission may, with the approval of the State Board of Control, authorize the refund of moneys received or collected by it illegally or by mistake, inadvertence, or error. Claims authorized by the commission and approved by the State Board of Control shall be filed with the Controller, and the Controller shall draw his or her warrant against the General Fund in payment of the refund from any appropriation made for that purpose.

(c) All references in any law to former Section 6816, which was repealed by Chapter 981 of the Statutes of 1968, shall be deemed to

refer to this section.

CHAPTER 787

An act to amend Sections 1208 and 6031.4 of, and to add Section 6031.6 to, the Penal Code, relating to crime.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 1208 of the Penal Code is amended to read:

1208. (a) The provisions of this section, insofar as they relate to employment, shall be operative in any county in which the board of supervisors by ordinance finds, on the basis of employment conditions, the state of the county jail facilities, and other pertinent circumstances, that the operation of this section, insofar as it relates to employment, in that county is feasible. The provisions of this section, insofar as they relate to job training, shall be operative in any county in which the board of supervisors by ordinance finds, on the basis of job training conditions, the state of the county jail facilities, and other pertinent circumstances, that the operation of this section, insofar as it relates to job training, in that county is feasible. The provisions of this section, insofar as they relate to education, shall be operative in any county in which the board of supervisors by ordinance finds, on the basis of education conditions, the state of the county jail facilities, and other pertinent circumstances, that the operation of this section, insofar as it relates to education, in that county is feasible. In any ordinance the board shall prescribe whether the sheriff, the probation officer, the director of the county department of corrections, or the superintendent of a county industrial farm or industrial road camp in the county shall perform the functions of the work furlough administrator. The board may, in that ordinance, provide for the performance of any or all functions of the work furlough administrator by any one or more of those persons, acting separately or jointly as to any of the functions; and may, by a subsequent ordinance, revise the provisions within the authorization of this section. The board of supervisors may also terminate the operation of this section, either with respect to employment, job training, or education in the county if it finds by ordinance that because of changed circumstances, the operation of this section, either with respect to employment, job training, or education in that county is no longer feasible.

Notwithstanding any other provision of law, the board of supervisors may by ordinance designate a facility for confinement of prisoners classified for the work furlough program and designate the work furlough administrator as the custodian of the facility. The

work furlough administrator may operate the work furlough facility or, with the approval of the board of supervisors, administer the work furlough facility pursuant to written contracts with appropriate public or private agencies or private entities. No agency or private entity may operate a work furlough program or facility without a written contract with the work furlough administrator, and no agency or private entity entering into a written contract may itself employ any person who is in the work furlough program. The sheriff or director of the county department of corrections, as the case may be, is authorized to transfer custody of prisoners to the work furlough administrator to be confined in a facility for the period during which they are in the work furlough program.

All privately operated local work furlough facilities and programs shall be under the jurisdiction of, and subject to the terms of a written contract entered into with, the work furlough administrator. Each contract shall include, but not be limited to, a provision whereby the private agency or entity agrees to operate in compliance with all appropriate state and local building, zoning, health, safety, and fire statutes, ordinances, and regulations and the minimum jail standards for Type IV facilities as established by regulations adopted by the Board of Corrections, and a provision whereby the private agency or entity agrees to operate in compliance with Section 1208.2, which provides that no eligible person shall be denied consideration for, or be removed from, participation in a work furlough program because of an inability to pay all or a portion of the program fees. The private agency or entity shall select and train its personnel in accordance with selection and training requirements adopted by the Board of Corrections as set forth in Subchapter 1 (commencing with Section 100) of Chapter 1 of Division 1 of Title 15 of the California Code of Regulations. Failure to comply with the appropriate health, safety, and fire laws or minimum jail standards adopted by the board may be cause for termination of the contract. Upon discovery of a failure to comply with these requirements, the work furlough administrator shall notify the privately operated program director that the contract may be canceled if the specified deficiencies are not corrected within 60 days.

All private work furlough facilities and programs shall be inspected biennially by the Board of Corrections unless the work furlough administrator requests an earlier inspection pursuant to Section 6031.1. Each private agency or entity shall pay a fee to the Board of Corrections commensurate with the cost of those inspections and a fee commensurate with the cost of the initial review of the facility.

(b) When a person is convicted of a misdemeanor and sentenced to the county jail, or is imprisoned in the county jail for nonpayment of a fine, for contempt, or as a condition of probation for any criminal offense, the work furlough administrator may, if he or she concludes that the person is a fit subject to continue in his or her regular employment, direct that the person be permitted to continue in that employment, if that is compatible with the requirements of

subdivision (c), or may authorize the person to secure employment for himself or herself, unless the court at the time of sentencing or committing has ordered that the person not be granted work furloughs. The work furlough administrator may, if he or she concludes that the person is a fit subject to continue in his or her job training program, direct that the person be permitted to continue in that job training program, if that is compatible with the requirements of subdivision (c), or may authorize the person to secure local job training for himself or herself, unless the court at the time of sentencing has ordered that person not be granted work furloughs. The work furlough administrator may, if he or she concludes that the person is a fit subject to continue in his or her regular educational program, direct that the person be permitted to continue in that educational program, if that is compatible with the requirements of subdivision (c), or may authorize the person to secure education for himself or herself, unless the court at the time of sentencing has ordered that person not be granted work furloughs.

(c) If the work furlough administrator so directs that the prisoner be permitted to continue in his or her regular employment, job training, or educational program, the administrator shall arrange for a continuation of that employment or for that job training or education, so far as possible without interruption. If the prisoner does not have regular employment or a regular job training or educational program, and the administrator has authorized the prisoner to secure employment, job training, or education for himself or herself, the prisoner may do so, and the administrator may assist the prisoner in doing so. Any employment, job training, or education so secured shall be suitable for the prisoner. The employment, and the job training or educational program if it includes earnings by the prisoner, shall be at a wage at least as high as the prevailing wage for similar work in the area where the work is performed and in accordance with the prevailing working conditions in that area. In no event may any employment, job training, or educational program involving earnings by the prisoner be permitted where there is a labor dispute in the establishment in which the prisoner is, or is to be, employed, trained, or educated.

(d) Whenever the prisoner is not employed or being trained or educated and between the hours or periods of employment, training, or education, the prisoner shall be confined in the facility designated by the board of supervisors for work furlough confinement unless the work furlough administrator directs otherwise. If the prisoner is injured during a period of employment, job training, or education, the work furlough administrator shall have the authority to release him or her from the facility for continued medical treatment by private physicians or at medical facilities at the expense of the employer, workers' compensation insurer, or the prisoner. The release shall not be construed as assumption of liability by the county or work furlough administrator for medical treatment obtained.

The work furlough administrator may release any prisoner

classified for the work furlough program for a period not to exceed 72 hours for medical, dental, or psychiatric care, or for family emergencies or pressing business which would result in severe hardship if the release were not granted, or to attend those activities as the administrator deems may effectively promote the prisoner's successful return to the community, including, but not limited to, an attempt to secure housing, employment, entry into educational programs, or participation in community programs.

(e) The earnings of the prisoner may be collected by the work furlough administrator, and it shall be the duty of the prisoner's employer to transmit the wages to the administrator at the latter's request. Earnings levied upon pursuant to writ of execution or in other lawful manner shall not be transmitted to the administrator. If the administrator has requested transmittal of earnings prior to levy, that request shall have priority. In a case in which the functions of the administrator are performed by a sheriff, and the sheriff receives a writ of execution for the earnings of a prisoner subject to this section but has not yet requested transmittal of the prisoner's earnings pursuant to this section, the sheriff shall first levy on the earnings pursuant to the writ. When an employer or educator transmits earnings to the administrator pursuant to this subdivision, the sheriff shall have no liability to the prisoner for those earnings. From the earnings the administrator shall pay the prisoner's board and personal expenses, both inside and outside the jail, and shall deduct so much of the costs of administration of this section as is allocable to the prisoner or if the prisoner is unable to pay that sum, a lesser sum as is reasonable, and, in an amount determined by the administrator, shall pay the support of the prisoner's dependents, if any. If sufficient funds are available after making the foregoing payments, the administrator may, with the consent of the prisoner, pay, in whole or in part, the preexisting debts of the prisoner. Any balance shall be retained until the prisoner's discharge. Upon discharge the balance shall be paid to the prisoner.

(f) The prisoner shall be eligible for time credits pursuant to Sections 4018 and 4019.

(g) In the event the prisoner violates the conditions laid down for his or her conduct, custody, job training, education, or employment, the work furlough administrator may order the balance of the prisoner's sentence to be spent in actual confinement.

(h) Willful failure of the prisoner to return to the place of confinement not later than the expiration of any period during which he or she is authorized to be away from the place of confinement pursuant to this section is punishable as provided in Section 4532.

(i) The court may recommend or refer a person to the work furlough administrator for consideration for placement in the work furlough program or a particular work furlough facility. The recommendation or referral of the court shall be given great weight in the determination of acceptance or denial for placement in the work furlough program or a particular work furlough facility.

(j) As used in this section, the following definitions apply:

(1) "Education" includes vocational and educational training and counseling, and psychological, drug abuse, alcoholic, and other rehabilitative counseling.

(2) "Educator" includes a person or institution providing that training or counseling.

(3) "Employment" includes care of children, including the daytime care of children of the prisoner.

(4) "Job training" may include, but shall not be limited to, job training assistance as provided through the Job Training Partnership Act (Public Law 97-300; 29 U.S.C.A. Sec. 1501 et seq.).

(k) This section shall be known and may be cited as the "Cobey Work Furlough Law."

SEC. 2. Section 6031.4 of the Penal Code is amended to read:

6031.4. (a) For the purpose of this title, "local detention facility" means any city, county, city and county, or regional facility used for the confinement for more than 24 hours of adults, or of both adults and minors, but does not include that portion of a facility for the confinement of both adults and minors which is devoted only to the confinement of minors.

(b) In addition to those provided for in subdivision (a), for the purposes of this title, "local detention facility" also includes any city, county, city and county, or regional facility, constructed on or after January 1, 1978, used for the confinement, regardless of the length of confinement, of adults or of both adults and minors, but does not include that portion of a facility for the confinement of both adults and minors which is devoted only to the confinement of minors.

(c) "Local detention facility" also includes any adult detention facility, exclusive of any facility operated by the California Department of Corrections or any facility holding inmates pursuant to Section 2910.5, Chapter 4 (commencing with Section 3410) of Title 2 of, Chapter 9.2 (commencing with Section 6220) of Title 7 of, Chapter 9.5 (commencing with Section 6250) of Title 7 of, or Chapter 9.6 (commencing with Section 6260) of Title 7 of, Part 3, that holds local prisoners under contract on behalf of cities, counties, or cities and counties. Nothing in this subdivision shall be construed as affecting or authorizing the establishment of private detention facilities.

(d) For purposes of this title, a local detention facility does not include those rooms that are used for holding persons for interviews, interrogations, or investigations, and are either separate from a jail or located in the administrative area of a law enforcement facility.

SEC. 3. Section 6031.6 is added to the Penal Code, to read:

6031.6. (a) Any privately operated local detention facility responsible for the custody and control of any local prisoner shall, as required by subdivision (a) of Section 1208, operate pursuant to a contract with the city, county, or city and county, as appropriate.

(b) (1) Each contract shall include, but not be limited to, a provision whereby the private agency or entity agrees to operate in

compliance with all appropriate state and local building, zoning, health, safety, and fire statutes, ordinances, and regulations, and with the minimum jail standards established by regulations adopted by the Board of Corrections, as set forth in Subchapter 4 (commencing with Section 1000) of Chapter 1 of Division 1 of Title 15 of the California Code of Regulations.

(2) The private agency or entity shall select and train its personnel in accordance with selection and training requirements adopted by the Board of Corrections as set forth in Subchapter 1 (commencing with Section 100) of Chapter 1 of Division 1 of Title 15 of the California Code of Regulations.

(3) The failure of a privately operated local detention facility to comply with the appropriate health, safety, and fire laws, or with the minimum jail standards adopted by the Board of Corrections, may constitute grounds for the termination of the contract.

(c) Upon the discovery of a failure of a privately operated local detention facility to comply with the requirements of subdivision (b), the local governmental entity shall notify the director of the facility that sanctions shall be applied or the contract shall be canceled if the specified deficiencies are not corrected within 60 days.

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 788

An act to amend Section 11001.5 of the Revenue and Taxation Code, and to amend Sections 5720, 5724, 14021, and 14115.8 of, to add Section 5667 to, and to repeal Section 5601.5 of, the Welfare and Institutions Code, relating to public social services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

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

(a) The Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508) provides for the inclusion of community mental health centers as a provider of services for purposes of furnishing partial hospitalization services, and authorizes Medicare Part B coverage for partial hospitalization services furnished by community mental health services, effective on or after October 1991.

(b) (1) County-operated mental health programs and their eligible contract providers in California meet the criteria set forth in the federal Public Health Services Act, contained in Chapter 6A (commencing with Section 201) of Title 42 of the United States Code, for certification as community mental health centers.

(2) For the purposes of paragraph (1), county mental health programs with performance contracts with the State Department of Mental Health are designated as community mental health centers.

(3) For purposes of paragraph (2), "community mental health centers" means entities that provide the services specified in Section 1916(c)(4) of the federal Public Health Services Act (42 U.S.C. Sec. 300x-4(c)(4)).

SEC. 2. It is the intent of the Legislature that county mental health programs apply to be certified as community mental health center providers to better serve Medicare beneficiaries with mental illness.

SEC. 3. Section 11001.5 of the Revenue and Taxation Code is amended to read:

11001.5. (a) Notwithstanding Section 11001, and except as provided in subdivision (b), 24.33 percent of the moneys collected by the department under this part shall be reported monthly to the Controller, and at the same time, deposited in the State Treasury to the credit of the Local Revenue Fund, as established pursuant to Section 17600 of the Welfare and Institutions Code. All other moneys collected by the department under this part shall continue to be deposited to the credit of the Motor Vehicle License Fee Account in the Transportation Tax Fund and allocated to each city, county, and city and county as otherwise provided by law.

(b) Notwithstanding Section 11001, net funds collected as a result of procedures developed for greater compliance with vehicle license fee laws in order to increase the amount of vehicle license fee collections shall be reported monthly to the Controller, and at the same time, deposited in the State Treasury to the credit of the Vehicle License Fee Collection Account of the Local Revenue Fund as established pursuant to Section 17600 of the Welfare and Institutions Code. All revenues in excess of fourteen million dollars

($14,000,000) in any fiscal year shall be allocated to cities and counties as specified in subdivisions (c) and (d) of Section 11005.

(c) Notwithstanding Section 11001, 25.72 percent of the moneys collected by the department on or after August 1, 1991, and before August 1, 1992, under this part shall be reported monthly to the Controller, and at the same time, deposited in the State Treasury to the credit of the Local Revenue Fund, as established pursuant to Section 17600 of the Welfare and Institutions Code. All other moneys collected by the department under this part shall continue to be deposited to the credit of the Motor Vehicle License Fee Account in the Transportation Tax Fund and allocated to each city, county, and city and county as otherwise provided by law.

(d) This section shall cease to be operative on the first day of the month following the month in which the Department of Motor Vehicles is notified by the Department of Finance of a final judicial determination by the California Supreme Court or any California court of appeal of either of the following:

(1) The allocation of funds from the Vehicle License Fee Account or the Vehicle License Fee Growth Account of the Local Revenue Fund established during the 1991–92 Regular Session is in violation of Section 15 of Article XI of the California Constitution.

(2) The state is obligated to reimburse counties for costs of providing medical services to medically indigent adults pursuant to Chapters 328 and 1594 of the Statutes of 1982.

SEC. 4. Section 5601.5 of the Welfare and Institutions Code is repealed.

SEC. 5. Section 5667 is added to the Welfare and Institutions Code, to read:

5667. (a) A community mental health center shall be considered to be a licensed facility for all purposes, including all provisions of the Health and Safety Code and the Insurance Code.

(b) For purposes of this section, "community mental health center" means any entity that is one of the following:

(1) A city or county mental health program.

(2) A facility funded under the federal Community Mental Health Centers Act, contained in Subchapter 3 (commencing with Section 2681) of Chapter 33 of Title 42 of the United States Code.

(3) A nonprofit agency that has been certified to provide services under this part that provides both of the following:

(A) A comprehensive program of mental health services in an outpatient setting designed to improve the function of persons with diagnosed mental health problems pursuant to procedures governing all aspects of the program formulated with the aid of multidisciplinary staff, including physicians and surgeons, all of whom serve on quality assurance and utilization review committees.

(B) Diagnostic and therapeutic services for individuals with diagnosed mental health problems, together with related counseling.

SEC. 6. Section 5720 of the Welfare and Institutions Code is amended to read:

5720. (a) Notwithstanding any other provision of law, the director, in the 1993–94 fiscal year and fiscal years thereafter, subject to the approval of the Director of Health Services, shall establish the amount of reimbursement for services provided by county mental health programs to Medi-Cal eligible individuals.

(b) Notwithstanding 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 4 of Division 9, the facility's rates shall be governed by that agreement.

SEC. 7. Section 5724 of the Welfare and Institutions Code is amended to read:

5724. (a) The department and the State Department of Health Services shall jointly develop a new ratesetting methodology for use in the Short-Doyle Medi-Cal system that maximizes federal funding and utilizes, as much as practicable, federal medicare reimbursement principles. The departments shall work with the counties and the federal Health Care Financing Administration in the development of the methodology required by this section.

(b) Rates developed through the methodology required by this section shall apply only to reimbursement for direct client services.

(c) Administrative costs shall be claimed separately and shall be limited to 15 percent of the total cost of direct client services.

(d) The cost of performing utilization reviews shall be claimed separately and shall not be included in administrative cost.

(e) The ratesetting methodology established pursuant to this section shall contain incentives relating to economy and efficiency in service delivery.

(f) The rates established for direct client services pursuant to this section shall be based on increments of time for all noninpatient services.

(g) The ratesetting methodology shall not be implemented until it has received any necessary federal approvals.

SEC. 8. Section 14021 of the Welfare and Institutions Code is amended to read:

14021. Notwithstanding any other provision of this chapter, health care shall include the following mental health services:

(a) Mental health services provided by a county or a city.

(b) Mental health services provided in a Short-Doyle community mental health service or in a community mental health center organized under the Federal Community Mental Health Centers Act of 1963. No amount shall be paid for that portion of the total costs of care and services in a federally funded community mental health center which may be compensated by the United States government under the Community Mental Health Centers Act of 1963. No amount shall be paid to a Short-Doyle community mental health service or a federally funded community mental health center unless the Short-Doyle community mental health service or the federally funded community mental health center participates in a county or city mental health performance contract pursuant to Section 5650.

(c) Outpatient drug abuse services under the jurisdiction of the State Department of Alcohol and Drug Programs provided by a county provider certified under this chapter or a private provider certified under this chapter which has an approved contract with the county to provide covered drug abuse services.

(d) Inpatient hospital services in an institution for mental diseases to persons of all ages, provided that the institution for mental diseases is certified as a psychiatric hospital under Title XVIII of the federal Social Security Act and regulations issued thereunder.

Notwithstanding Section 14157, no money in the State Health Care Deposit Fund shall be expended for the purposes of this section unless the Legislature specifically appropriates money for the purposes of this section.

The amendment of this subdivision enacted at the 1972 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the preexisting law.

(e) (1) Other diagnostic, screening, preventive, or remedial rehabilitative services for the maximum restoration of an individual to the best possible functional level.

(2) Paragraph (1) includes any medical or remedial services provided in a facility, home, or other setting, that are recommended by a physician or other licensed practitioner of the healing arts within the scope of his or her practice under state law.

SEC. 9. Section 14115.8 of the Welfare and Institutions Code is amended to read:

14115.8. (a) 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.

(b) This section shall not apply to claims for services rendered during the 1993–94 fiscal year, including any claim for services provided in the 1993–94 fiscal year that is filed on or after July 1, 1993.

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 apply this act to the 1993–94 fiscal year with the optimum administrative efficiency, it is necessary that this act take effect immediately.

CHAPTER 789

An act to amend Sections 2932 and 12804.9 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 2932 of the Vehicle Code is amended to read:

2932. The commissioner may, through contracts with other public agencies or with private entities, do all of the following:

(a) Provide financial or other support to projects aimed at enhancing motorcycle operation or safety, including, but not limited to, rider training programs. The rider training programs shall comply with criteria which the commissioner, in consultation with other state agencies and national motorcycle safety organizations, may adopt to provide validated rider safety training programs in the state.

(b) Sponsor and coordinate efforts aimed at increasing motorists' awareness of motorcyclists.

(c) Sponsor research into effective communication techniques to reach all highway users on matters of motorcyclist safety.

(d) Establish an advisory committee of persons from other state and local agencies with an interest in motorcycle safety; persons from the motorcycle industry; motorcycle safety organizations; motorcycle enthusiast organizations; and others with an interest in motorcycle safety, to assist in the establishment of a comprehensive program of motorcycle safety.

(e) Adopt standards for course content, contact hours, curriculum, instructor training and testing, and instructional quality control, and setting forth a maximum amount for course fees for the novice rider training course specified in subdivision (g) of Section 12804.9.

SEC. 2. Section 12804.9 of the Vehicle Code, as amended by Section 26 of Chapter 272 of the Statutes of 1993, is amended to read:

12804.9. (a) (1) The examination shall include all of the following:

(A) A test of the applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways.

(B) A test of the applicant's ability to read and understand simple English used in highway traffic and directional signs.

(C) A test of the applicant's understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation.

(D) An actual demonstration of the applicant's ability to exercise ordinary and reasonable control in operating a motor vehicle by

driving it under the supervision of an examining officer. The applicant shall submit to an examination appropriate to the type of motor vehicle or combination of vehicles he or she desires a license to drive, except that the department may waive the driving test part of the examination of any applicant who holds a valid license issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. The examining officer may request to see evidence of financial responsibility for the vehicle prior to supervising the demonstration of the applicant's ability to operate the vehicle. The examining officer may refuse to examine an applicant who is unable to provide proof of financial responsibility for the vehicle, unless proof of financial responsibility is not required by this code.

(E) A test of the hearing and eyesight of the applicant, and of other matters that may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways, and whether any ground exists for refusal of a license under this code.

(2) The examination for a class A or class B license under subdivision (b) shall also include a report of a medical examination of the applicant given not more than two years prior to the date of the application by a physician licensed to practice medicine or by a licensed physician's assistant or nurse practitioner under the supervision of a physician and surgeon licensed to practice medicine. The report shall be on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration. In establishing the requirements, consideration may be given to the standards presently required of motor carrier drivers by the Federal Highway Administration.

(3) Any physical defect of the applicant, which, in the opinion of the department, is compensated for to ensure safe driving ability, shall not prevent the issuance of a license to the applicant.

(b) Beginning on January 1, 1989, in accordance with the following classifications, any applicant for a driver's license shall be required to submit to an examination appropriate to the type of motor vehicle or combination of vehicles the applicant desires a license to drive:

(1) Class A includes the following:

(A) Any combination of vehicles, if any vehicle being towed has a gross vehicle weight rating of more than 10,000 pounds.

(B) Any vehicle towing more than one vehicle.

(C) Any trailer bus.

(D) The operation of all vehicles under class B and class C.

(2) Class B includes the following:

(A) Any single vehicle with a gross vehicle weight rating of more than 26,000 pounds.

(B) Any single vehicle with three or more axles, except any three-axle vehicle weighing less than 6,000 pounds.

(C) Any bus except a trailer bus.

(D) Any farm labor vehicle.

(E) Any single vehicle with three or more axles or a gross vehicle weight rating of more than 26,000 pounds towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less.

(F) The operation of all vehicles covered under class C.

(3) Class C includes the following:

(A) Any two-axle vehicle with a gross vehicle weight rating of 26,000 pounds or less, including when the vehicle is towing a trailer or semitrailer with a gross vehicle weight rating of 10,000 pounds or less.

(B) Notwithstanding subparagraph (A), any two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer coach not exceeding 9,000 pounds gross.

(C) Any housecar.

(D) Any three-axle vehicle weighing 6,000 pounds or less gross.

(E) Any housecar or vehicle towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less, including when a tow dolly is used. No vehicle shall tow another vehicle in violation of Section 21715.

(F) (i) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing either a trailer coach or a fifth-wheel travel trailer not exceeding 10,000 pounds gross vehicle weight rating, when the towing of the trailer is not for compensation.

(ii) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing a fifth-wheel travel trailer exceeding 10,000 pounds, but not exceeding 15,000 pounds, gross vehicle weight rating, when the towing of the trailer is not for compensation, and if the person has passed a specialized written examination provided by the department relating to the knowledge of this code and other safety aspects governing the towing of recreational vehicles upon the highway. The authority to operate combinations of vehicles under this subparagraph shall be granted by endorsement on a class C license upon completion of that written examination.

(G) Class C does not include any two-wheel motorcycle or any two-wheel motor-driven cycle.

(4) Class M1. Any two-wheel motorcycle. Authority to operate vehicles included in a class M1 license may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination.

(5) Class M2. Any two-wheel motor-driven cycle, including, but not limited to, a motorized bicycle or moped, or any bicycle with an attached motor. Authority to operate vehicles included in class M2 may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination. Persons holding a class M1 license or endorsement may operate vehicles included in class M2 without further examination.

(c) No driver's license or driver certificate shall be valid for operating any commercial motor vehicle, as defined in subdivision (b) of Section 15210, any other motor vehicle defined in paragraph

(1) or (2) of subdivision (b), or any other vehicle requiring a driver to hold any driver certificate or any driver's license endorsement under Section 15275, unless a medical certificate approved by the department, the Federal Highway Administration, or the Federal Aviation Administration, which has been issued within two years of the date of the operation of that vehicle, is within the licensee's immediate possession, and a copy of the medical examination report from which the certificate was issued is on file with the department. Otherwise the license shall be valid only for operating class C vehicles which are not commercial vehicles, as defined in subdivision (b) of Section 15210, and for operating class M1 or M2 vehicles, if so endorsed, which are not commercial vehicles, as defined in subdivision (b) of Section 15210.

(d) A license or driver certificate issued prior to the enactment of Chapter 7 (commencing with Section 15200) shall be valid to operate the class or type of vehicles specified under the law in existence prior to that enactment until the license or certificate expires or is otherwise suspended, revoked, or canceled.

(e) The department may accept a certificate of driving skill that is issued by an employer, authorized by the department to issue a certificate under Section 15250, of the applicant, in lieu of a driving test, on class A or B applications, if the applicant has first qualified for a class C license and has met the other examination requirements for the license for which he or she is applying. The certificate may be submitted as evidence of the applicant's skill in the operation of the types of equipment covered by the license for which he or she is applying.

(f) The department may accept a certificate of competence in lieu of a driving test on class M1 or M2 applications, when the certificate is issued by a law enforcement agency for its officers who operate class M1 or M2 vehicles in their duties, if the applicant has met the other examination requirements for the license for which he or she is applying.

(g) The department may accept a certificate of satisfactory completion of a novice motorcyclist training program approved by the commissioner pursuant to Section 2932 in lieu of a driving test on class M1 or M2 applications, if the applicant has met the other examination requirements for the license for which he or she is applying. The department shall review and approve the written and driving test used by a program to determine whether the program may issue a certificate of completion.

(h) Notwithstanding subdivision (b), any person holding a valid California driver's license of any class may operate a short-term rental motorized bicycle without taking any special examination for the operation of a motorized bicycle, and without having a class M2 endorsement on that license. As used in this paragraph, "short-term" means 48 hours or less.

(i) No person under the age of 21 years shall be issued a class M1 or M2 license or endorsement unless he or she provides evidence

satisfactory to the department of completion of a motorcycle safety training program that is operated pursuant to Article 2 (commencing with Section 2930) of Chapter 5 of Division 2.

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

(k) During the implementation of this section, from January 1, 1989, through December 31, 1992, provisions of this code pertaining to persons holding class 1, 2, 3, or 4 licenses pursuant to Section 12804, shall apply to persons holding class A, B, C, M1, or M2 licenses pursuant to this section, to the extent that class A, B, C, M1, or M2 vehicles under this section fall within the definition of class 1, 2, 3, or 4 vehicles under Section 12804.

(*l*) A class M license issued between January 1, 1989, and December 31, 1992, shall permit the holder to operate any motorcycle, motor-driven cycle, or motorized bicycle until the expiration of the license.

(m) The amendments made to paragraph (2) of subdivision (a) by Chapter 1270 of the Statutes of 1989 shall become operative only after federal regulations are adopted which permit physician's assistants and nurse practitioners to complete the physicals described in that paragraph.

CHAPTER 790

An act to add Section 12470.1 to the Government Code, relating to the Controller.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 12470.1 is added to the Government Code, to read:

12470.1. The Trustees of the California State University, in conjunction with the Controller, shall do both of the following:

(a) Conduct an analysis of the various means of developing an electronic interface between the Human Resources Information Systems of the campuses of the California State University and the Controller's personnel and payroll system. Notwithstanding Section 7550.5, the trustees shall report the results of that study and make recommendations for future action to the Legislature by January 1, 1995.

(b) Implement a pilot project on three campuses to reduce the time required for California State University vendors to receive payment by authorizing the university to make payments directly to vendors from its revolving fund. Notwithstanding Sections 16400 and 16402, the three campuses involved in the pilot project may draw from funds appropriated to the California State University, for use as a revolving fund, amounts necessary to make payments directly to vendors, and those payments shall be considered an authorized use. Under the pilot project, the university shall maintain records on the three campuses for three years and make those records available to the Controller for postaudit review, as needed. The pilot project shall be operative for a period of two years, commencing April 1, 1994. Notwithstanding Section 7550.5, the trustees shall report the results of the pilot project and make recommendations for future action to the Legislature by January 1, 1997.

The California State University shall reimburse the Controller's office for any net cost resulting from the pilot project. It is the intent of the Legislature that an expansion of the pilot project beyond three university campuses be accomplished by a constitutional amendment to modify the duties of the Controller.

CHAPTER 791

An act to amend Section 36500 of the Public Resources Code, relating to ocean resources.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 36500 of the Public Resources Code is amended to read:

36500. The task force shall prepare a report regarding existing ocean resources management activities and impacts, including a plan to increase coordination and consolidation of these activities. The report and plan shall be submitted to the Governor and the Legislature by July 1, 1994. The report and plan shall include, to the degree information is available, at least all of the following:

(a) Inventory of state and federal laws, rules and regulations, authorities, and programs which pertain to the resources and uses of state and federal waters.

(b) Analysis of state laws, rules and regulations, authorities, and programs which pertain to the resources and uses of state and federal waters, and which conflict with one another or with federal laws, rules and regulations, authorities, and programs.

(c) Identification of existing and potential resources and uses of, and issues pertaining to, the ocean, and of potential new industries

and jobs related to development of ocean resources and uses.

(d) Identification of potential impacts to federal and state waters and to coastal areas above the mean high tide line from activities in federal and state waters, and an evaluation of state agency ability to manage those impacts.

(e) Identification of all existing state and federal programs relating to federal and state waters pollution research and monitoring, including general research on the marine ecosystem.

(f) Evaluation of the feasibility of developing computerized mapping of existing conditions, uses, and resources in federal and state waters.

(g) A long-term plan for conservation and protection of ocean resources and uses.

(h) A long-term plan for the management of California's interests in federal waters, including recommendations to develop or improve state agency programs relating to the management of EEZ resources and uses, and the identification of issues which may affect local government local coastal programs.

(i) A plan for the continuation and improvement of the role of the state as a leader in education, research, and training in marine sciences and the management of marine resources, including recommendations for state-supported marine research in state and federal waters.

(j) A plan for cooperation by the state with other states, the federal government, other nations, and national and international organizations in marine science activities when that cooperation is in the interest of the State of California.

(k) A plan for options for ensuring appropriate public infrastructure investment to support present and future ocean industries.

(*l*) Prioritization of resource and use conflicts in federal and state waters.

(m) Identification of alternative dispute management and resolution processes for resource conflicts in and between federal and state jurisdictions, and a proposed framework for managing future conflicts.

(n) A plan for joint federal and state management activities and revenue sharing in state and federal waters.

(o) Recommendations for proposed implementing legislation, if any.

CHAPTER 792

An act to amend Sections 4560 and 4563 of the Government Code, and to add Section 99161 to the Public Utilities Code, relating to child care.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 4560 of the Government Code is amended to read:

4560. The Legislature finds and declares that there is a substantial need to provide adequate child care facilities for state employees.

When the state constructs, acquires, or receives as a gift any office building which can accommodate 700 or more state employees, or when additions, alterations, or repairs are made to existing state-owned office buildings which can accommodate 700 or more state employees, and the additions, alterations, or repairs both change and affect the use of 25 percent of the net square feet area of the building and include the addition to, alteration of, or repair of the first floor, adequate space shall be designated within the building to meet the child care needs of those employees, if a review of those employees slated to occupy the new or renovated building shows sufficient need for child care services for 30 or more children. The review shall be conducted by the Department of General Services and the Child Development Programs Advisory Committee established pursuant to Section 8286 of the Education Code. The Director of General Services may secure space in any adequate facility for the same purposes only in the event that all other physical requirements controlling the development of the child care facilities within the office building cannot be utilized, provided that funds for the off-site facilities are made available.

It is the intent of the Legislature that existing state office buildings, at the discretion of the Director of General Services, may be retrofitted to accommodate a child care facility. State funds required for the retrofitting shall be subject to regular budgetary procedures and approvals.

Space designed within a state-owned office building for the child care facility shall comply with the prevailing local and state safety building codes for child care facilities.

The indoor area shall not exceed 2,100 square feet, nor be less than that required to accommodate 30 children, excluding space for restrooms, kitchen facilities, storage areas, and teacher offices. Outdoor play area space shall correspond with the indoor play area as set forth in Title 22 of the California Administrative Code.

Utilization of the space shall be subject to terms and conditions as set forth by the Director of General Services. The terms shall include

payment of rent, proof of financial responsibility, and maintenance of space. The space shall be made available to the employees who wish to establish child care facilities at a rate to be established by the Director of General Services based upon the actual cost to the state, the average cost of state-owned space in the area, or the statewide average cost of state-owned space, whichever is less.

The employee-occupants shall be notified in writing by the department or departments occupying the building, of the availability of space to be used for a child care facility no earlier than 180 days prior to the projected date of occupancy of a new building or space provided as the result of additions, alterations, or repairs to an existing state-owned building, and the additions, alterations, or repairs that both change and affect the use of 25 percent of the net square feet area of the building and include the addition to, alteration of, or repair of the first floor. If, within 30 days after full occupancy of a new office building or 30 days after the completion of additions, alterations, or repairs to an existing state-owned office building, the employee-occupants so desiring have not filed an application with the Secretary of State as a nonprofit corporation for the purpose of organizing a child care center, deposited two months' rent in a commercial or savings account, and entered into a contract with the Department of General Services, the space may be used for any other purpose, as long as no permanent alteration of the space occurs. Other purposes may include, but are not limited to, conference rooms, storage areas, or offices. The space for child care shall be held for the employee-occupants' nonprofit corporation only as long as they pay the monthly rent and meet the terms set forth in the contract. Payment of rent shall commence 30 days after full occupancy of a new office building or 30 days after completion of additions, alterations, or repairs, as specified in this section.

If at a later date, the employee-occupants so desiring (a) file an application with the Secretary of State as a nonprofit corporation for the purpose of organizing a child care facility, (b) deposit two month's rent in a commercial or savings account, and (c) notify the Director of General Services of those actions, then the space shall be reconverted for child care purposes within 180 days of the notice.

Children of whom at least one parent or guardian is a state employee shall be given priority admission, over other children, to the child care facility.

When a child care center has been operative for five years, the Director of General Services shall assess the child care needs of the state employees using the center and the office space needs of the building within which the center is located. If the assessment demonstrates a greater need for office space than for child care, the Director of General Services may close the child care center. Ninety days' written notice shall be given to the director or head teacher of the center of the closure.

This section shall not be construed to apply to those buildings which provide care or 24-hour residential care for patients, inmates,

or wards of the state, such as state hospitals and correctional facilities.

SEC. 2. Section 4563 of the Government Code is amended to read:

4563. (a) Sections 4560, 4561, and 4562 are not applicable to any state-owned transportation facility.

(b) Space at a state-owned transportation facility may be leased by competitive bid, taking into consideration affordability and quality of care, to a child care operator who has obtained licensure as required by Section 1596.80 of the Health and Safety Code. First priority for child care services provided by the center shall be given to children of state employees who work at the transportation facility and second priority shall be given to children of users of the transportation facility.

(c) No state funds shall be provided to any child care operator pursuant to this section unless all of the following conditions are met:

(1) The child care facility is open to children without regard to any child's religious beliefs or any other factor related to religion.

(2) No religious instruction is included in the child care program.

(3) The space in which the child care program is operated is not utilized in any manner to foster religion during the time it is used for child care.

(d) The Legislature finds and declares that the use of public property or facilities for the purpose of furnishing child care services for the benefit of persons using public transit is in the public interest and serves a public purpose.

SEC. 3. Section 99161 is added to the Public Utilities Code, to read:

99161. (a) Space at a publicly owned transportation facility may be leased by competitive bid, taking into consideration affordability and quality of care, to a child care operator who has obtained licensure as required by Section 1596.80 of the Health and Safety Code. Priority for child care services provided by the center shall be given to the children of public agency employees who work at the transportation facility and children of users of the transportation facility.

(b) No state funds shall be provided to any child care operator pursuant to this section unless all of the following conditions are met:

(1) The child care facility is open to children without regard to any child's religious beliefs or any other factor related to religion.

(2) No religious instruction is included in the child care program.

(3) The space in which the child care program is operated is not utilized in any manner to foster religion during the time it is used for child care.

(c) The Legislature finds and declares that the use of publicly owned transportation facilities for the purpose of furnishing child care services for the benefit of persons using public transit is in the public interest and serves a public purpose.

CHAPTER 793

An act to amend Section 708.110 of, and to repeal Section 1167.6 of, the Code of Civil Procedure, and to amend Section 602 of the Penal Code, relating to service of process.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 708.110 of the Code of Civil Procedure is amended to read:

708.110. (a) The judgment creditor may apply to the proper court for an order requiring the judgment debtor to appear before the court, or before a referee appointed by the court, at a time and place specified in the order, to furnish information to aid in enforcement of the money judgment.

(b) If the judgment creditor has not caused the judgment debtor to be examined under this section during the preceding 120 days, the court shall make the order upon ex parte application of the judgment creditor.

(c) If the judgment creditor has caused the judgment debtor to be examined under this section during the preceding 120 days, the court shall make the order if the judgment creditor by affidavit or otherwise shows good cause for the order. The application shall be made on noticed motion if the court so directs or a court rule so requires. Otherwise, it may be made ex parte.

(d) The judgment creditor shall personally serve a copy of the order on the judgment debtor not less than 10 days before the date set for the examination. Service shall be made in the manner specified in Section 415.10. Service of the order creates a lien on the personal property of the judgment debtor for a period of one year from the date of the order unless extended or sooner terminated by the court.

(e) The order shall contain the following statement in 14-point boldface type if printed or in capital letters if typed: "NOTICE TO JUDGMENT DEBTOR. If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court and the court may make an order requiring you to pay the reasonable attorney's fees incurred by the judgment creditor in this proceeding."

SEC. 2. Section 1167.6 of the Code of Civil Procedure is repealed.

SEC. 3. Section 602 of the Penal Code is amended to read:

602. Except as provided in Section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.

(b) Carrying away any kind of wood or timber lying on those lands.

(c) Maliciously injuring or severing from the freehold of another anything attached to it, or its produce.

(d) Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant, any earth, soil, or stone.

(e) Digging, taking, or carrying away from land in any city or town laid down on the map or plan of the city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone.

(f) Maliciously tearing down, damaging, mutilating, or destroying any sign, signboard, or notice placed upon, or affixed to, any property belonging to the state, or to any city, county, city and county, town or village, or upon any property of any person, by the state or by an automobile association, which sign, signboard or notice is intended to indicate or designate a road, or a highway, or is intended to direct travelers from one point to another, or relates to fires, fire control, or any other matter involving the protection of the property, or putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention to it.

(g) Entering upon any lands owned by any other person whereon oysters or other shellfish are planted or growing; or injuring, gathering, or carrying away any oysters or other shellfish planted, growing, or on any such lands, whether covered by water or not, without the license of the owner or legal occupant; or destroying or removing, or causing to be removed or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any such lands.

(h) Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property.

(i) Building fires upon any lands owned by another where signs forbidding trespass are displayed at intervals not greater than one mile along the exterior boundaries and at all roads and trails entering the lands, without first having obtained written permission from the owner of the lands or the owner's agent, or the person in lawful possession.

(j) Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful

business or occupation carried on by the owner of the land, the owner's agent or by the person in lawful possession.

(k) Entering any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands without the written permission of the owner of the land, the owner's agent or of the person in lawful possession, and

(1) Refusing or failing to leave the lands immediately upon being requested by the owner of the land, the owner's agent or by the person in lawful possession to leave the lands, or

(2) Tearing down, mutilating, or destroying any sign, signboard, or notice forbidding trespass or hunting on the lands, or

(3) Removing, injuring, unlocking, or tampering with any lock on any gate on or leading into the lands, or

(4) Discharging any firearm.

(*l*) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

(m) Driving any vehicle, as defined in Section 670 of the Vehicle Code, upon real property belonging to, or lawfully occupied by, another and known not to be open to the general public, without the consent of the owner, the owner's agent, or the person in lawful possession. This subdivision shall not apply to any person described in Section 22350 of the Business and Professions Code who is making a lawful service of process.

(n) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent or person in lawful possession is absent from the premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed six months when the premises or property is closed to the public and posted as being closed. However, this subdivision shall not be applicable to persons engaged in lawful labor union activities which are permitted to be carried out on the property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or

by the National Labor Relations Act. For purposes of this section, land, real property, or structures owned or operated by any housing authority for tenants as defined under Section 34213.5 of the Health and Safety Code constitutes property not open to the general public; however, this subdivision shall not apply to persons on the premises who are engaging in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or ordinance.

(o) Entering upon any lands declared closed to entry as provided in Section 4256 of the Public Resources Code, if the closed areas shall have been posted with notices declaring the closure, at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through the lands.

(p) Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchman, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances are such as to indicate to a reasonable person that the person has no apparent lawful business to pursue.

(q) Knowingly skiing in an area or on a ski trail which is closed to the public and which has signs posted indicating the closure.

(r) Refusing or failing to leave a hotel or motel, where he or she has obtained accommodations and has refused to pay for those accommodations, upon request of the proprietor or manager, and the occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

(s) Entering upon private property, including contiguous land, real property, or structures thereon belonging to the same owner, whether or not generally open to the public, after having been informed by a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, that the property is not open to the particular person; or refusing or failing to leave the property upon being asked to leave the property in the manner provided in this subdivision.

This subdivision shall apply only to a person who has been convicted of a violent felony, as specified in subdivision (c) of Section 667.5, committed upon the particular private property. A single notification or request to the person as set forth above shall be valid and enforceable under this subdivision unless and until rescinded by the owner, the owner's agent, or the person in lawful possession of the property.

(t) (1) Knowingly entering, by an unauthorized person, upon any airport operations area if the area has been posted with notices

restricting access to authorized personnel only and the postings occur not greater than every 150 feet along the exterior boundary.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) By a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, if the person refuses to leave the airport operations area after being requested to leave by a peace officer.

(C) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, for a second or subsequent offense.

(3) As used in this subdivision, the following definitions shall control:

(A) "Airport operations area" means that part of the airport used by aircraft for landing, taking off, surface maneuvering, loading and unloading, refueling, parking, or maintenance, where aircraft support vehicles and facilities exist, and which is not for public use or public vehicular traffic.

(B) "Authorized personnel" means any person who has a valid airport identification card issued by the airport operator or has a valid airline identification card recognized by the airport operator, or any person not in possession of an airport or airline identification card who is being escorted for legitimate purposes by a person with an airport or airline identification card.

(C) "Airport" means any facility whose function is to support commercial aviation.

SEC. 3.5. Section 602 of the Penal Code is amended to read:

602. Except as provided in Section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.

(b) Carrying away any kind of wood or timber lying on those lands.

(c) Maliciously injuring or severing from the freehold of another anything attached to it, or its produce.

(d) Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant, any earth, soil, or stone.

(e) Digging, taking, or carrying away from land in any city or town laid down on the map or plan of the city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone.

(f) Maliciously tearing down, damaging, mutilating, or destroying any sign, signboard, or notice placed upon, or affixed to, any property belonging to the state, or to any city, county, city and county, town or village, or upon any property of any person, by the state or by an automobile association, which sign, signboard or notice is intended

to indicate or designate a road, or a highway, or is intended to direct travelers from one point to another, or relates to fires, fire control, or any other matter involving the protection of the property, or putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention to it.

(g) Entering upon any lands owned by any other person whereon oysters or other shellfish are planted or growing; or injuring, gathering, or carrying away any oysters or other shellfish planted, growing, or on any such lands, whether covered by water or not, without the license of the owner or legal occupant; or destroying or removing, or causing to be removed or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any such lands.

(h) Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property.

(i) Building fires upon any lands owned by another where signs forbidding trespass are displayed at intervals not greater than one mile along the exterior boundaries and at all roads and trails entering the lands, without first having obtained written permission from the owner of the lands or the owner's agent, or the person in lawful possession.

(j) Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business or occupation carried on by the owner of the land, the owner's agent or by the person in lawful possession.

(k) Entering any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands without the written permission of the owner of the land, the owner's agent or of the person in lawful possession, and

(1) Refusing or failing to leave the lands immediately upon being requested by the owner of the land, the owner's agent or by the person in lawful possession to leave the lands, or

(2) Tearing down, mutilating, or destroying any sign, signboard, or notice forbidding trespass or hunting on the lands, or

(3) Removing, injuring, unlocking, or tampering with any lock on any gate on or leading into the lands, or

(4) Discharging any firearm.

(*l*) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

(m) Driving any vehicle, as defined in Section 670 of the Vehicle Code, upon real property belonging to, or lawfully occupied by, another and known not to be open to the general public, without the consent of the owner, the owner's agent, or the person in lawful possession. This subdivision shall not apply to any person described in Section 22350 of the Business and Professions Code who is making a lawful service of process.

(n) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent or person in lawful possession is absent from the premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed six months when the premises or property is closed to the public and posted as being closed. However, this subdivision shall not be applicable to persons engaged in lawful labor union activities which are permitted to be carried out on the property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act. For purposes of this section, land, real property, or structures owned or operated by any housing authority for tenants as defined under Section 34213.5 of the Health and Safety Code constitutes property not open to the general public; however, this subdivision shall not apply to persons on the premises who are engaging in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or ordinance.

(o) Entering upon any lands declared closed to entry as provided in Section 4256 of the Public Resources Code, if the closed areas shall have been posted with notices declaring the closure, at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through the lands.

(p) Refusing or failing to leave a public building of a public

agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchman, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances are such as to indicate to a reasonable person that the person has no apparent lawful business to pursue.

(q) Knowingly skiing in an area or on a ski trail which is closed to the public and which has signs posted indicating the closure.

(r) Refusing or failing to leave a hotel or motel, where he or she has obtained accommodations and has refused to pay for those accommodations, upon request of the proprietor or manager, and the occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

(s) Entering upon private property, including contiguous land, real property, or structures thereon belonging to the same owner, whether or not generally open to the public, after having been informed by a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, that the property is not open to the particular person; or refusing or failing to leave the property upon being asked to leave the property in the manner provided in this subdivision.

This subdivision shall apply only to a person who has been convicted of a violent felony, as specified in subdivision (c) of Section 667.5, committed upon the particular private property. A single notification or request to the person as set forth above shall be valid and enforceable under this subdivision unless and until rescinded by the owner, the owner's agent, or the person in lawful possession of the property.

(t) (1) Knowingly entering, by an unauthorized person, upon any airport operations area if the area has been posted with notices restricting access to authorized personnel only and the postings occur not greater than every 150 feet along the exterior boundary.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) By a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, if the person refuses to leave the airport operations area after being requested to leave by a peace officer.

(C) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, for a second or subsequent offense.

(3) As used in this subdivision the following definitions shall control:

(A) "Airport operations area" means that part of the airport used by aircraft for landing, taking off, surface maneuvering, loading and

unloading, refueling, parking, or maintenance, where aircraft support vehicles and facilities exist, and which is not for public use or public vehicular traffic.

(B) "Authorized personnel" means any person who has a valid airport identification card issued by the airport operator or has a valid airline identification card recognized by the airport operator, or any person not in possession of an airport or airline identification card who is being escorted for legitimate purposes by a person with an airport or airline identification card.

(C) "Airport" means any facility whose function is to support commercial aviation.

(u) Refusing or failing to leave a battered women's shelter at any time after being requested to leave by a managing authority of the shelter.

(1) A person who is convicted of violating this subdivision shall be punished by imprisonment in a county jail for not more than one year.

(2) The court may order a defendant who is convicted of violating this subdivision to make restitution to a battered woman in an amount equal to the relocation expenses of the battered woman and her children if those expenses are incurred as a result of trespass by the defendant at a battered women's shelter.

SEC. 4. In repealing Section 1167.6 of the Code of Civil Procedure, it is the intent of the Legislature that the Legislature should enact new provisions designed to provide notice regarding a potential stay of eviction procedures for the spouses and dependent children of members of the California National Guard or United States Military Reserve who are called to active duty in the event of a future military conflict.

SEC. 5. Section 3.5 of this bill incorporates amendments to Section 602 of the Penal Code proposed by both this bill and AB 284. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 602 of the Penal Code, and (3) this bill is enacted after AB 284, in which case Section 3 of this bill shall not become operative.

CHAPTER 794

An act to amend Sections 2333, 7250, and 8488 of the Probate Code, relating to guardianship and conservatorship.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 2333 of the Probate Code is amended to read:

2333. (a) In case of a breach of a condition of the bond, an action may be brought against the sureties on the bond for the use and benefit of the ward or conservatee or of any person interested in the estate.

(b) No action may be maintained against the sureties on the bond unless commenced within four years from the discharge or removal of the guardian or conservator or within four years from the date the order surcharging the guardian or conservator becomes final, whichever is later.

(c) In any case, and notwithstanding the provisions of subdivision (b) of Section 2103, no action may be maintained against the sureties on the bond unless the action commences within six years from the date the judgment under Section 2103 or the later of the orders under subdivision (b) of this section becomes final.

SEC. 2. Section 7250 of the Probate Code is amended to read:

7250. (a) When a judgment or order made pursuant to the provisions of this code concerning the administration of the decedent's estate becomes final, it releases the personal representative and the sureties from all claims of the heirs or devisees and of any persons affected thereby based upon any act or omission directly authorized, approved, or confirmed in the judgment or order. For the purposes of this section, "order" includes an order settling an account of the personal representative, whether an interim or final account.

(b) Nothing in this section affects any order, judgment, or decree made, or any action taken, before July 1, 1988. The validity of any action taken before July 1, 1988, is determined by the applicable law in effect before July 1, 1988, and not by this section.

(c) This section shall not apply where the judgment or order is obtained by fraud or conspiracy or by misrepresentation contained in the petition or account or in the judgment as to any material fact. For purposes of this subdivision, misrepresentation includes, but shall not be limited to, the omission of a material fact.

SEC. 3. Section 8488 of the Probate Code is amended to read:

8488. (a) In case of a breach of a condition of the bond, an action may be brought against the sureties on the bond for the use and benefit of the decedent's estate or of any person interested in the estate.

(b) No action may be maintained against the sureties on the bond of the personal representative unless commenced not later than four years after the discharge of the personal representative.

(c) In any case, and notwithstanding the provisions of subdivision (c) of Section 7250, no action may be maintained against the sureties on the bond unless commenced within six years from the date the judgment under Section 2103 or the later of the orders under subdivision (b) of this section becomes final.

CHAPTER 795

An act to repeal Section 62000.11 of the Education Code, relating to gifted and talented pupils.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 62000.11 of the Education Code, as added by Chapter 494 of the Statutes of 1989, is repealed.

CHAPTER 796

An act to add Section 65957.5 to the Government Code, and to amend Section 671.5 of the Streets and Highways Code, relating to transportation.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 65957.5 is added to the Government Code, to read:

65957.5. (a) Whenever the director of a Department of Transportation highway district recommends to a public agency considering an application to subdivide real property or to issue a construction permit that the agency impose certain conditions on its approval of the application, the applicant may appeal the district director's recommendation.

(b) The Department of Transportation shall adopt regulations prescribing procedures for effecting an appeal pursuant to subdivision (a). The appeal shall be made in writing to the Director of Transportation. The director's decision on the appeal shall be rendered within 60 calendar days after receipt of the appeal, and the director's written determination shall be transmitted to the appellant and to the agency to whom the appealed recommendation was made. The adopted regulations shall require the appellant to pay to the department a fee of not more than 50 percent of the estimated administrative cost to the department of conducting the appeal.

(c) The appeal process, including the director's written determination, shall be completed at least 60 days prior to completion of the period of public review for a draft environmental impact report or a negative declaration prescribed by Section 21091 of the Public Resources Code.

SEC. 2. Section 671.5 of the Streets and Highways Code is

amended to read:

671.5. (a) The department shall either approve or deny an application from an applicant for an encroachment permit within 60 days of receiving a completed application, as determined by the department. An application for an encroachment permit is complete when all other statutory requirements, including the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), have been complied with. The department's failure to notify the applicant within that 60-day period that the permit is denied shall be deemed to constitute approval of the permit. Thereafter, upon notifying the department, the applicant may act in accordance with its permit application, as if the permit had been approved.

(b) If the department denies an application for an encroachment permit, it shall, at the time of notifying the applicant of the denial, furnish to the applicant a detailed explanation of the reason for the denial.

(c) The department shall adopt regulations prescribing procedures for an applicant to appeal to the director for a final determination of the department's denial of an application. The appeal shall be made in writing to the director. There shall be a final written determination by the director within 60 calendar days after receipt of the applicant's written appeal. The adopted regulations shall require the appellant to pay to the department a fee of not more than 50 percent of the estimated administrative cost to the department of conducting the appeal.

(d) Nothing in this section precludes an applicant and the department from mutually agreeing to an extension of any time limit provided by this section.

CHAPTER 797

An act to amend Section 7031 of the Business and Professions Code, relating to contractors.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 7031 of the Business and Professions Code is amended to read:

7031. (a) Except as provided in subdivision (d), no person engaged in the business or acting in the capacity of a contractor, 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 by this chapter without alleging that he or she was a duly

licensed contractor at all times during the performance of that act or contract, regardless of the merits of the cause of action brought by the person, except that this prohibition shall not apply to contractors who are each individually licensed under this chapter but who fail to comply with Section 7029.

(b) A security interest taken to secure any payment for the performance of any act or contract for which a license is required by this chapter is unenforceable if the person performing the act or contract was not a duly licensed contractor at all times during the performance of the act or contract.

(c) If licensure or proper licensure is controverted, then proof of licensure pursuant to this section shall be made by production of a verified certificate of licensure from the Contractors' State License Board which establishes that the individual or entity bringing the action was duly licensed in the proper classification of contractors at all times during the performance of any act or contract covered by the action. Nothing herein shall require any person or entity controverting licensure or proper licensure to produce a verified certificate. When licensure or proper licensure is controverted, the burden of proof to establish licensure or proper licensure shall be on the licensee.

(d) The judicial doctrine of substantial compliance shall not apply to this section, except that a court may determine that there has been substantial compliance with licensure requirements, for purposes of this section, if it is shown at an evidentiary hearing that the person was a duly licensed contractor during any portion of the 90 days immediately preceding the performance of the act or contract for which compensation is sought, that the person's category of licensure would have authorized the performance of that act or contract, and that noncompliance with the licensure requirement was the result of (1) inadvertent clerical error, or (2) other error or delay not caused by the negligence of the person. Subdivision (b) of Section 143 does not apply to contractors subject to this subdivision.

(e) The exceptions to the prohibition against the application of the judicial doctrine of substantial compliance found in subdivision (d) shall have no retroactive effect. These exceptions to that prohibition shall only apply to an action or arbitration proceeding, at law or in equity, that is commenced on or after January 1, 1992.

CHAPTER 798

An act to amend Sections 30319, 30322, 30324, 30327, and 30824 of the Public Resources Code, relating to coastal resources.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 30319 of the Public Resources Code is amended to read:

30319. Any person who applies to the commission for approval of a development permit shall provide the commission with the names and addresses of all persons who, for compensation, will be communicating with the commission or commission staff on the applicant's behalf or on behalf of the applicant's business partners. That disclosure shall be provided to the commission prior to any such communication. Failure to comply with that disclosure requirement is a misdemeanor and, upon conviction, the person shall be punished by a fine of five thousand dollars ($5,000) or imprisonment in the county jail not exceeding six months, and, in addition, shall be subject to immediate denial of the permit.

SEC. 2. Section 30322 of the Public Resources Code is amended to read:

30322. (a) For purposes of this article, except as provided in subdivision (b), an "ex parte communication" is any oral or written communication between a member of the commission and an interested person, about a matter within the commission's jurisdiction, which does not occur in a public hearing, workshop, or other official proceeding, or on the official record of the proceeding on the matter.

(b) The following communications are not ex parte communications:

(1) Any communication between a staff member acting in his or her official capacity and any commission member or interested person.

(2) Any communication limited entirely to procedural issues, including, but not limited to, the hearing schedule, location, format, or filing date.

(3) Any communication which takes place on the record during an official proceeding of a state, regional, or local agency that involves a member of the commission who also serves as an official of that agency.

(4) Any communication between a member of the commission, with regard to any action of another state agency or of a regional or local agency of which the member is an official, and any other official or employee of that agency, including any person who is acting as an attorney for the agency.

(5) Any communication between a nonvoting commission member and a staff member of a state agency where both the commission member and the staff member are acting in an official capacity.

(6) Any communication to a nonvoting commission member relating to an action pending before the commission, where the nonvoting commission member does not participate in that action, either through written or verbal communication, on or off the record, with other members of the commission.

SEC. 3. Section 30324 of the Public Resources Code is amended to read:

30324. (a) No commission member, nor any interested person, shall conduct an ex parte communication unless the commission member fully discloses and makes public the ex parte communication by providing a full report of the communication to the executive director within seven days after the communication or, if the communication occurs within seven days of the next commission hearing, to the commission on the record of the proceeding at that hearing.

(b) (1) The commission shall adopt standard disclosure forms for reporting ex parte communications which shall include, but not be limited to, all of the following information:

(A) The date, time, and location of the communication.

(B) The identity of the person or persons initiating and the person or persons receiving the communication.

(C) A complete description of the content of the communication, including the complete text of any written material that was a part of the communication.

(2) The executive director shall place in the public record any report of an ex parte communication.

(c) Communications shall cease to be ex parte communications when fully disclosed and placed in the commission's official record.

SEC. 4. Section 30327 of the Public Resources Code is amended to read:

30327. (a) No commission member or alternate shall make, participate in making, or any other way attempt to use his or her official position to influence a commission decision about which the member or alternate has knowingly had an ex parte communication that has not been reported pursuant to Section 30324.

(b) In addition to any other applicable penalty, including a civil fine imposed pursuant to Section 30824, a commission member who knowingly violates this section shall be subject to a civil fine, not to exceed seven thousand five hundred dollars ($7,500). Notwithstanding any law to the contrary, the court may award attorneys' fees and costs to the prevailing party.

SEC. 5. Section 30824 of the Public Resources Code is amended to read:

30824. In addition to any other applicable penalty, any commission member who knowingly violates Section 30324 is subject

to a civil fine, not to exceed seven thousand five hundred dollars ($7,500). Notwithstanding any law to the contrary, the court may award attorneys' fees and costs to the prevailing party.

CHAPTER 799

An act to add and repeal Article 5.7 (commencing with Section 1559.110) of Chapter 3 of Division 2 of the Health and Safety Code, to amend Sections 11400, 11402, 18358, 18358.05, 18358.10, 18358.15, and 18358.30 of, to add Section 18358.45 to, to repeal and add Section 18358.50 of, and to add and repeal Article 6 (commencing with Section 11460.1) of Chapter 2 of, and Article 4 (commencing with Section 16522) to Chapter 5 of Division 9 of, the Welfare and Institutions Code, relating to community care facilities.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Article 5.7 (commencing with Section 1559.110) is added to Chapter 3 of Division 2 of the Health and Safety Code, to read:

Article 5.7. Out-of-Home Placement Pilot Program

1559.110. The State Department of Social Services shall license community care facilities participating in transitional housing placement programs in three counties, as designated in Section 16522 of the Welfare and Institutions Code. Transitional housing placement programs shall provide supervised apartment living services to persons at least 17 years old, and not more than 18 years old unless the requirements of Section 11403 of the Welfare and Institutions Code are met, who are in out-of-home placement under the supervision of the county department of social services or the county probation department, and who are participating in an independent living program. Transitional housing placement program services shall include any of the following:

(a) Programs in which one or more participants in the program live in an apartment with an adult employee of the licensee.

(b) Programs in which a participant lives independently in an apartment rented or leased by the licensee located in a building in which one or more adult employees of the licensee reside and provide supervision.

(c) Programs in which a participant lives independently in an apartment rented or leased by a licensee under the supervision of the licensee if the State Department of Social Services provides approval.

1559.115. No applicant shall be issued a license pursuant to this article unless the county welfare department, in the county where the license will be issued, has approved the transitional housing placement program as required by Section 16522.5 of the Welfare and Institutions Code, and has certified the program as described in Section 16522.1 of the Welfare and Institutions Code.

1559.120. The department shall license community care facilities participating in transitional housing placement programs in three counties commencing the 1994–95 fiscal year. In subsequent years, the department may, in addition, license community care licensed facilities participating in transitional housing placement programs, in additional counties, upon the request of the county board of supervisors, if the department determines that the three counties initially authorized pursuant to this section have had successful outcomes.

1559.125. The department shall develop regulations to implement this transitional housing placement program. The State Department of Social Services shall adopt emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code to implement this article. The adoption of regulations pursuant to this section in order to implement this article shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health or safety. 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) of the Government Code, as required by subdivision (e) of Section 11346.1 of the Government Code. The department shall study the need to create a permanent community care facility licensing category to accommodate transitional housing placement facility types.

1559.130. This article shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2000, deletes or extends that date.

SEC. 2. Section 11400 of the Welfare and Institutions Code is amended to read:

11400. For the purposes of this article, the following definitions shall apply:

(a) "Aid to Families with Dependent Children-Foster Care (AFDC-FC)" means the aid provided in behalf of needy children in foster care under the terms of this division.

(b) "Case plan" means a written document which at a minimum specifies the type of home in which the child shall be placed, the appropriateness of the home for meeting the child's needs, the agency's plan for ensuring that the child, family, and foster parents receive services, and the appropriateness of the services provided to the child, in order to meet the child's needs while in foster care, and to reunify the child with his or her family, or, when reunification is

not possible, to facilitate an alternate permanent plan.

(c) "Certified family home" means a family residence certified by a licensed foster family agency and issued a certificate of approval by that agency as meeting licensing standards, and used only by that foster family agency for placements.

(d) "Family home" means the family residency of a licensee in which 24-hour care and supervision are provided for children.

(e) "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.

(f) "Foster care" means the 24-hour out-of-home care provided to children whose own families are unable or unwilling to care for them, and who are in need of temporary or long-term substitute parenting.

(g) "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.

(h) "Group home" means a nondetention privately operated residential home, organized and operated on a nonprofit basis only, of any capacity, that provides services in a group setting to children in need of care and supervision, as required by paragraph (1) of subdivision (a) of Section 1502 of the Health and Safety Code.

(i) "Periodic review" means review of a child's status by the juvenile court or by an administrative review panel, which shall include a determination of the continuing need for placement in foster care, evaluation of the goals for the placement and the progress toward meeting these goals, and development of a target date for the child's return home or establishment of alternative permanent placement.

(j) "Permanency planning hearing" means a hearing conducted by the juvenile court in which the child's future status, including whether the child shall be returned home or another permanent plan shall be developed, is determined.

(k) "Placement and care" refers to the responsibility for the welfare of a child vested in an agency or organization by virtue of the agency or organization having (1) been delegated care, custody, and control of a child by the juvenile court, (2) taken responsibility, pursuant to a relinquishment or termination of parental rights on a child, (3) taken the responsibility of supervising a child detained by the juvenile court pursuant to Section 319 or 636, or (4) signed a voluntary placement agreement for the child's placement; or to the responsibility designated to an individual by virtue of his or her being appointed the child's legal guardian.

(*l*) "Preplacement preventive services" means services which are designed to help children remain with their families by preventing or eliminating the need for removal.

(m) "Relative" means a person who can be a "caretaker relative" of a dependent child under Section 406 of the Social Security Act.

(n) "Voluntary placement" means an out-of-home placement of a minor by (1) county welfare department after the parents or guardians have requested the assistance of the county welfare department and have signed a voluntary placement agreement; or (2) the county welfare department licensed public or private adoption agency, or the department acting as an adoption agency, after the parents have requested the assistance of either the county welfare department, the licensed public or private adoption agency, or the department acting as an adoption agency for the purpose of adoption planning, and have signed a voluntary placement agreement.

(o) "Voluntary placement agreement" means a written agreement between either the county welfare department, a licensed public or private adoption agency, or the department acting as an adoption agency, and the parents or guardians of a minor which specifies, at a minimum, the following:

(1) The legal status of the child.

(2) The rights and obligations of the parents or guardians, the child, and the agency in which the child is placed.

(p) "Original placement date" means the most recent date on which the court detained a child and ordered an agency to be responsible for supervising the child or the date on which an agency assumed responsibility for a child due to termination of parental rights, relinquishment, or voluntary placement.

(q) "Transitional housing placement facility" means a community care facility licensed by the State Department of Social Services pursuant to Section 1559.110 of the Health and Safety Code to provide transitional housing opportunities to persons as least 17 years old, and not more than 18 years old unless they satisfy the requirements of Section 11403, who are in out-of-home placement under the supervision of the county department of social services or the county probation department, and who are participating in an independent living program.

SEC. 3. Section 11402 of the Welfare and Institutions Code is amended to read:

11402. In order to be eligible for AFDC-FC, a child must be placed in one of the following:

(a) The home of a relative, provided the home has been documented by the social worker or probation officer as being suited to the needs of the child and the child is otherwise eligible for federal financial participation in the AFDC-FC payment.

(b) The licensed family home of a nonrelative.

(c) A licensed group home, as defined in subdivision (h) of Section 11400, provided that the placement worker has documented

that the placement is necessary to meet the treatment needs of the child and that the facility offers those treatment services.

(d) The home of a nonrelated legal guardian or the home of a former nonrelated legal guardian when the guardianship of a child who is otherwise eligible for AFDC-FC has been dismissed due to the child's attaining age 18.

(e) A home which has been certified by a social worker or probation officer as meeting licensing standards, provided that a family home license has been applied for and has not been denied.

(f) An exclusive-use home.

(g) A licensed transitional housing placement facility as described in Health and Safety Code Section 1559.110 and as defined in Section 11400.

SEC. 4. Article 6 (commencing with Section 11460.1) is added to Chapter 2 of Division 9 of the Welfare and Institutions Code, to read:

Article 6. Transitional Housing

11460.1. (a) The department shall develop a ratesetting system for licensed community care facilities participating in transitional housing placement programs, as defined by Section 16522, and as described by Section 1559.110 of the Health and Safety Code. The rates shall not exceed the aggregate placement costs for these children if they had not participated in the transitional housing placement program.

(b) The department shall adopt and maintain regulations that establish a method for determining the rates for facilities specified in subdivision (a).

(c) This article shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2000, deletes or extends that date.

SEC. 5. Article 4 (commencing with Section 16522) is added to Chapter 5 of Division 9 of the Welfare and Institutions Code, to read:

Article 4. Transitional Housing Placement Program

16522. The State Department of Social Services shall develop programs in three counties, upon the request of the county board of supervisors, to licensed private, nonprofit, or county operated facilities to provide transitional housing placement program services to persons at least 17 years old, and not more than 18 years old unless they satisfy the requirements of Section 11403, who are in out-of-home placement under the supervision of the County Department of Social Services or the County Probation Department, and who are participating in an independent living program. Transitional housing placement program services shall include any of the following:

(a) Programs in which one or more participants in the program live in an apartment with an adult employee of the licensee.

(b) Programs in which a participant lives independently in an apartment rented or leased by the licensee located in a building in which one or more adult employees of the licensee reside and provide supervision.

(c) Programs in which a participant lives independently in an apartment rented or leased by a licensee under the supervision of the licensee if the State Department of Social Services provides approval.

16522.1. In order to be licensed pursuant to Section 1559.110 of the Health and Safety Code, an applicant shall obtain certification from the county welfare department that the facility program provides all of the following:

(a) Strict admission criteria for participants in the program, including, but not limited to, consideration of the applicant's age, previous placement history, delinquency history, history of drug or alcohol abuse, level of education, mental health history, medical problems, and work experience. The department shall review the admission criteria to ensure that the criteria are sufficient to protect participants and that they do not discriminate on the basis of race, gender, sexual orientation, or disability.

(b) Strict employment criteria that include a consideration of the employee's age, drug or alcohol history, and experience in working with persons in this age group.

(c) A training program designed to educate employees who work directly with participants about the characteristics of persons in this age group placed in long-term care settings, and designed to ensure that these employees are able to adequately supervise and counsel participants and to provide them with training in independent living skills.

(d) A detailed plan for monitoring the placement of persons under the licensee's care.

(e) A contract between the participating person and the licensee that specifically sets out the requirements for each party, and in which the licensee and the participant agree to the requirements of this article.

(f) An allowance to be provided to each participant in the program. In the case of a participant living independently, this allowance shall be sufficient for the participant to purchase food and other necessities.

(g) A system for payment for utilities, telephone, and rent.

(h) Policies regarding all of the following:

(1) Education requirements.

(2) Work expectations.

(3) Savings requirements.

(4) Personal safety.

(5) Visitors including, but not limited to, visitation by the placement auditor pursuant to subdivision (d).

(6) Emergencies.

(7) Medical problems.

(8) Disciplinary measures.
(9) Child care.
(10) Pregnancy.
(11) Curfew.
(12) Apartment cleanliness.
(13) Use of utilities and telephone.
(14) Budgeting.
(15) Care of furnishings.
(16) Decorating of apartments.
(17) Cars.
(18) Lending or borrowing money.
(19) Unauthorized purchases.
(20) Dating.
(21) Grounds for termination that may include, but shall not be limited to, illegal activities or harboring runaways.

(i) Apartment furnishings, and a policy on disposition of the furnishings when the participant completes the program.

(j) Evaluation of the participant's progress in the program and reporting to the independent living program and to the department regarding that progress.

(k) A linkage to the federal Job Training and Partnership Act (29 U.S.C. Sec. 1501 et seq.) program administered in the local area to provide employment training to eligible participants.

16522.2. Persons may participate in the supervised transitional housing placement programs only with the permission of both the independent living program of the county in which the program is located and the county department of social services or the county probation department that has custody of the person.

16522.3. (a) The cost for all participants in each of the county's programs shall be no greater than the aggregate cost of care and supervision for those children had they not participated in the county's supervised apartment living program as described in this article.

(b) The department shall develop, implement, and maintain a ratesetting system schedule pursuant to Section 11460.1 of the Welfare and Institutions Code.

16522.4. The department shall approve supervised transitional housing placement programs in up to three counties commencing the 1994–95 fiscal year. In subsequent years, the department may approve supervised transitional housing placement programs in additional counties, upon the request of the county board of supervisors, if the department determines that the three counties initially authorized pursuant to this section have had successful outcomes.

16522.5. Prior to approval of supervised transitional housing placement programs in a county, the department shall approve a plan submitted by the county's independent living program that includes assurances that the independent living program shall participate actively in the screening of candidates for this program

and shall assist the licensed agency in the supervision of clients participating in the program.

16522.6. The department shall make information available to the Legislature upon request regarding services rendered pursuant to this article.

SEC. 6. Section 18358 of the Welfare and Institutions Code is amended to read:

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 have been either:

(A) Placed in a group home with a rate classification level of 12 or higher pursuant to Section 11462.

(B) Assessed by the child's county interagency review team as at imminent risk of psychiatric hospitalization or placement 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, except for children on probation or otherwise in the custody of the Juvenile Court for any violent felony as defined in subdivision (c) of Section 667.5 of the Penal Code.

(4) Children who have been adjudicated a dependent of the court pursuant to Section 300 of the Welfare and Institutions Code.

SEC. 7. Section 18358.05 of the Welfare and Institutions Code is amended to read:

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 participating foster family agency may accept under this program up to 25 children per year, no more than 20 of whom are placed from a group home with a rate classification level of 12 or above pursuant to Section 11462. Up to five children per year

may be accepted under this program who are at imminent risk of psychiatric hospitalization or placement in a group home with a rate classification level of 12 or higher pursuant to Section 11462 based on an assessment by a county interagency review team. No children accepted under this program may come from placement in a state psychiatric hospital. Each participating foster family agency may accept placements, with approval of the host county, from counties other than its host county up to the maximum of 25 children per year.

(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.

SEC. 8. Section 18358.10 of the Welfare and Institutions Code is amended to read:

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. In two-parent homes, placement may be made after one parent has completed 60 hours of training, provided that the second parent has completed 40 hours of training and completes an additional 20 hours of training within the first six months of placement.

(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 six months of 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 31 hours per child per week of service to the child and the foster family. This service shall include, but not be limited to, structuring a safe environment for the child, collateral contacts, and any administrative or training functions necessary to implement the child's needs and services plan. The child's needs and services plan shall ensure that services meet the child's needs and are appropriate to and consistent with the minimum level of service specified in Section 18358.30. The child's individual needs and services plan shall be reviewed and approved by the certified foster parents.

(B) Arrange for coordination services with local education agencies and the service provider's nonpublic school, where applicable.

(e) A 24-hour on call administrator who is available to respond to emergency situations.

SEC. 9. Section 18358.15 of the Welfare and Institutions Code is amended to read:

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 needs and services plans that ensure continuity and stability in the placement of emotionally disturbed children in certified family homes that meet the needs of children making the transition from institutional placement to noninstitutional placement. The needs and services plan for each child in placement shall describe the specific needs of the child and the appropriate level of services provided to the child pursuant to Section 18358.30.

(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.

SEC. 10. Section 18358.30 of the Welfare and Institutions Code is amended to read:

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 average case loads not to exceed eight children per worker, except that social worker average case loads for children in Pilot Classification Models E and 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, represented by paid employee hours incurred by the participating foster family agency, 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 1993–94 fiscal year shall be:

Pilot Classification Model	Fiscal Year 1993–94 Standard Rate
A	$3,733
B	$3,423
C	$3,112
D	$2,802
E	$2,490
F	$2,099

(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, subject to the availability of funds.

(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 at any time during an eligible child's placement. An eligible child may be initially placed in a participating intensive foster care program at any one of the five pilot classification levels A to E, inclusive, and thereafter placed at any level, either higher or lower, not to exceed a total of six months at any level other than Pilot Classification Model E, unless it is determined to be in the best interests of the child by the child's county interagency review team and the child's certified foster parents. The child's interagency county interagency placement review team may, through a formal review of the child's placement, extend the placement of an eligible child in a pilot classification model higher than Pilot Classification Model E for additional periods of up to six months each.

(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).

SEC. 11. Section 18358.45 is added to the Welfare and Institutions Code, to read:

18358.45. New placements under this chapter shall not be accepted after June 30, 1996.

SEC. 12. Section 18358.50 of the Welfare and Institutions Code is repealed.

SEC. 13. Section 18358.50 is added to the Welfare and Institutions Code, to read:

18358.50. (a) It is the intent of the Legislature to avoid any unnecessary disruption of services to the children placed pursuant to this chapter.

(b) (1) If the date for the repeal of this chapter is not extended beyond January 1, 1999, any child in placement pursuant to that chapter as of January 1, 1999, shall continue to receive on his or her behalf the payment level specified in paragraph (2) of subdivision (b) of Section 18358.30, if the certified foster parents become licensed.

(2) If the certified foster parents do not become licensed, the child shall continue to receive the intensive foster care services provided for in this chapter. These services shall be provided by the participating foster family agency until the child is no longer in placement with the foster parents previously participating under this chapter or the child is no longer eligible for the Aid to Families with Dependent Children-Foster Care program. These services shall be provided at the rate set for Pilot Classification Levels A to E, inclusive, as of June 30, 1996, with the pilot classification model and the rate paid to participating foster family agencies decreased to that for Pilot Classification Model F for all children still in placement on January 1, 1999.

(c) Except as provided in subdivision (b), this chapter shall remain in effect only until January 1, 1999, and as of that date, this chapter is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

CHAPTER 800

An act to amend Section 99268.18 of, and to add and repeal Section 99268.10 of, the Public Utilities Code, relating to transportation.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 99268.10 is added to the Public Utilities Code, to read:

99268.10. (a) Notwithstanding subdivision (a) of Section 99247, the additional operating costs required to provide comparable complementary paratransit service, as required by Section 37.121 of Title 49 of the Code of Federal Regulations, pursuant to the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), as identified in the operator's paratransit plan pursuant to paragraph (d) (6) of Section 37.139 of the Code of Federal Regulations, shall be excluded from operating costs.

(b) 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. Section 99268.18 of the Public Utilities Code is amended to read:

99268.18. The exclusions contained in Sections 99268.10, 99268.16, and 99268.17 shall not be applicable for purposes of determining an operator's compliance with Section 99268.

CHAPTER 801

An act to amend Section 5.2 of the Yuba County Water Agency Act (Chapter 788 of the Statutes of 1959), relating to the Yuba County Water Agency.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 5.2 of the Yuba County Water Agency Act (Chapter 788 of the Statutes of 1959) is amended to read:

Sec. 5.2. (a) The agency may enter into long-term contracts for the sale of water, for use outside the boundaries of the agency by other than a member unit, if the board of directors determines that the transferred water is surplus to the amount of water available to meet the contractual requirements of member units.

(b) (1) Before the board may enter into a contract pursuant to

subdivision (a), it shall hold a public hearing to receive oral and written comments on the transfer proposal.

(2) The board shall provide notice of the hearing by publication in a newspaper of general circulation once a week for two consecutive weeks prior to the hearing, with the last publication being at least seven days before the hearing.

(3) At the time and place fixed for the hearing, or at any time to which the hearing is continued, the board shall consider all written and oral objections to the proposed contract. Upon the conclusion of the hearing the board may abandon or proceed with the proposed contract, unless, prior to the conclusion of the hearing, written protests against the proposed contract signed by a majority in number of registered voters residing within Yuba County are filed with the board, in which event further proceedings relating to the contract must 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.

(c) A long-term contract for the sale of water pursuant to this section shall not be implemented until the state board, pursuant to Section 386 of the Water Code, finds that the water transfer may be made without injuring any legal user of the water, without unreasonably affecting fish, wildlife, or other instream beneficial use, and without unreasonably affecting the overall economy of the area from which the water is to be transferred.

CHAPTER 802

An act to amend Sections 19890 and 19891 of the Health and Safety Code, relating to automatic garage door openers.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 19890 of the Health and Safety Code is amended to read:

19890. (a) On or after January 1, 1991, no person, corporation, or entity shall manufacture for sale in this state, purchase, sell or offer for sale at retail or wholesale, or install in this state, a residential automatic garage door opener that does not have an automatic reverse safety device that complies with the applicable standards set forth in the Underwriters Laboratories Inc., Standard for Safety-ANSI/UL 325-30.1 and 325-30.2, Third Edition, as revised May 4, 1988.

(b) In addition to the requirements of subdivision (a), on or after January 1, 1993, no person, corporation, or entity shall manufacture for sale in this state, purchase, sell or offer for sale at retail or

wholesale, or install in this state, any residential automatic garage door opener unless, in order to operate, it requires the inclusion of a tactile garage door edge sensor, an optical sensor, or a similar device that when activated is designed to cause a closing door to open and prevent an open door from closing. This device shall be designed to operate in a manner so that the interruption or misalignment of the device or an opening or short in the wires between the device and the power head would cause a closing door to open and prevent an open door from closing. Notwithstanding any other provision of this subdivision, a garage door opener that is manufactured prior to January 1, 1993, and that is in the possession of a retailer or wholesaler on January 1, 1993, may be purchased, sold, offered for sale, and installed on or before July 1, 1993, provided the garage door opener is in compliance with subdivision (a).

(c) On or after January 1, 1991, any manufacturer selling or offering for sale residential automatic garage door openers in this state shall comply with federal labeling requirements for automatic residential garage door openers contained in Section 203 of Public Law 101-608.

(d) On and after January 1, 1991, any manufacturer, distributor, wholesaler, or retailer, selling or offering for sale residential automatic garage door openers in this state shall include with each automatic garage door opener a set of installation, operation, maintenance, and testing instructions. On or after January 1, 1991, any person installing, servicing, or repairing a residential automatic garage door opener shall comply with those instructions.

(e) On and after January 1, 1993, any person hired to service or repair any residential automatic garage door opener shall, upon completion of the service or repair, if any, determine whether it reverses upon contact with a rigid two-inch high obstacle placed on the surface beneath the garage door. If the residential automatic garage door opener does not pass the test, the person shall complete and conspicuously affix to the residential automatic garage door opener, a red certificate as follows:

WARNING!

This garage door opener, when tested on this date, did not reverse upon contact with a two-inch high rigid obstacle placed on the surface beneath the garage door, and may not be in compliance with the safety standards relating to automatic reversing devices as set forth in Chapter 12.5 (commencing with Section 19890) of Part 3 of Division 13 of the Health and Safety Code.

Address [location of automatic garage door opener]: _____

_____

_____

Manufacturer [if known]: _____

Date of manufacture [if known]: _____
Serial No. [if any]: _____
Model No. [if any]: _____

[signed] _____ [date] _____
[print name] _____
[firm name and address] _____
_____
_____
_____

(f) This chapter shall apply to all automatic garage door openers manufactured and sold for use in any residence. This chapter shall also apply to automatic garage door openers manufactured for commercial purposes, but sold for, or installed, in a residence because the commercial opener was necessary to meet the specific application requirements of that installation. Residential applications of garage door openers manufactured for commercial purposes shall comply with this chapter, and be installed according to the manufacturer's instructions, except that the applicable standard shall be the Underwriters Laboratories Inc., Standard for Safety-ANSI/UL 325-29 in lieu of the Underwriters Laboratories Inc., Standard for Safety-ANSI/UL 325-30.1 and 325-30.2.

(g) For the purposes of this chapter:

(1) "Residential" shall define a device or structure that is part of, affixed to, or associated with, a residence.

(2) "Residence" means a building that contains from one to four single-family dwelling units.

(3) "Garage" means an enclosed and covered shelter for one or more automobiles, that may be attached to, or detached from but associated with, a residence. "Garage" does not include an unenclosed automobile parking area nor an unenclosed, covered carport.

(4) "Garage door" means a structure that serves as an overhead, vertical-moving barrier to the opening that serves as the automobile entrance to the garage. "Garage door" does not include structures that operate in a sliding or horizontal motion.

(h) On or after January 1, 1992, no replacement residential garage door shall be installed in a manner that connects the replacement door to an existing residential automatic garage door opener that does not meet the test standard set forth in subdivision (e), regardless of the date of manufacture of the residential automatic garage door opener.

SEC. 2. Section 19891 of the Health and Safety Code is amended to read:

19891. (a) In addition to any other remedies permitted by law, any violations of subdivision (a), (b), or (c) of Section 19890 shall be subject to a civil penalty of one thousand dollars ($1,000) per opener

installed, manufactured, sold, or offered for sale which is not in compliance with Section 19890.

(b) In addition to any other remedies permitted by law, any violations of subdivision (d) or (h) of Section 19890 shall be subject to a civil penalty of five hundred dollars ($500) per opener installed and operational, that is not in compliance with Section 19890.

(c) In addition to any other remedies permitted by law, a seller who violates the notice requirements of Section 1102.6 of the Civil Code, relating to automatic garage door openers, shall be subject to a civil penalty of five hundred dollars ($500).

(d) Court proceedings may be initiated by the building department of the local agency with jurisdiction over enforcement of building standards, by affected consumers, or by the district attorney. Civil penalties assessed shall be payable to the local agency initiating the proceedings to enforce this chapter to offset the costs to the agency related to court proceedings. If an affected consumer initiates the proceeding, the civil penalties shall be payable to the consumer.

CHAPTER 803

An act to amend Sections 17511.1, 17511.4, 17511.5, and 17511.12 of the Business and Professions Code, relating to telephonic sellers.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 17511.1 of the Business and Professions Code is amended to read:

17511.1. As used in this article, "telephonic seller" or "seller" means a person who, on his or her own behalf or through salespersons or through the use of an automatic dialing-announcing device, as defined in Section 2871 of the Public Utilities Code, causes a telephone solicitation or attempted telephone solicitation to occur which meets the criteria specified in subdivision (a), (b), (c), or (d) and who is not exempted by subdivision (e), as follows:

(a) A telephone solicitation or attempted telephone solicitation wherein the telephonic seller initiates telephonic contact with a prospective purchaser and represents or implies one or more of the following:

(1) That a prospective purchaser who buys one or more items will also receive additional or other items, whether or not of the same type as purchased, without further cost. For purposes of this subdivision, "further cost" does not include actual postage or common carrier delivery charges, if any.

(2) That a prospective purchaser will receive a prize or gift, if the

person also encourages the prospective purchaser to do either of the following:

(A) Purchase or rent any goods or services.

(B) Pay any money, including, but not limited to, a delivery or handling charge.

(3) That a prospective purchaser is able to obtain any item or service at a price which the seller states or implies is below the regular price of the item or service offered. This paragraph shall not apply to retailers who, within the previous 12 months, have sold a majority of their goods or services through in-person sales at retail stores.

(4) That a prospective purchaser who buys office equipment or supplies will, because of some unusual event or imminent price increase, be able to buy these items at prices which are below those that are usually charged or will be charged for the items.

(5) That the seller is a person other than the person he or she is.

(6) That the items for sale are manufactured or supplied by a person other than the actual manufacturer or supplier.

(7) That the seller is offering to sell the prospective purchaser any gold, silver, or other metals, including coins, diamonds, rubies, sapphires, or other stones, coal or other minerals, or any interest in oil, gas, or mineral fields, wells, or exploration sites, or any other investment opportunity of any type whatsoever.

(8) That the seller is offering to make a loan, or to arrange or assist in arranging a loan or to assist in providing information which may lead to the obtaining of a loan, unless no payment of any kind is made until the loan proceeds are disbursed to the borrower.

(9) That a prospective purchaser will receive a credit card, as defined in subdivision (a) of Section 1747.02 of the Civil Code, if the purchaser pays an up front or preapplication fee for the credit card to the telephonic seller.

(b) A solicitation or attempted solicitation which is made by telephone in response to inquiries generated by unrequested notifications sent by the seller to persons who have not previously purchased goods or services from the seller or who have not previously requested credit from the seller, to a prospective purchaser wherein the seller represents or implies to the recipient of the notification that any of the following applies to the recipient:

(1) That the recipient has in any manner been specially selected to receive the notification or the offer contained in the notification.

(2) That the recipient will receive a prize or gift if the recipient calls the seller.

(3) That if the recipient buys one or more items from the seller, the recipient will also receive additional or other items, whether or not of the same type as purchased, without further cost or at a cost which the seller states or implies is less than the regular price of such items.

However, this subdivision does not apply to the solicitation of sales by a catalog seller who periodically issues and delivers catalogs to

potential purchasers by mail or by other means. This exception only applies if the catalog includes a written description or illustration and the sales price of each item of merchandise offered for sale, includes at least 24 full pages of written material or illustrations, is distributed in more than one state, and has an annual circulation of not less than 250,000 customers.

(c) A solicitation or attempted solicitation which is made by telephone in response to inquiries generated by advertisements on behalf of the telephonic seller wherein it is represented or implied that the seller is offering to sell to the prospective purchaser any gold, silver, or other metals, including coins, diamonds, rubies, sapphires, or other stones, coal or other minerals, or any interest in oil, gas, or mineral fields, wells, or exploration sites, or any other investment opportunity of any type whatsoever.

(d) A solicitation or attempted solicitation which is made by telephone in response to inquiries generated by advertisements on behalf of the telephonic seller wherein it is represented or implied that the seller is offering to make a loan or to arrange or assist in arranging a loan or to assist in providing information which may lead to the obtaining of a loan, unless no payment of any kind is made until the loan proceeds are disbursed to the borrower.

(e) For purposes of this article, "telephonic seller" or "seller" does not include any of the following:

(1) A person offering or selling a security qualified under Section 25110, 25120, or 25130 of the Corporations Code or exempt from qualification under Chapter 1 (commencing with Section 25100) of Part 2 of Division 1 of Title 4 of the Corporations Code. The fact that a notice claiming an exemption under the Corporate Securities Law of 1968 is filed with the Department of Corporations does not create an exemption under this paragraph.

(2) A person licensed pursuant to Part 1 (commencing with Section 10000) of Division 4, when the solicited transaction is governed by that law.

(3) A person licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3, when the solicited transaction is governed by that law.

(4) A person licensed or certificated pursuant to Part 2 (commencing with Section 680) of Division 1 of the Insurance Code, including a person licensed pursuant to Chapter 5 (commencing with Section 1621) thereof, when the solicited transaction is governed by that law.

(5) A person offering or selling a franchise registered pursuant to Section 31110 of the Corporations Code or exempt from registration under Chapter 1 (commencing with Section 31100) of Part 2 of Division 5 of Title 4 of the Corporations Code. The fact that a notice claiming an exemption under the Franchise Investment Law is filed with the Department of Corporations does not create an exemption under this paragraph.

(6) A person soliciting the sale of a seller assisted marketing plan,

as defined in Title 2.7 (commencing with Section 1812.200) of Part 4 of Division 3 of the Civil Code, who has filed with the Attorney General the documents required by Section 1812.203 of the Civil Code.

(7) A person primarily soliciting the sale of a newspaper of general circulation, as defined in Article 1 (commencing with Section 6000) of Chapter 1 of Division 7 of Title 1 of the Government Code, a magazine, or membership in a book or record club whose program operates in conformity with the requirements of Section 1584.5 of the Civil Code.

(8) A person soliciting business from prospective purchasers who have previously purchased from the business enterprise for which the person is calling.

(9) A person soliciting without the intent to complete and who does not complete the sales presentation during the telephone solicitation but completes the sales presentation at a later face-to-face meeting between the solicitor and the prospective purchaser. However, if a seller, directly following a telephone solicitation, causes an individual whose primary purpose it is to go to the prospective purchaser to collect the payment or deliver any item purchased, this exemption does not apply.

(10) Any supervised financial institution or parent, subsidiary, or subsidiary of parent thereof. As used in this paragraph, "supervised financial institution" means any commercial bank, trust company, savings and loan association, credit union, industrial loan company, personal property broker, consumer finance lender, commercial finance lender, or insurer, provided that the institution is subject to supervision by an official or agency of this state or of the United States.

(11) A person soliciting the sale of a preneed funeral arrangement regulated by Article 9 (commencing with Section 7735) of Chapter 12 of Division 3.

(12) A person licensed pursuant to Chapter 19 (commencing with Section 9600) of Division 3 when acting pursuant to that licensure.

(13) A person soliciting the sale of services provided by a cable television system licensed or franchised pursuant to Section 53066 of the Government Code or any other authority.

(14) A person or an affiliate of a person whose business is regulated by the Public Utilities Commission.

(15) A person soliciting the sale of a commodity pursuant to Part 2 (commencing with Section 58601) of Division 21 of the Food and Agricultural Code, if the solicitation neither intends to, nor actually results in, a sale which costs the purchaser in excess of one hundred dollars ($100).

(16) An issuer or subsidiary of an issuer that has a security listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., if the exchange or interdealer quotation system has been certified by rule or order of the

Commissioner of Corporations under subdivision (o) of Section 25100 of the Corporations Code. A subsidiary of an issuer that qualifies for exemption under this paragraph is not itself exempt unless not less than 60 percent of the voting power of its shares is owned by the qualifying issuer or issuers.

(17) A person soliciting exclusively the sale of telephone answering services to be provided by that person or that person's employer.

(18) A person soliciting a transaction regulated by the Commodity Futures Trading Commission if the person is registered or temporarily licensed for this activity with the Commodity Futures Trading Commission under the Commodity Exchange Act, (7 U.S.C. Sec. 1 et seq.) and the registration or license has not expired or been suspended or revoked.

(19) A person who sells coins or bullion at a price which is not more than 25 percent more than the price at which the seller is concurrently buying the same coins or bullion, if: (A) the seller has had a retail location in California from which he or she has been selling coins or bullion to the public in person for at least three years; (B) the telephonic solicitations are not the person's primary business and sales made telephonically make up less than 20 percent of the person's total retail sales; and (C) the person claiming an exemption pursuant to this subdivision complies with Section 17511.3, as applicable, and subdivision (p) of Section 17511.4.

(20) A person licensed pursuant to Chapter 14 (commencing with Section 1800) of Division 1 of the Financial Code to receive money for transmittal to foreign countries if the license has not expired or been suspended or revoked.

(f) In any civil proceeding alleging a violation of this article, the burden of proving an exemption or an exception from a definition is upon the person claiming it, and in any criminal proceeding alleging a violation of this article, the burden of producing evidence to support a defense based upon an exemption or an exception from a definition is upon the person claiming it.

(g) Compliance with this article does not satisfy nor substitute for any requirements for license, registration, or regulation mandated by other laws.

SEC. 2. Section 17511.4 of the Business and Professions Code is amended to read:

17511.4. Each filing pursuant to Section 17511.3 shall contain the following information:

(a) The name or names of the seller, including the name under which the seller is doing or intends to do business, if different from the name of the seller, and the name of any parent or affiliated organization (1) that will engage in business transactions with purchasers relating to sales solicited by the seller or (2) that accepts responsibility for statements made by, or acts of, the seller relating to sales solicited by the seller.

(b) The seller's business form and place of organization and, if the

seller is a corporation, a copy of its articles of incorporation and bylaws and amendments thereto, or, if a partnership, a copy of the partnership agreement, or if operating under a fictitious business name, the location where the fictitious name has been registered. All the same information shall be included for any parent or affiliated organization disclosed pursuant to subdivision (a).

(c) The complete street address or addresses of all locations, designating the principal location from which the telephonic seller will be conducting business. If the principal business location of the seller is not in this state, then the seller shall also designate which of its locations within this state is its main location in the state.

(d) A listing of all telephone numbers to be used by the seller and the address where each telephone using each of these telephone numbers is located.

(e) The name of, and the office held by, the seller's officers, directors, trustees, general and limited partners, sole proprietor, and owners, as the case may be, and the names of those persons who have management responsibilities in connection with the seller's business activities.

(f) The complete address of the principal residence, the date of birth, and the driver's license number and state of issuance of each of the persons whose names are disclosed pursuant to subdivision (e).

(g) The name and principal residence address of each person the telephonic seller leaves in charge at each location from which the seller does business in this state, as defined in subdivision (a) of Section 17511.3, and the business location which each of these persons is or will be in charge of.

(h) A statement, meeting the requirements of this subdivision, as to both the seller, whether a corporation, partnership, firm, association, joint venture, or any other type of business entity (and whether identified pursuant to subdivision (e) or (g) or not), and as to any person identified pursuant to subdivision (e) or (g) who:

(1) Has been convicted of a felony or misdemeanor involving an alleged violation of this article, or fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property. For purposes of this paragraph, a plea of nolo contendere is a conviction.

(2) Has had entered against him or her a final judgment or order in a civil or administrative action, including a stipulated judgment or order, if the complaint or petition in the civil or administrative action alleged acts constituting a violation of this article, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property, the use of untrue or misleading representations in an attempt to sell or dispose of real or personal property, or the use of unfair, unlawful, or deceptive business practices.

(3) Is subject to any currently effective injunction or restrictive court order relating to business activity as the result of an action brought by a federal, state, or local public agency or unit thereof, including, but not limited to, an action affecting any vocational license.

(4) Has at any time during the previous seven tax years filed in bankruptcy, been adjudged a bankrupt, been reorganized due to insolvency, or been a principal, director, officer, trustee, general or limited partner, or had management responsibilities of any other corporation, partnership, joint venture, or business entity, that has so filed or was so adjudicated or reorganized, during or within one year after the period that the person held that position.

For purposes of paragraphs (1), (2), and (3), the statement required by this subdivision shall identify the seller or person, the court or administrative agency rendering the conviction, judgment, or order, the docket number of the matter, the date of the conviction, judgment, or order, and the name of the governmental agency, if any, that brought the action resulting in the conviction, judgment, or order. For purposes of paragraph (4), the statement required by this subdivision shall include the name and location of the seller or person filing in bankruptcy, adjudged a bankrupt, or reorganized due to insolvency, and shall include the date thereof, the court which exercised jurisdiction, and the docket number of the matter.

(i) A list of the names, principal residence addresses, the date of birth, and the driver's license number and state of issuance thereof, of salespersons who solicit on behalf of the telephonic seller and the names the salespersons use while so soliciting. No salesperson shall use the same name as used by any other salesperson soliciting for the telephonic seller and no telephonic seller shall permit a salesperson to use the same name as used by any other salesperson soliciting for the telephonic seller.

(j) A description of the items the seller is offering for sale and a copy of all sales scripts the telephonic seller requires salespersons to use when soliciting prospective purchasers, or if no sales script is required to be used, a statement to that effect.

(k) A copy of all sales information and literature (including, but not limited to, scripts, outlines, instructions, and information regarding how to conduct telephonic sales, sample introductions, sample closings, product information, and contest or premium-award information) provided by the telephonic seller to salespersons or of which the seller informs salespersons, and a copy of all written materials the seller sends to any prospective or actual purchaser.

(*l*) If the telephonic seller represents or implies, or directs salespersons to represent or imply, to purchasers that the purchaser will receive certain specific items (including a certificate of any type which the purchaser must redeem to obtain the item described in the certificate) or one or more items from among designated items, whether the items are denominated as gifts, premiums, bonuses, prizes, or otherwise, the filing shall include the following:

(1) A list of the items offered.

(2) The value or worth of each item described to prospective purchasers and the basis for the valuation.

(3) The price paid by the telephonic seller to its supplier for each

of these items and the name, address, and telephone number of each item's supplier.

(4) If the purchaser is to receive fewer than all of the items described by the seller, the filing shall include the following:

(A) The manner in which the telephonic seller decides which item or items a particular prospective purchaser is to receive.

(B) The odds a single prospective purchaser has of receiving each described item.

(C) The name and address of each recipient who has, during the preceding 12 months (or if the seller has not been in business that long, during the period the telephonic seller has been in business) received the item having the greatest value and the item with the smallest odds of being received.

(5) All rules, regulations, terms, and conditions a prospective purchaser must meet in order to receive the item.

(m) If the telephonic seller is offering to sell any metal, stone, or mineral, the filing shall include the following:

(1) The name, address, and telephone number of each of the seller's suppliers and a description of each metal, stone, or mineral provided by the supplier.

(2) If possession of any metal, stone, or mineral is to be retained by the seller or will not be transferred to the purchaser until the purchaser has paid in full, the filing shall include the following:

(A) The address of each location where the metal, stone, or mineral will be kept.

(B) If not kept on premises owned by the seller or at an address or addresses set forth in compliance with subdivision (c), the name of the owner of the business at which the metal, stone, or mineral will be kept.

(C) A copy of any contract or other document which evidences the seller's right to store the metal, stone, or mineral at the address or addresses designated pursuant to subparagraph (A).

(3) If the seller is not selling the metal, stone, or mineral from its own inventory, but instead purchases the metal, stone, or mineral to fill orders taken from purchasers, the filing shall include copies of all contracts or other documents evidencing the seller's ability to call upon suppliers to fill the seller's orders.

(4) If the seller represents to purchasers that the seller has insurance or a surety bond of any type relating to a purchaser's purchase of any metal, stone, or mineral from the seller, the filing shall include a complete copy of all these insurance policies and bonds.

(5) If the seller makes any representation as to the earning or profit potential of purchases of any metal, stone, or mineral, the filing shall include data to substantiate the claims made. If the representation relates to previous sales made by the seller or a related entity, substantiating data shall be based on the experiences of at least 50 percent of the persons who have purchased the particular metal, stone, or mineral from the seller or related entity

during the preceding six months (or if the seller or related entity has not been in business that long, during the period the seller or related entity has been in business) and shall include the raw data upon which the representation is based, including, but not limited to, all of the following:

(A) The length of time the seller or related entity has been selling the particular metal, stone, or mineral being offered.

(B) The number of purchasers thereof from the seller or related entity known to the seller or related entity to have made at least the same earnings or profit as those represented.

(C) The percentage that the number disclosed pursuant to subparagraph (B) represents of the total number of purchasers from the seller or related entity of the particular metal, stone, or mineral.

(n) If the telephonic seller is offering to sell an interest in oil, gas, or mineral fields, wells, or exploration sites, the filing shall include disclosure of the following:

(1) The seller's ownership interest, if any, in each field, well, or site being offered for sale.

(2) The total number of interests to be sold in each field, well, or site being offered for sale.

(3) If, in selling an interest in any particular field, well, or site, reference is made to an investigation of these fields, wells, or sites by the seller or anyone else, the filing shall include the following:

(A) The name, business address, telephone number, and professional credentials of the person or persons who made the investigation.

(B) A copy of the report and other documents relating to the investigation prepared by the person or persons.

(4) If the seller makes any representation as to the earning or profit potential of purchases of any interest in these fields, wells, or sites, the filing shall include data to substantiate the claims made. If the representation relates to previous sales made by the seller or a related entity, the substantiating data shall be based on the experiences of at least 50 percent of the purchasers of the particular interests from the seller or the related entity during the preceding six months (or if the seller has not been in business that long, during the period the seller or related entity has been in business) and shall include the raw data upon which the representation is based, including, but not limited to, all of the following:

(A) The length of time the seller or related entity has been selling the particular interests in the fields, wells, or sites being offered.

(B) The number of purchasers of the particular interests from the seller or related entity known to the seller to have made, at least the same earnings as those represented.

(C) The percentage the number disclosed pursuant to subparagraph (B) represents of the total number of purchasers of the particular interests from the seller or related entity.

(o) The name and address of the telephonic seller's agent in this state, other than the Attorney General, authorized to receive service

of process in this state.

(p) If a person, based on paragraph (19) of subdivision (c) of Section 17511.1, claims an exemption from having to file the information required by subdivisions (a) to (o), inclusive, the person shall file, on a form provided by the Attorney General, the following information:

(1) The name or names of the person claiming the exemption, including the name under which the person is doing or intends to do business.

(2) The person's business form, and place of organization, whether corporate or otherwise; or, if operating under a fictitious business name, the location where the fictitious name has been registered.

(3) The complete street address of the person's retail locations, and telephone numbers located therein and a statement as to how long the person has been selling at retail from each location.

(4) A copy of the person's currently valid business license.

(5) A statement reflecting the dollar amount of the person's total retail sales during the 12 months preceding the filing.

(6) A statement reflecting the dollar amount of the person's sales made telephonically during the 12 months preceding the filing.

The filing shall be verified by a declaration signed under penalty of perjury by each principal of the person claiming the exemption. The declaration shall specify the date and location of signing.

If a person filing pursuant to subdivision (p) makes any representation to a prospective purchaser as to the historical movements or changes in the price or value of any coin or bullion, the person shall maintain in its records sufficient data to substantiate each representation. This data shall be retained in the person's records for a period of at least three years after the last date on which a representation is made and shall be made available for inspection upon request by any governmental agency at each of its business locations.

(q) If the telephonic seller represents or implies, or directs salespersons to represent or imply, that the telephonic seller can, or may be able to, make a loan or arrange or assist in arranging a loan or to assist in providing information which may lead to the obtaining of a loan, the filing shall include the following:

(1) The names and addresses of all persons who, in the previous 24 months, lent money to those who responded to the seller's solicitations or lent money to the telephonic seller for the seller to lend to those who responded to the seller's representations that it could make a loan or arrange or assist in arranging a loan or could assist in providing information which could lead to the obtaining of a loan.

(2) The names and addresses of all persons who, in the previous 24 months, lent money to those who responded to the solicitations of the seller's predecessor or the seller's officers, owners, or those persons having present management responsibilities or to companies

with which they were associated, that they could make a loan or arrange or assist in arranging a loan or could assist in providing information which could lead to the obtaining of a loan or lent money to the seller's predecessor or the seller's officers, owners, or those persons having present management responsibilities or to companies with which they were associated for them to lend to those who responded to these representations.

(3) The names and addresses of all persons who have informed the telephonic seller that they may be able to lend money, within the next 12 months from the date of this registration, to persons solicited by the seller or to the telephonic seller for the seller to lend to those who respond to the seller's representations that it can make a loan or arrange or assist in arranging a loan or can assist in providing information which can lead to the obtaining of a loan.

(4) Copies of all contracts between the seller and lenders or prospective lenders who may lend money: (A) to the seller to lend to individuals who, in connection with the seller's business activities, respond to the seller's representations that it can make a loan or arrange or assist in arranging a loan or can assist in providing information which can lead to the obtaining of a loan; or (B) directly to persons to whom the seller may represent that it can arrange or assist in providing information which can lead to the obtaining of a loan.

SEC. 3. Section 17511.5 of the Business and Professions Code is amended to read:

17511.5. In addition to complying with the requirements of Section 17500.3, as applicable, each telephonic seller, shall, at the time the solicitation is made and prior to consummation of any sales transaction, provide all of the following information to each prospective purchaser:

(a) If the telephonic seller represents or implies that a prospective purchaser will receive, without charge therefor, certain specific items or one item from among designated items, whether the items are denominated as gifts, premiums, bonuses, prizes, or otherwise, the seller shall provide the following:

(1) The information required to be filed by subparagraphs (A) and (B) of paragraph (4) of, and paragraph (5) of, subdivision (*l*) of Section 17511.4. In addition, each time the telephonic seller makes reference to an item or items, the telephonic seller shall state that no purchase is necessary, and that the purchase of goods will have no greater chance of receiving the more valuable item or items than the person who does not purchase. The seller shall state, in a manner enabling a consumer to copy the information, the method, including the telephonic seller's address, for obtaining without purchase the item or items or for a chance to obtain the item or items. The provisions of Section 17537.2 of the Business and Professions Code shall apply to all offers.

(2) The complete street address of the location from which the salesperson is calling the prospective purchaser and, if different, the

complete street address of the telephonic seller's principal location.

(3) The total number of individuals who have actually received from the telephonic seller, during the preceding 12 months (or if the seller has not been in business that long, during the period the telephonic seller has been in business), the item having the greatest value and the item with the smallest odds of being received.

(b) If the telephonic seller is offering to sell any metal, stone, or mineral, the seller shall provide the following information:

(1) The complete street address of the location from which the salesperson is calling the prospective purchaser and, if different, the complete street address of the telephonic seller's principal location.

(2) When required to be filed pursuant to Section 17511.4, the information specified in subparagraphs (A) and (B) of paragraph (2) of, and paragraph (5) of, subdivision (m) of Section 17511.4.

(c) If the telephonic seller is offering to sell an interest in oil, gas, or mineral fields, wells, or exploration sites the seller shall provide the following information:

(1) The complete street address of the location from which the salesperson is calling the prospective purchaser and, if different, the complete street address of the telephonic seller's principal location.

(2) The information required to be filed by paragraphs (1), (2), and (4) of, and subparagraph (A) of paragraph (3) of, subdivision (n) of Section 17511.4.

(d) If the telephonic seller represents that office equipment or supplies being offered are offered at prices which are below those usually charged for these items, the seller shall provide the following information:

(1) The complete street address of the location from which the salesperson is calling the prospective purchaser and, if different, the complete street address of the telephonic seller's principal location.

(2) The name of the manufacturer of each of the items the telephonic seller has represented for sale and in which the prospective purchaser expresses interest.

SEC. 4. Section 17511.12 of the Business and Professions Code is amended to read:

17511.12. (a) Every telephonic seller shall maintain a bond issued by a surety company admitted to do business in this state. The bond shall be in the amount of one hundred thousand dollars ($100,000) in favor of the State of California for the benefit of any person suffering pecuniary loss in a transaction commenced during the period of bond coverage with a telephonic seller who violated this chapter. The bond shall include coverage for the payment of the portion of any judgment, including a judgment entered pursuant to Section 17203 or 17535, that provides for restitution to any person suffering pecuniary loss, notwithstanding whether the surety is joined or served in the action or proceeding. A copy of the bond shall be filed with the Consumer Law Section of the Department of Justice. This bond shall not be required of any cable television operator franchised or licensed pursuant to Section 53066 of the

Government Code.

(b) (1) At least 10 days prior to the inception of any promotion offering a premium with an actual market value or advertised value of five hundred dollars ($500) or more, the telephonic seller shall notify the Attorney General in writing of the details of the promotion, describing the premium, and its current market value, the value at which it is advertised or held out to the customer, and the date the premium shall be awarded. All premiums offered shall be awarded. The telephonic seller shall maintain an additional bond for the total current market value or advertised value, whichever is greater, of the premiums held out or advertised to be available to a purchaser or recipient. A copy of the bond shall be filed with the Consumer Law Section of the Department of Justice. The bond shall be for the benefit of any person entitled to the premium who did not receive it within 30 days of the date disclosed to the Attorney General as the date on which the premium would be awarded. The amount paid to a person under a bond required by this subdivision shall not exceed the greater of the current market value or advertised or represented value of the premium offered to that person. The bond shall include coverage for the payment of any judgment, including a judgment entered pursuant to Section 17203 or 17535, that provides for payment of the value of premiums that were not timely awarded, notwithstanding whether the surety is joined or served in the action or proceeding. The bond shall also provide for payment upon motion by the Attorney General pursuant to subdivision (d) in the event the seller fails to provide the Attorney General with proof of the award of premiums as required in paragraph (2).

(2) Within 45 days after the date disclosed to the Attorney General for the award of premiums, the seller shall provide to the Attorney General proof that all premiums were awarded. The proof shall include the names, addresses, and telephone numbers of the recipients of the premiums and the date or dates on which the premiums were awarded. The bond shall be maintained until the seller files proof with the Attorney General as required by this subdivision or until payment of the amount of the bond is ordered pursuant to subdivision (d).

(c) (1) In addition to any other means for the enforcement of the surety's liability on a bond required by this section, the surety's liability on the bond may be enforced by motion, as provided in this subdivision, after a judgment has been obtained against the seller.

(2) The Attorney General, district attorney, city attorney, or any other person who obtained a judgment for restitution against the seller, as described in subdivision (a), may file a motion in the court which entered the judgment to enforce liability on the bond without first attempting to enforce the judgment against any party liable under the judgment.

(3) The notice of motion, the motion, and a copy for the judgment shall be served on the surety as provided in Chapter 5 (commencing

with Section 1010) of Title 14 of Part 2 of the Code of Civil Procedure. The notice shall set forth the amount of the claim and a brief statement indicating that the claim is covered by the bond. Service shall also be made on the Consumer Law Section of the Department of Justice.

(4) The court shall grant the motion unless (A) the surety establishes that the claim is not covered by the bond or (B) the court sustains an objection made by the Attorney General that the grant of the motion might impair the rights of actual or potential claimants or is not in the public interest.

(d) (1) In addition to any other means for the enforcement of the surety's liability on a bond required by subdivision (b), the surety's liability on the bond may be enforced by motion as provided in this subdivision.

(2) The Attorney General, district attorney, city attorney, or any person who claims the premium, may file a motion in a court of competent jurisdiction in the county or judicial district from which the seller made an offer of a premium, in which the seller maintains any office or place of business, or in which an offeree of the premium resides. The motion shall set forth the nature of the seller's offer, the greater of the current market value or advertised or represented value of the premium, the date by which the premium should have been awarded, and the fact that the premium was not awarded as represented.

(3) The notice of motion and motion shall be served on the surety as provided in Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of the Code of Civil Procedure.

(4) The court shall grant the motion unless the surety establishes that the claim is untrue or is not covered by the bond.

(5) The Attorney General may file a motion in a court of competent jurisdiction in the county or judicial district from which the seller made an offer of a premium, in which an offeree of a premium resides for the payment of the entire bond if the seller fails to file proof with the Attorney General of the award of all premiums as required by paragraph (2) of subdivision (b). The notice of motion and motion shall be served a provided in Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of the Code of Civil Procedure. The motion shall be granted if the Attorney General establishes that the seller failed to file proof of making the timely award of all premiums. The recovery on the bond shall be distributed pro rata to the promised recipients of the premiums to the extent their identity is actually known to the Attorney General at the time payment is made by the surety. The balance of the recovery shall be paid to any judicially established consumer protection trust fund designated by the Attorney General or as directed by the court under the cy pres doctrine.

(e) No stay of a motion filed pursuant to this section shall be granted pending the determination of conflicting claims among beneficiaries. An order enforcing liability on a bond may be enforced

in the same manner as a money judgment pursuant to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure. Nothing herein affects the rights of the surety against the principal.

(f) The surety shall not be liable on the bond for payment of a judgment against a seller for any violation of this chapter unless the action or proceeding is filed within two years after the cancellation or termination of the bond, the termination of the seller's registration, or the seller's cessation of business, whichever is later.

(g) The surety shall not be liable on a motion made pursuant to subdivision (d) unless the motion is filed within two years of the date on which the seller represented the premium was to have been awarded.

(h) For the purpose of this section, "judgment" includes a final order in a proceeding for the termination of telephone service pursuant to Public Utilities Commission Tariff Rule 31.

(i) Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure shall apply to the enforcement of a bond given pursuant to this section except to the extent of any inconsistency with this section in which event this section shall apply.

CHAPTER 804

An act to amend Sections 207, 208, 209, 210, 1054.6, 1054.8, and 4332 of, and to add Sections 211 and 4334 to, the Fish and Game Code, relating to fish and game, and making an appropriation therefor.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 207 of the Fish and Game Code is amended to read:

207. (a) In addition to, or in conjunction with, other regular or special meetings, the commission shall hold meetings in the first 10 days of the months of February, March, and April in even-numbered years for the purpose of considering and adopting revisions to regulations relating to mammals. The commission shall alternate the location of the February meeting between Sacramento and Los Angeles or Long Beach. The commission shall alternate the location of the March meeting between San Diego and Redding or Red Bluff. The commission shall alternate the location of the April meeting between Sacramento and Los Angeles or Long Beach.

(b) At the February meeting, the commission shall receive recommendations for regulations from its own members and staff, the department, other public agencies, and the public.

(c) At the March meeting, the commission shall devote time for

open public discussion of proposed regulations presented at the February meeting. The department shall participate in this discussion by reviewing and presenting its findings regarding each regulation proposed by the public and by responding to objections raised pertaining to its proposed regulations. After considering the public discussion, the commission shall announce, prior to adjournment of the March meeting, the regulations it intends to add, amend, or repeal relating to mammals.

(d) At, or within 20 days after, the April meeting, the commission may choose to hear additional public discussion regarding the regulations it intends to adopt. At, or within 20 days after, the meeting, the commission shall add, amend, or repeal regulations relating to any recommendations received at the February meeting regarding mammals that it deems necessary to preserve, properly utilize, and maintain each species or subspecies.

(e) Within 45 days after adoption, the department shall publish and distribute regulations adopted pursuant to this section.

SEC. 2. Section 208 of the Fish and Game Code is amended to read:

208. (a) In addition to, or in conjunction with, other regular or special meetings, the commission shall hold meetings in June and August in even-numbered years for the purpose of considering and adopting revisions to regulations relating to resident game birds.

(b) At the June meeting, the commission shall receive recommendations for regulations from its own members and staff, the department, other public agencies, and the public.

(c) At, or within 20 days after, the August meeting, the commission shall devote time for open public discussion of proposed regulations presented at the June meeting. The department shall participate in this discussion by reviewing and presenting its findings regarding each regulation proposed by the public and by responding to objections raised pertaining to its proposed regulations. After considering the public discussion, the commission, at, or within 20 days after, the August meeting, shall add, amend, or repeal regulations relating to any recommendation received at the June meeting regarding resident game birds that it deems necessary to preserve, properly utilize, and maintain each species or subspecies.

(d) Within 45 days after adoption, the department shall publish and distribute regulations adopted pursuant to this section.

SEC. 3. Section 209 of the Fish and Game Code is amended to read:

209. (a) The commission shall determine and give notice of the date and location of the first meeting required to be held during a year by Sections 206, 207, and 208 at least 60 days prior to that first meeting. The commission shall give notice of any change in the date or location of that first meeting at least 30 days prior to the meeting date.

(b) The commission shall cause to be published the notice required in subdivision (a) in each newspaper of general circulation,

as defined in Section 6000 of the Government Code, with an average daily circulation of 50,000 or more.

(c) The commission shall set the dates of its meetings in order to provide maximum time for public review of proposed regulations consistent with the proper management of the species or subspecies affected. All meetings required by Sections 206, 207, and 208 shall be open to the public and, to the extent feasible, held in state facilities.

SEC. 4. Section 210 of the Fish and Game Code is amended to read:

210. (a) The commission shall provide copies of the regulations added, amended, or repealed pursuant to subdivision (e) of Section 206, subdivision (e) of Section 207, and subdivision (d) of Section 208 to each county clerk, each district attorney, and each judge of a municipal court or justice court in the state.

(b) The commission and the department may do anything that is deemed necessary and proper to publicize and distribute regulations so that persons likely to be affected will be informed of them. The failure of the commission to provide any notice of its regulations, other than by filing them in accordance with Section 215, shall not impair the validity of the regulations.

(c) The department or the license agent may give a copy of the current applicable published regulations to each person issued a license at the time the license is issued.

(d) Notwithstanding any other provision of law, the commission and the department may contract with private entities to print regulations and other regulatory and public information. Printing contracts authorized by this subdivision and for which no state funds are expended are not subject to Chapter 2 (commencing with Section (10290) of Part 2 of Division 2 of the Public Contract Code, except for Article 2 (commencing with Section 10295) of Chapter 2.

SEC. 5. Section 211 is added to the Fish and Game Code, to read:

211. (a) Material printed pursuant to subdivision (d) of Section 210 that contains advertisements shall meet all specifications prescribed by the department. The printed material shall not contain advertisements for tobacco products, alcohol, firearms and devices prohibited pursuant to Sections 12020, 12220, and 12280 of the Penal Code, or firearms not authorized by the commission as a legal method of sport-hunting, political statements, solicitations for membership in organizations, or any other statement, solicitation, or product advertisement that is in conflict with the purposes for which the material is produced, as determined by the commission. The printing contract shall include criteria to ensure that the public information provided in the publication is easy to reference, read, and understand.

(b) Neither the department nor the commission shall contract with private entities to print the materials described in subdivision (d) of Section 210 if the letting of those contracts will result in the elimination of civil service positions.

SEC. 5.5. Section 1054.6 of the Fish and Game Code is amended

to read:

1054.6. If more than one hunting license tag authorized pursuant to subdivision (c) of Section 331, subdivision (d) of Section 332, Section 4334, or subdivision (d) of Section 4902 is sold at auction or by other methods by a nonprofit organization, or by a chapter of a nonprofit organization, the selection of one of the sellers of the tags authorized by any of those provisions by the department shall be determined by drawing from the qualified applicants as determined by the department pursuant to policies and procedures established pursuant to Section 1054.8. The drawing shall be held in a public place as determined by the department.

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. 6. Section 1054.8 of the Fish and Game Code is amended to read:

1054.8. (a) The department shall establish, and keep current, written policies and procedures relating to the application process and the award of hunting license tags for fundraising purposes, as authorized pursuant to subdivision (c) of Section 331, subdivision (d) of Section 332, Section 4334, or subdivision (d) of Section 4902.

(b) The policies and procedures shall include, but need not be limited to, all of the following:

(1) The application process and criteria.

(2) A standard application format.

(3) An appeal process.

(4) A requirement that all applications shall remain sealed until on or after a filing date specified by the department.

(c) The department shall make the policies and procedures available to interested parties 30 days prior to their implementation and shall receive and consider any related recommendations.

(d) The department shall not require a minimum tag sale price, except as otherwise provided in this code.

(e) It is the intent of the Legislature that the department develop policies and procedures that seek to maximize both the revenues received by the department and participation by qualified nonprofit organizations making application to sell the tags as sellers of the tags.

SEC. 7. Section 4332 of the Fish and Game Code is amended to read:

4332. (a) Any resident of this state, 12 years of age or over, who possesses a valid hunting license, may procure one license tag for the taking of one deer by one person during the current license year, upon payment of the base fee of ten dollars ($10) for the license year beginning July 1, 1986, and the base fee as adjusted under Section 713 for subsequent license years.

(b) Any nonresident of this state, 12 years of age or over, who possesses a valid hunting license, may procure one license tag for the taking of one deer by one person during the current license year, upon payment of the base fee of one hundred dollars ($100) for the

license year beginning July 1, 1986, and the base fee as adjusted under Section 713 for subsequent license years.

(c) If provided in regulations adopted by the commission under Section 200, any resident of this state, 12 years of age or over, who possesses a deer tag may procure one additional deer tag for the taking of one additional deer during the current license season, upon payment of the base fee of twelve dollars and fifty cents ($12.50) for the license years beginning July 1, 1986, and the base fee as adjusted under Section 713 for subsequent license years.

(d) If provided in regulations adopted by the commission under Section 200, any nonresident of this state, 12 years of age or over, who possesses a deer tag may procure one additional deer tag for the taking of one additional deer during the current license season, upon payment of the base fee of one hundred dollars ($100) for the license year beginning July 1, 1986, and the base fee as adjusted under Section 713 for subsequent license years.

(e) The revenue received pursuant to this section shall be deposited in the Fish and Game Preservation Fund, and, notwithstanding Section 13340 of the Government Code, 54 percent of the amount deposited in that fund pursuant to this section each year is hereby continuously appropriated to the department for expenditure for the purpose of implementing the deer herd management plans prepared pursuant to Chapter 5 (commencing with Section 450) of Division 1.

The amount appropriated for implementation of deer herd management plans by this subdivision is intended to be in addition to, and not a replacement for, the funds budgeted in that year or the previous year to the department from the Fish and Game Preservation Fund for deer management.

SEC. 8. Section 4334 is added to the Fish and Game Code, to read:

4334. The commission shall annually direct the department to authorize, pursuant to Sections 1054.6 and 1054.8, the sale of not more than 10 deer license tags solely for the purpose of raising funds for programs and projects to benefit deer. These tags may be sold to residents or nonresidents of the State of California at auction or by any other method and are not subject to the fees prescribed by Section 4332. Notwithstanding Section 13340 of the Government Code, all funds derived from the sale of these tags is hereby continuously appropriated to the department to be used for the Deer Herd Management Plan Implementation Program. These funds shall augment, not supplant, any other funds appropriated to the department for the preservation, restoration, utilization, and management of deer. All revenues derived from the sale of these tags shall be remitted to the department by the seller.

CHAPTER 805

An act to add Chapter 17.5 (commencing with Section 77401) to Division 22 of the Food and Agricultural Code, relating to agriculture, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Chapter 17.5 (commencing with Section 77401) is added to Division 22 of the Food and Agricultural Code, to read:

CHAPTER 17.5. CALIFORNIA STRAWBERRY COMMISSION

Article 1. Declaration and General Provisions

77401. The production and marketing of strawberries constitutes an important industry of this state that provides substantial and necessary revenues for the state and employment for its citizens.

77402. The establishment of the commission is necessary for the efficient creation and management of a research program to develop improved varieties of strawberries, an integrated approach to control pests and diseases common to strawberries, and more efficient cultural practices. The commission is also necessary for the efficient development and management of a national and international advertising and promotion program which, combined with the research program, will enhance the competitiveness of the California strawberry industry within the national and international marketplace.

77403. The maintenance of the strawberry industry of California is necessary to assure the public of a continuous supply of this vital product and the maintenance of needed levels of income for those engaged in the strawberry industry of this state.

77404. The production and marketing of strawberries produced in this state is hereby declared to be affected with the 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.

77405. 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.

77406. No action taken by the commission, or by any individual in accordance with this chapter or with rules and regulations adopted under the chapter, shall be deemed 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 rule of statutory or common law against monopolies or combinations in restraint of trade.

77407. It is hereby declared as a matter of legislative determination that members of the commission are intended to represent and further the interest of the particular 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 industry concerned is tantamount to, and constitutes the public generally within the meaning of Section 87103 of the Government Code.

Article 2. Definitions

77410. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

77411. "Strawberries" mean all strawberries produced for commercial purposes and prepared for market within the state. For the purpose of shipper and processor assessments only, "strawberries" includes all strawberries marketed within the state regardless of where the strawberries are produced.

77412. "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.

77413. "Commission" means the California Strawberry Commission.

77414. "Crate" means a shipping container holding more than six pint baskets, or the equivalent volume thereof, and no more than 12 pint baskets, or the equivalent volume thereof, used in preparing for market or marketing strawberries for fresh consumption. A shipping container holding six pint baskets, or the equivalent volume thereof, shall be considered to be a half-crate. Assessments on a half-crate shall be one-half of the rate for a crate of strawberries. A shipping container holding more than 12 pint baskets, or the equivalent volume thereof, shall be assessed at a rate determined by the commission.

77415. "Director" means the Director of Food and Agriculture.

77416. "Districts" consist of the following:

(a) District 1 consists of San Diego, Imperial, and Riverside Counties.

(b) District 2 consists of Los Angeles, Orange, and San Bernardino Counties.

(c) District 3 consists of Santa Barbara and San Luis Obispo Counties.

(d) District 4 consists of Ventura County.

(e) District 5 consists of Madera, Fresno, Kings, Tulare, Kern, Inyo, Merced, Stanislaus, San Joaquin, and Sacramento Counties and

all other counties within the State of California not included in Districts 1 to 4, inclusive, and Districts 6 to 8, inclusive.

(f) District 6 consists of Monterey County.

(g) District 7 consists of Santa Cruz and San Mateo Counties and the City and County of San Francisco.

(h) District 8 consists of Alameda, Santa Clara, and San Benito Counties.

The boundaries of any district may be changed by a two-thirds vote of the commission, which is concurred in by the director, to ensure proper representation. The boundaries need not coincide with county lines.

77417. "Ex officio member" are nonvoting members of the commission.

77417.5. "Market" or "marketing" means to sell or otherwise distribute strawberries into commercial channels or trade resulting in the sale of strawberries.

77418. "Marketing research" means any research relating to the sale of strawberries.

77419. "Marketing season" or "fiscal year" are synonymous terms and mean the period beginning February 1 of any year and extending through the last day of January of the following year.

77420. "Process" and "processing" are synonymous terms and mean the operations of receiving, cleaning, grading, canning, freezing, preserving, or otherwise preparing strawberries for marketing in any form other than for fresh consumption.

77421. "Processor" means any person who performs any of the functions of processing strawberries. When a processor is a corporation, all of the directors and officers of the corporation in their capacity as individuals shall be included, and any liability for failure to collect or make payment of assessments for which a corporate processor may be subject pursuant to this chapter shall include identical liability upon each individual director or officer of the corporation. It does not, however, include a retailer, except a retailer who purchases or acquires from, or processes on behalf of, any producer, strawberries that were not previously subject to assessment by the commission.

77422. "Producer" and "grower" are synonymous terms and mean any person who produces or causes to be produced strawberries for market and who shall, upon request of the commission, provide proof of commodity sale.

77423. "Production research" means any research relating to the production, harvest, and post harvest handling of strawberries.

77424. "Ship" and "shipping" are synonymous terms and mean the operations of receiving, grading, cleaning, transporting, distributing, or otherwise preparing for market or marketing strawberries for fresh consumption.

77425. "Shipper" means any person who performs any of the functions of shipping strawberries. When the shipper is a corporation, all of the directors and officers of the corporation in

their capacity as individuals shall be included, and any liability for failure to collect or make payment of assessments for which a corporate shipper may be subject pursuant to this chapter shall include identical liability upon each individual director or officer of the corporation. It does not, however, include a retailer, except a retailer who purchases or acquires from, or ships on behalf of, any producer, strawberries that were not previously subject to assessment by the commission.

Article 3. The California Strawberry Commission

77430. (a) There is in the state government the California Strawberry Commission. Except as provided in subdivision (d), the commission shall be composed of 13 producers, five shippers, five processors, and one public member.

(b) Producers within the respective districts shall elect one member from District 1, two members from District 2, two members from District 3, two members from District 4, one member from District 5, two members from District 6, two members from District 7, and one member from District 8. Shippers and processors shall be elected by and from shippers and processors, respectively, on a statewide basis without reference to districts. The public member shall be appointed to the commission by the director from nominees recommended by the commission.

(c) The director and other appropriate persons as determined by the commission shall be ex officio members of the commission.

(d) The commission may modify the number of producers in each district, and shippers and processors who serve on the commission, and may elect producers, shippers, and processors to serve as at large members of the commission. The total number of producer, shipper, and processor members shall not exceed 28.

77431. The director may require the commission to correct or cease any existing activity or function that is determined by the director not to be in the public interest or in violation of this chapter. If the commission refuses or fails to cease those activities or functions or to make corrections as required by the director, the director may, upon written notice, suspend all or a portion of the activities or functions of the commission until such time as the cessation or correction of activities or functions as required by the director has been accomplished by the commission.

Actions of the commission in violation of the written notice shall be 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 that are the subject of the written notice. Upon service of the written notice, the director shall notify the commission in writing of the specific acts that he or she determines are not in the public interest or are in violation of this chapter, and his or her reasons for requiring a cessation or correction of specific existing or

proposed activities or functions, and may make recommendations that will make those activities or functions acceptable to the director.

77432. 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, in a court of competent jurisdiction, which may issue a temporary restraining order, permanent injunction, or other applicable relief.

77433. The commission shall reimburse the director for all expenditures incurred by the director in carrying out his or her duties and responsibilities under 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.

77434. Except for the ex officio members of the commission, an alternate member for each member shall be elected in the same manner 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 on the commission, and shall have and be able to exercise all rights, privileges, and powers of the member when serving on the commission. In the event of death, removal, resignation, or the disqualification of a member, the alternate shall act as a member on the commission until a qualified successor is elected.

77435. Any vacancy on the commission including, but not limited to, the failure of any person elected to the commission as a member or alternate member to continue in his or her position due to a change in status making him or her ineligible to serve, or due to death, removal, or resignation, shall be filled by the appointment of another person, for the unexpired portion of the term, by a majority vote of the commission. However, the appointee shall fulfill all the qualifications set forth in this article as required for the office he or she is to occupy. The 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 he or she determines that the person is not qualified.

77436. A producer member or his or her alternate on the commission shall be an individual, partner, or employee of a producer who has a financial interest in producing, or causing to be produced, strawberries for market. The producer member or his or her alternate shall be so qualified during the entire term of office.

77437. A shipper member or his or her alternate on the commission shall be an individual, partner, or employee of a shipper who has a financial interest in shipping, or causing to be shipped, strawberries for market. The shipper member or his or her alternate shall be so qualified during the entire term of office.

77438. A processor member or his or her alternate on the commission shall be an individual, partner, or employee of a processor who has a financial interest in processing, or causing to be

processed, strawberries for market. The processor member or his or her alternate shall be so qualified during the entire term of office.

77439. The public member or his or her alternate on the commission shall have all the powers, rights, and privileges of any other member on the commission. The public member and his or her alternate shall not have any financial interest in the strawberry industry.

77440. The term of office of all members of the commission and alternates, except any ex officio member, shall be two years from the date of their election and until their successors are elected.

77441. The commission shall be and is hereby declared and created a corporate body. It may sue and be sued, enter into contracts, adopt a corporate seal, and has all of the powers of a corporation. Copies of its proceedings, records, and acts, when authenticated, shall be admissible in evidence in all courts of the state, and shall be prima facie evidence of the truth of all statements therein.

77442. A quorum of the commission shall be any seven voting producer members, three voting processor members, and three voting shipper members of the commission. Except as provided in Sections 77481.5 and 77503, the vote of a majority of members present at a meeting at which there is a quorum shall constitute an act of the commission.

77443. 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. However, the director is not entitled to attend an executive session of the commission called for the purpose of discussing potential or actual litigation against the department.

77444. No member of the commission or of any committee established by the commission, which may include nonmembers of the commission, shall receive a salary. Except ex officio government members, the members may receive an amount not to exceed one hundred dollars ($100) per day, as established by the commission, 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, together with the necessary traveling expenses and meal allowances, as approved by the commission.

77445. If the director is required to concur in a decision of the commission, he or she shall indicate his or her response to the commission within 15 working days from notification of the decision. The response may be a request that additional information be provided.

77446. All moneys received by any person from assessments levied under the authority of this chapter or otherwise received by the commission shall be deposited in banks designated by the commission and shall be disbursed by order of the commission through an agent or agents designated for that purpose. Any authorized agent or agents shall be bonded by a fidelity bond,

executed by a surety company authorized to transact business in the state, in favor of the commission, in the amount of not less that twenty-five thousand dollars ($25,000).

77447. The state shall not be 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 shall be limited to the funds collected by the commission. No member of the commission, alternate member, or any employee or agent thereof, shall be personally liable on the contracts of the commission and no member, alternate member, or employee of the commission shall be responsible individually in any way to any producer, processor, shipper or any other person for error in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, or employee, except for his or her own individual acts of dishonesty or crime. No member or alternate member shall be held responsible individually for any act or omission of any member or alternate member of the commission. The liability of the members and alternate members shall be several and not joint, and no member or alternate member shall be liable for the default of any other member or alternate member.

Article 4. Powers and Duties of the Commission

77451. The powers and duties of the commission shall include, but are not limited to, all of the following:

(a) Adopt and from time to time alter, rescind, modify, and amend bylaws, rules, regulations, and orders for carrying out this chapter, including rules for appeals from any bylaw, rule, regulation, or order of the commission. These actions shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Administer and enforce this chapter and do and perform all acts and exercise all powers incidental to, or in connection with, or determined reasonably necessary for, proper or advisable effectuation of the purposes of this chapter.

(c) Appoint its own officers, including a chairperson, one or more vice chairpersons, and any other officers as it determines necessary. The officers shall have the powers and duties delegated to them by the commission.

(d) 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 committee of the state to perform the functions prescribed by this subdivision under control of the commission. If the person engages in any conduct that the director determines is not in the public interest or 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.

(e) Fix the compensation for all employees of the commission.

(f) Appoint committees composed of both members and nonmembers of the commission to advise the commission in carrying out this chapter.

(g) Establish offices and incur expenses, invest funds, enter into contracts and agreements, and create liabilities and borrow funds in advance of receipt of assessments as determined necessary by the commission for the proper administration and enforcement of this chapter and the performance of its duties.

(h) Keep accurate books, records, and accounts of all of its dealings, which books, records, and accounts shall be subject to an annual audit by an auditing firm selected by the commission with the concurrence of the director. The audit shall be made a part of an annual report to all producers, processors, and shippers of strawberries, and copies of the audit shall be submitted to the Legislature and the department. In addition, the director may, as he or she determines necessary, conduct or cause to be conducted, a fiscal and compliance audit of the commission.

(i) Promote the sale of strawberries by advertising and any 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 strawberries, and to educate and instruct the public with respect to the uses, healthful properties, and nutritional value of strawberries.

(j) Educate and instruct the wholesale and retail trade with respect to proper methods of handling and selling strawberries, make market surveys and analyses, and present facts to, and negotiate with, state, federal, and foreign agencies on matters that affect the marketing of strawberries.

(k) Make, in the name of the commission, contracts to render service in formulating and conducting plans and programs, and any other contracts or agreements the commission determines necessary for the promotion of the sale of strawberries.

(*l*) Conduct, and contract with others to conduct, scientific research, including the study, analysis, dissemination, and accumulation of information obtained from research or elsewhere, respecting cultural and production practices, and marketing and distribution of strawberries. In connection with the research, the commission shall have the power to accept contributions of, or to match, private, state, or federal funds that may be available for these purposes, and to employ or make contributions of funds to other persons or state or federal agencies conducting the research.

(m) Collect information and publish and distribute, without charge, to producers, processors, and shippers a bulletin or other communication for dissemination of information, including, but not limited to, crop statistics relating to the strawberry industry.

(n) Establish an assessment rate to defray operating costs of the commission.

(o) Establish an annual budget according to accepted accounting practices. The budget shall be concurred in by the director prior to disbursement of funds, except for disbursements made pursuant to subdivision (e).

(p) Submit to the director for his or her concurrence, an annual statement of contemplated activities authorized under this chapter, including advertising, promotion, marketing research, and production research.

(q) 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

77461. Within 90 days after the effective date of this chapter, the director shall establish a list of producers, processors, and shippers eligible to vote on the implementation of this chapter. In establishing the list, the director shall require that processors and shippers of strawberries in California submit the names, mailing addresses, and the volume of strawberries received during the preceding marketing season from each producer of strawberries in California. The request for the information shall be in writing. The information shall be filed within 30 days following receipt of the written request for information.

Any producer, processor, or shipper of strawberries, whose name does not appear upon the director's 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, processor, or shipper. Failure to be on the list does not exempt the producer, processor, or shipper from paying assessments under this chapter.

77462. This chapter, except as necessary to conduct an implementation referendum vote, shall not become operative until the director finds in a referendum conducted by the director that at least 40 percent of the total number of producers, processors, and shippers from the list established by the director pursuant to this article participate, and that either of the following occurs:

(a) Sixty-five percent or more of the producers, processors, and shippers who voted in the referendum voted in favor of this chapter, and the producers, processors, and shippers so voting each marketed a majority of the total quantity of strawberries in the preceding season by all producers, processors, and shippers who voted in the referendum.

(b) A majority of each of the producers, processors, and shippers who voted in the referendum voted in favor of this chapter, and the producers, processors, and shippers so voting marketed 65 percent or more of the total quantity of strawberries in the preceding season by all producers, processors, or shippers who voted in the referendum.

77463. The director shall establish a period in which to conduct the referendum which shall not be less than 10 days or more than 60 days in duration and may prescribe additional procedures necessary to conduct the referendum. If the initial period established is less than 60 days, the director may extend the period. However, the total referendum period may not exceed 60 days.

77464. Nonreceipt of a ballot shall not invalidate a referendum.

77464.5. In finding whether the commission is approved pursuant to this article, the vote of any nonprofit agricultural cooperative marketing association that is authorized by its members to so vote, shall be considered as being the approval or rejection by the individual members of, or the individual stockholders in, the nonprofit agricultural cooperative marketing association.

77465. If the director finds that a favorable vote has been given as provided in Section 77462, he or she shall so certify and give notice of the vote to all producers, processors, and shippers whose names and addresses are on file with the director.

77466. If the director finds that a favorable vote has not been given as provided in this article, he or she shall so 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.

77467. Upon certification of the commission, the members and alternates of anybody operating pursuant to an existing state marketing order affecting the same subject matter of this chapter shall comprise the initial membership of the commission. Thereafter, persons to be elected to the commission shall be selected pursuant to nomination and election procedures established by the commission with the concurrence of the director.

77468. Prior to the referendum vote conducted by the director pursuant to this article, the proponents of the commission shall deposit with the director an amount of funds determined necessary by the director to defray the expenses of preparing the necessary lists and information and conducting the vote. Any funds not used for this purpose shall be returned to the proponents of the commission who deposited the funds with the director. Upon establishment of the commission, the commission may reimburse the proponents of the commission for any funds deposited with the director and for any legal expenses and costs incurred in establishing the commission.

Article 6. Assessments and Records

77481. The commission shall, not later than February 1 of each year, establish the assessment for the marketing season that begins February 1 and continues through January 31 of the following year. The assessment shall not exceed the following amounts:

(a) Two and one-half cents ($0.025) per crate, or the equivalent, for strawberries delivered to shippers by producers.

(b) Two and one-half cents ($0.025) per crate, or the equivalent,

for strawberries received by shippers from producers.

(c) Two and one-half cents ($0.025) per 14 pounds for strawberries delivered to processors for processing by producers.

(d) Two and one-half cents ($0.025) per 14 pounds for strawberries received by processors for processing from producers.

An assessment greater than the amounts in this section may not be charged unless it is approved in accordance with the voting requirements of Section 77462.

77481.5. An assessment established by the commission shall require a favorable vote of not less than eight producer members, three processor members, and three shipper members of the commission.

77482. This chapter does not apply to strawberries produced only for a producer's home use or to strawberries that are used only for ornamental purposes.

77483. Every shipper and processor shall keep a complete and accurate record of all strawberries shipped or processed by him or her with the name of the producer whose strawberries were shipped or processed. The records shall contain information required by the commission. The records shall be preserved by the shipper or processor 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.

77484. All proprietary information obtained by the commission or the director from any source, including the names and addresses of producers, shall be confidential and shall not be disclosed except when required by court order in a judicial proceeding. Information on volume shipments, crop value, and any other related information that is required for reports to governmental agencies, financial reports to the commission or aggregate sales and inventory information, and any other information that gives only totals, but excludes individual information, may be disclosed by the commission.

77485. Producer assessments shall be upon the producer. The first shipper or processor of strawberries being assessed 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.

77486. Every shipper or processor shall be personally liable for the payment of the collected assessments from producers, and failure to collect the assessment from any producer shall not exempt the processor or shipper from liability.

77487. Any assessment that is levied as provided in this chapter is a personal debt of every producer, processor, or shipper so assessed. Failure of a shipper or processor to make payment of the collected producer assessment to the commission shall not relieve the producer of this obligation.

77488. (a) Any producer, shipper, or processor who fails to file a return or pay any 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 past due and, in addition, interest on the unpaid balance at the rate of 1.5 percent per month.

(b) In addition to any other penalty imposed, the commission may require any person who fails to pay any assessment or related charge pursuant to this article to furnish and maintain a surety bond in a form and amount and for a period of time specified by the commission as assurance that all payments to the commission will be made when due.

Article 7. Actions and Penalties

77491. It is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000) or by both fine and imprisonment, for any person to do any of the following:

(a) Willfully to render or furnish a false report, statement, or record required by the commission, or in any way to affect the shipment and marketing of strawberries in order to avoid payment of assessments on the product's highest value.

(b) Fail to render or furnish a report, statement, or record required by the commission.

(c) When engaged in the shipping or processing of strawberries or in the wholesale or retail trade of strawberries, to fail or refuse to furnish to the commission or its duly authorized agents, upon request, information concerning the name and address of the persons from whom he or she has received strawberries and the quantity so received.

(d) Secrete, destroy, or alter records required to be kept by this chapter.

77492. The commission shall establish procedures for the purpose of according 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.

77493. 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, relating to this chapter and the rules and regulations adopted under 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 other rule or 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. A writ of attachment shall be issued pursuant to

Chapter 5 (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 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 of inadequate remedy at law specified by Section 526 or 527 is not required. 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 regarding strawberries until there is full compliance with, and satisfaction of, the judgment. Upon a favorable judgment for the commission, the court may order that the commission be reimbursed for reasonable attorney's fees and other actual related costs. Venue for these actions is 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.

77494. Any action by the commission for any penalty or other remedy that is prescribed under this chapter shall be commenced within two years from the date of discovery of the alleged violation. Any action against the commission by any person shall be commenced within two years from the date of the alleged violation.

77495. The commission is not required to allege or prove that an adequate remedy at law does not exist in any action brought under this chapter.

77496. This chapter shall be liberally construed. If any section, clause, or part of this chapter is for any reason held unconstitutional or invalid as applied to any person or as applied under certain circumstances, that decision shall not affect the remaining portions of this chapter or the application of this chapter to any other persons or under any other circumstance.

77497. The termination of this chapter shall not affect or waive any right, duty, obligation, or liability that has arisen or that 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

77501. Every five years, commencing with the 1999–2000 marketing season, the director shall hold a hearing to determine whether the operation of this chapter should be continued. If the director finds after the hearing that a substantial question exists among the producers, processors, and shippers assessed under this chapter regarding whether the operation of this chapter should be continued, the director shall submit the chapter to a reapproval referendum. If a reapproval referendum is required, the operation of this chapter shall be continued in effect if the director finds that a majority of the eligible producers, processors, and shippers voting in the referendum, voted in favor of continuing this chapter. In

finding whether the commission is continued pursuant to this article, the vote of any nonprofit agricultural cooperative marketing association that is authorized by its members to so vote, shall be considered as being the approval or rejection by the individual members of, or the individual stockholders in, the nonprofit agricultural cooperative marketing association.

If the director finds after conducting a hearing that no substantial question exists or that a favorable vote has been given, the director shall so certify and this chapter shall remain operative. If the director finds that a favorable vote has not been given, he or she shall so certify and declare the operation of this chapter and the commission suspended upon the expiration of the marketing season ending January 31, 2000. Thereupon, the operations of the commission shall be concluded and funds distributed in the manner provided in Section 77504. No bond or security shall be required for any such referendum.

77502. Following a hearing, and favorable referendum if required, conducted prior to January 31, 2000, the process specified in Section 77501 shall be conducted by the commission every fifth year thereafter between February 1 and June 30, unless a referendum is conducted as the result of a petition pursuant to Section 77503. In that case, the hearing, and referendum if required, shall be conducted every fifth year following the industry petitioned referendum.

77503. (a) Upon a finding by a two-thirds vote 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 commission be suspended. Any suspension shall not become effective until the expiration of the current marketing season.

(b) The director shall, upon receipt of a recommendation, or may, after a public hearing to review a petition filed with him or her requesting such suspension, signed by 15 percent of the producers, processors, or shippers by number who produced, processed, or shipped not less than 15 percent of the volume in the immediately preceding season, cause a referendum to be conducted among the listed producers, processors, and shippers 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 the weight of evidence that this chapter has not effectuated its declared purposes.

(c) The director shall establish a referendum period, which shall not be less than ten or more than 60 days in duration. The director may prescribe additional procedures necessary to conduct the referendum. At the close of the established referendum period, the director shall tabulate the ballots filed during the period. If at least 40 percent of the total number of producers, processors, and shippers from the list established by the director, participate in the referendum, the director shall suspend the operation of this chapter, if the director finds either one of the following:

(1) Sixty-five percent or more of the producers, processors, and shippers who voted in the referendum voted in favor of suspension, and the producers, processors, and shippers so voting marketed a majority of the total quantity of strawberries marketed in the preceding marketing season by all of the producers, processors, and shippers who voted in the referendum.

(2) That a majority of the producers, processors, and shippers who voted in the referendum voted in favor of suspension, and that the producers, processors, and shippers so voting marketed 65 percent or more of the total quantity of strawberries marketed in the preceding season by all of the producers, processors, and shippers who voted in the referendum.

77504. After the effective date of suspension of this chapter and of the commission, the operations of the commission shall be concluded and all moneys held by the commission, and moneys collected by assessment 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 current marketing season. However, if the commission finds that the amounts returnable are so small as to make impractical the computation and remitting of the pro rata refund to those persons, any moneys remaining and any moneys remaining after payment of all expenses of winding up and terminating operations shall be withdrawn from the approved depository and paid into an appropriate state or federal program or used to fund activities related to the subject matter of this chapter.

77505. Upon suspension of the operation of this chapter and of the commission, the commission shall mail a copy of the notice of suspension to all producers, processors, and shippers affected by the suspension whose names and addresses are on file.

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 that the strawberry industry in this state obtain the benefits of this legislation at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 806

An act to add Article 3 (commencing with Section 5030) to Chapter 1 of Part 1 of Division 4 of the Food and Agricultural Code, relating to agriculture.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Article 3 (commencing with Section 5030) is added to Chapter 1 of Part 1 of Division 4 of the Food and Agricultural Code, to read:

Article 3. Proof of Ownership

5030. Upon probable cause to believe a person buying, selling, or transporting a shipment of plant material intended to be marketed for commercial purposes is in violation of this division, proof of ownership of the plant material shall be made available for inspection upon request of the director, the commissioner, or any peace officer. If the director or the commissioner has probable cause to believe that a person is in unlawful possession of any shipment of plant material, he or she may request a peace officer to stop the vehicle for inspection. The record of proof of ownership shall contain the following information:

(a) The name, address, telephone number, and signature of the seller or the seller's authorized representative.

(b) The name, address, and telephone number of the buyer, or consignee if the commodity has not been sold.

(c) The common or generic name and quantity of the commodity.

(d) The name of the country, state, or territory where the commodity was grown.

5031. It is unlawful for any person to knowingly falsify, misrepresent, or cause to be falsified or misrepresented, any information in a record intended to show proof of ownership.

5032. The director or commissioner may compile information and make any necessary investigations relative to suspected violations of this division. The director or commissioner may call and conduct a hearing in furtherance of the investigation.

5033. The person in custody of any records containing information required pursuant to Section 5030 shall exhibit those records upon a demand therefor by the director or commissioner, as their designees, or by a peace officer. The records may include, but are not limited to, certificates of inspection or treatment, bills of sale or consignment, truck invoices, or bills of lading.

5034. At the time of the hearing, the director or commissioner may take any of the following actions:

(a) Administer oaths and take testimony.

(b) Issue subpoenas that compel the attendance of any witness before the director or commissioner, together with the production of all relevant documents.

(c) Compel disclosure by witnesses of all facts that are known to them relative to the matter under investigation.

5035. Any party that disobeys any order or subpoena of the director is subject to Section 11188 of the Government 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 807

An act to amend Section 1872.83 of, and to add Section 11736.1 to the Insurance Code, and to amend Section 4612 of the Labor Code, and to amend Section 75 of Chapter 121 of the Statutes of 1993, relating to workers' compensation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 1872.83 of the Insurance Code is amended to read:

1872.83. (a) The commissioner shall ensure that the Bureau of Fraudulent Claims aggressively pursues all reported incidents of probable workers' compensation fraud, as defined in subdivision (a) of Section 1871.4 and Section 549 of the Penal Code, and forwards to the appropriate disciplinary body the names, along with all supporting evidence, of any individuals licensed under the Business and Professions Code who are suspected of actively engaging in fraudulent activity. The Bureau of Fraudulent Claims shall forward to the Insurance Commissioner or the Director of Industrial Relations, as appropriate, the name, along with all supporting evidence, of any insurer, as defined in subdivision (c) of Section 1877.1, suspected of actively engaging in the fraudulent denial of claims.

(b) To fund increased investigation and prosecution of workers'

compensation fraud, there shall be an annual assessment as follows:

(1) The aggregate amount of the assessment shall be determined by the Fraud Assessment Commission, which is hereby established. The commission shall be composed of five members consisting of two representatives of self-insured employers, one representative of insured employers, one representative of workers' compensation insurers, and the President of the State Compensation Insurance Fund, or his or her designee.

The Governor shall appoint members representing self-insured employers, insured employers, and insurers. The term of office of members of the commission shall be four years, and a member shall hold office until the appointment of a successor. However, the initial terms of three of the members appointed by the Governor shall expire, respectively, on December 31, 1992, December 31, 1993, and December 31, 1994. The President of the State Compensation Insurance Fund shall be an ex officio, voting member of the commission. Members of the commission shall receive one hundred dollars ($100) for each day of actual attendance at commission meetings and other official commission business, and shall also receive their actual and necessary raveling expenses incurred in the performance of commission duties. Payment of per diem and travel expenses shall be made from the Workers' Compensation Fraud Account in the Insurance Fund, established in paragraph (4), upon appropriation by the Legislature.

(2) In determining the aggregate amount of the assessment, the Fraud Assessment Commission shall consider the advice and recommendations of the Bureau of Fraudulent Claims and the commissioner.

(3) The aggregate amount of the assessment shall be collected by the Director of Industrial Relations pursuant to Section 62.6 of the Labor Code. The Fraud Assessment Commission shall annually advise the Director of Industrial Relations, not later than March 15, of the aggregate amount to be assessed for the next fiscal year.

(4) The amount collected, together with the fines collected for violations of the unlawful acts specified in Section 1871.4 and Section 549 of the Penal Code, shall be deposited in the Workers' Compensation Fraud Account in the Insurance Fund, which is hereby created, and may be used, upon appropriation by the Legislature, only for enhanced workers' compensation fraud investigation and prosecution as provided in this section.

(c) For each fiscal year, the total amount of revenues derived from the assessment pursuant to subdivision (b) shall, together with amounts collected pursuant to fines imposed for unlawful acts described in Section 1871.4 and Section 549 of the Penal Code, not be less than three million dollars ($3,000,000). Any funds appropriated by the Legislature pursuant to subdivision (b) that are not expended in the fiscal year for which they have been appropriated shall be applied to satisfy for the immediately following fiscal year the minimum total amount required by this subdivision.

(d) After incidental expenses, 50 percent of the funds to be used for the purposes of this section shall be provided to the Bureau of Fraudulent Claims of the Department of Insurance for enhanced investigative efforts and 50 percent of the funds shall be distributed to district attorneys, pursuant to a determination by the commissioner with the advice and consent of the bureau and the Fraud Assessment Commission, as to the most effective distribution of moneys for purposes of the investigation and prosecution of workers' compensation insurance fraud cases. Each district attorney seeking a portion of the funds shall submit to the commissioner an application setting forth in detail their proposed use of any funds provided. Any district attorney receiving funds pursuant to this subdivision shall submit an annual report to the commissioner with respect to the success of their efforts. Upon receipt, the commissioner shall provide copies to the bureau and the Fraud Assessment Commission of any application, annual report, or other documents with respect to the allocation of money pursuant to this subdivision. These documents shall be public records.

SEC. 1.5. Section 11736.1 is added to the Insurance Code, to read:

11736.1. Notwithstanding Section 11736, and solely in connection with the 24-hour care pilot project contemplated by Section 4612 of the Labor Code, the commissioner, on application from an insurer that is approved by the Administrative Director of the Division of Workers' Compensation to participate in the 24-hour care pilot project, may allow the insurer under conditions and to the extent the commissioner deems appropriate to issue, renew, or continue in force a policy of workers' compensation insurance solely in connection with the 24-hour care pilot project at premium rates that are less than the rates approved or issued by the commissioner under this article. The authority of an insurer to offer a rate pursuant to this section shall expire on receipt of notice from the commissioner or on termination of the insurer's participation in the 24-hour care pilot project.

SEC. 2. Section 4612 of the Labor Code is amended to read:

4612. (a) A pilot project is hereby authorized, for a duration of up to 36 months, under regulations to be developed and implemented by the administrative director. The purpose of the pilot project is to authorize an employer participating in the pilot project to contract with a licensed health care service plan to be the exclusive provider of medical, surgical, and hospital treatment for occupational and nonoccupational injuries and illnesses incurred by its employees. The health care service plan shall provide all occupational-related medical treatment coverage required by this division without any payment by the employee of deductibles, copayments, or any share of the premium. Employers participating in the pilot project shall make available health plan coverage for their employees' dependents for the treatment of nonindustrial injuries and illnesses. Nothing herein shall require an employer to pay for that dependent coverage. An employer participating in the

pilot project shall offer its employees a choice between the exclusive provider of care option and a traditional health benefits plan which allows employees to obtain workers' compensation treatment from a traditional workers' compensation provider. In the case of a pilot project established by a multiemployer, collectively bargained employee welfare benefit plan, or by a recognized exclusive bargaining agent for state employees that sponsors an employee welfare benefit plan for the benefit of employees, this choice may be exercised by an exclusive or certified bargaining agent that represents employees of the employer.

(b) That pilot project may be implemented in four counties as designated by the administrative director and may include more than one health care service plan. One county shall be in northern California, one in central California, and two in southern California. Multiemployer, collectively bargained employee welfare benefit plans that operate in one or more of the designated counties, or recognized bargaining agents for state employees that sponsor a welfare benefit plan, may implement a pilot project in all counties in which participants are employed and covered for nonoccupational injuries and illnesses.

(c) Notwithstanding the terms of Section 4600, 4601, or any other provision of this article, an employee employed by an employer participating in the pilot project who has elected to enroll in the pilot project shall not have the option of predesignating a personal physician, other than a physician provided by the licensed health care service plan designated by the participating employer, as his or her treating physician, nor shall an employee have the option of changing to a physician not provided by the health care service plan pursuant to Section 4601. However, this section shall not be construed to limit the requirement under Section 4600 that an employer provide treatment reasonably required to cure or relieve the effects of an injury, nor shall this section be construed to prohibit an employee from changing to another provider of health care services during any annual open enrollment period.

(d) The administrative director shall, at the completion of the second year of the pilot project, or sooner if feasible, prepare a preliminary report, and within one year after completion of the pilot project, prepare a final report to the Legislature and the Governor describing the pilot project. The report shall include a review of the following:

(1) Employer costs.

(2) Vocational rehabilitation implications of 24-hour care pilot projects.

(3) Numbers and percentages of employees in pilot worksites that enroll in the plan.

(4) Incentives used by employers to encourage enrollment in the plan.

(5) Extent to which dependents of pilot project employees enroll in health plans.

(6) Determination of employee satisfaction with the pilot program.

(7) Extent to which employees enrolling in the pilot plan continue to stay within it during the length of the pilot program.

(8) Differentials in costs of treatment between different types of pilot programs for occupational and nonoccupational injuries and illnesses.

(9) Differentials in costs of treatment and of indemnity benefits among workplaces comparable in size, type of industry, and location, between pilot programs and non-24-hour care for occupational and nonoccupational injuries and illnesses.

(10) Differentials in costs of claims administration between pilot programs.

(11) Percentage of occupational injury claims litigated and the type of dispute giving rise to litigation.

(12) How continuing obligations for medical treatment under workers' compensation will be secured after completion of the pilot project.

(13) Whether the pilot project was or could be utilized by small employers.

The pilot project shall be deemed a success if the administrative director can verify that the information contained in the report required by paragraphs (1) to (13), inclusive, compares favorably with that of employers and employees not included in the pilot project. In order to prepare the report, the administrative director shall prescribe information to be collected by each approved pilot program for submission to the division in a timely manner.

(e) The administrative director shall prepare an itemization of the costs to the division associated with preparation of the report described in subdivision (d). The cost of the report shall be borne by the employers participating in the pilot project, and, if available, by other external sources outside of the General Fund. Contribution by the employers shall be apportioned on a per capita basis based upon the number of employees enrolled under the pilot project.

(f) For purposes of this section, "health care service plan" includes health care service plans and disability insurers that offer a managed care product within a pilot project county, workers' compensation insurers as defined in Section 3211 of the Labor Code that offer a managed care product within a pilot project county, multiemployer collectively bargained employee welfare benefit plans that offer a managed care product within a pilot project county, and welfare benefit plans sponsored by recognized exclusive bargaining agents for state employees. Pilot projects covering state employees shall be approved by the state employer and approved pursuant to Part 5 (commencing with Section 22751) of Title 2 of the Government Code.

(g) The employer's contract with the health care service plan shall include a surcharge or other provision to cover the cost of the medical care of an injured employee which is required by this

division after the employee leaves the contracting employer's employment.

(h) Enrollment or subscription in the pilot project may not be canceled or not renewed except in the following:

(1) Failure to pay the charge for that coverage if the subscriber has been duly notified and billed for the charge and at least 15 days has elapsed since the date of notification.

(2) Fraud or deception in the use of the services or facilities of the plan or knowingly permitting that fraud or deception by another.

(3) Any other good cause as is agreed upon in the contract between the plan and a group or the subscriber.

(i) Notwithstanding any other provision of this section, no employer that is required to bargain with an exclusive or certified bargaining agent which represents employees of the employer in accordance with state or federal employer-employee relations law for represented employees, shall contract with a managed care organization for purposes of this section unless authorized to do so by mutual agreement between the bargaining agent and the employer.

SEC. 3. Section 75 of Chapter 121 of the Statutes of 1993 is amended to read:

Sec. 75. Nothing in Section 4600.3, 4600.5, or 4614 of the Labor Code, or in the Workers' Compensation Health Care Provider Organization Act of 1993, shall be deemed to supersede or limit the operation of pilot projects approved by the administrative director pursuant to Section 4612 of the Labor Code. No provision or requirement of Section 4600.3, 4600.5, or 4614 of the Labor Code, or in the Workers' Compensation Health Care Provider Organization Act of 1993, shall be deemed applicable to those pilot projects, or impose any requirements on them for any purpose.

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

In order for employers to obtain 24-hour health care coverage through the pilot project as quickly as possible, and to ensure that certain additional employers can participate immediately in the pilot project, it is necessary for this act to take effect immediately.

CHAPTER 808

An act to amend Section 10105 of, and to add Section 10108.5 to, the Public Contract Code, relating to state contracts.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. Section 10105 of the Public Contract Code is amended to read:

10105. (a) As used in this part, "project" includes the erection, construction, alteration, repair or improvement of any state structure, building, road, or other state improvement of any kind which will exceed a total cost calculated pursuant to subdivision (b).

(b) The total cost limit for calendar year 1993 shall be one hundred thousand dollars ($100,000), and at two year intervals thereafter, the total cost limit shall be adjusted upward or downward by the Director of Finance to reflect the percentage change in the annual California Construction Index as used by the Department of General Services. The amount shall be rounded off to the nearest one thousand dollar ($1,000) figure.

SEC. 2. Section 10108.5 is added to the Public Contract Code, to read:

10108.5. Where the nature of the work by departments within the Resources Agency in the opinion of the Department of General Services is such that its services in connection therewith are not required, it may authorize the carrying out of the project directly by the department within the Resources Agency concerned therewith if the estimated cost does not exceed five hundred thousand dollars ($500,000). This limit shall be adjusted pursuant to subdivision (b) of Section 10105.

If the estimated total cost of any construction project or work carried out under this section exceeds fifty thousand dollars ($50,000), the Department of Forestry and Fire Protection shall solicit bids in writing and shall award the work to the lowest responsible bidder or reject all bids; provided, however, that the Director of General Services may authorize the Department of Forestry and Fire Protection to carry out work in excess of fifty thousand dollars ($50,000) under the provisions of this section by day labor if he or she deems that the award of a contract, the acceptance of bids, or the acceptance of further bids is not in the best interests of the state; however, in no event shall the amount of work performed by day labor under this section exceed the sum of one hundred thousand dollars ($100,000). This limit shall be adjusted pursuant to subdivision (b) of Section 10105.

CHAPTER 809

An act to amend Sections 44253.3, 44253.6, 44282, 44285, and 44311 of, to amend the headings of Article 5 (commencing with Section 44280) of, and Article 6 (commencing with Section 44310) of, Chapter 2 of Part 25 of, to add Sections 44230, 44257, 44257.2, and 44257.4 to, and to repeal Sections 44283, 44287, 44315, 44316, and 44317 of, the Education Code, relating to teacher credentialing.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 4, 1993.]

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

SECTION 1. The Legislature finds and declares that, to ensure excellence in public school teaching, teaching credentials should be awarded on the basis of challenging, attainable standards of preparation and competence. At the same time, the structure of teaching credentials should be clear and streamlined, and the number of credentials should be reduced without compromising the competence of teachers in essential subjects of the school curriculum. Therefore, it is the intent of the Legislature to eliminate unnecessary credentials while requiring the Commission on Teacher Credentialing to maintain high standards for the depth and breadth of each teacher's subject matter preparation and competence.

SEC. 2. Section 44230 is added to the Education Code, to read:

44230. (a) The Commission on Teacher Credentialing shall maintain for public record, and may disclose, only the following information relating to the credentials, certificates, permits, or other documents that it issues: the document number, title, term of validity, subjects, authorizations, effective dates, renewal requirements, and restrictions. The commission may also disclose the last known business address of any applicant or credential holder.

(b) In order to expedite the application process for the benefit of applicants for credentials, certificates, permits, or other documents issued by the commission, the commission may receive from, or transmit to, the agency that submitted the application, either electronically or by printed copy, the information set forth in that application. For purposes of this subdivision, "agency" means a school district, county office of education, or institution of higher education having a commission-approved program of professional preparation.

SEC. 3. Section 44253.3 of the Education Code is amended to read:

44253.3. (a) The commission shall issue a certificate that authorizes the holder to provide all of the following services to limited-English-proficient pupils:

(1) Instruction for English language development in preschool, kindergarten, grades 1 to 12, inclusive, and classes organized

primarily for adults, except when the requirement specified in paragraph (1) of subdivision (b) of Section 44253.3 is satisfied by the possession of a children's center instructional permit pursuant to Sections 8363 and 44252.7, a children's center supervision permit pursuant to Section 8363, or a designated subjects teaching credential in adult education pursuant to Section 44260.2. If the requirement specified in paragraph (1) of subdivision (b) of Section 44253.3 is satisfied by the possession of a children's center instructional permit, or a children's center supervision permit, then instruction for English language development shall be limited to the programs authorized by that permit. If the requirement specified in paragraph (1) of subdivision (b) of Section 44253.3 is satisfied by the possession of a designated subjects teaching credential in adult education, then instruction for English language development shall be limited to classes organized primarily for adults.

(2) Specially designed content instruction delivered in English in the subjects and at the levels authorized by the teacher's prerequisite credential or permit used to satisfy the requirement specified in paragraph (1) of subdivision (b) of Section 44253.3.

(b) The minimum requirements for the certificate shall include all of the following:

(1) Possession of a valid California teaching credential, services credential, children's center instructional permit, or children's center supervision permit which credential or permit authorizes the holder to provide instruction to pupils in preschool, kindergarten, any of grades 1 to 12, inclusive, or classes primarily organized for adults, except for the following:

(A) Emergency credentials or permits.

(B) Exchange credentials as specified in Section 44333.

(C) District intern certificates as specified in Section 44325.

(D) Sojourn certificated employee credentials as specified in Section 44856.

(E) Teacher education internship credentials as specified in Article 3 (commencing with Section 44450) of Chapter 3.

(2) Passage of one or more examinations that the commission determines are necessary for demonstrating the knowledge and skills required for effective delivery of the services authorized by the certificate.

(3) Completion of at least six semester units, or nine quarter units, of coursework in a second language at a regionally accredited institution of postsecondary education. The commission shall establish minimum standards for scholarship in the required coursework. The commission shall also establish alternative ways in which the requirement can be satisfied by language-learning experience that creates an awareness of the challenges of second-language acquisition and development.

(c) The commission shall establish alternative requirements for a teacher to earn the certificate, which shall be awarded as a supplementary authorization pursuant to subdivision (e) of Section

44225.

(d) The certificate shall remain valid as long as the prerequisite credential or permit specified in paragraph (1) of subdivision (b) of Section 44253.3 remains valid.

SEC. 4. Section 44253.6 of the Education Code is amended to read:

44253.6. (a) Until the commission begins the administration of Section 44253.5, as added by Chapter 1050 of the Statutes of 1992, the commission shall continue to administer Sections 44253.5 and 44253.6 and Article 3.5 (commencing with Section 44475) of Chapter 3, as those sections and that article existed on December 31, 1992.

(b) A teacher who earned a passing score on a part of the examination for the bilingual cross-cultural certificate that was administered by the commission pursuant to Sections 44253.5 and 44253.6 as those sections existed on December 31, 1992, shall not be required by the commission, as a requirement for earning the certificate described in Section 44253.3 or 44253.4, to take a duplicate examination within nine years of the date when the teacher earned the passing score.

(c) A teacher who has passed both sections of the examination for the language development specialist certificate of competence that was administered by the commission pursuant to Article 3.5 (commencing with Section 44475) of Chapter 3 as that article existed on December 31, 1992, shall have five years from the date of his or her earliest passing score to complete the other requirements and apply for the language development specialist certificate of competence.

(d) After the commission begins to administer the examinations required by Section 44253.5, the commission shall continue to administer, until June 30, 1995, the examination for the language development specialist certificate administered pursuant to Article 3.5 (commencing with Section 44475) of Chapter 3 as that article existed on December 31, 1992, solely to those individuals who, on or after June 30, 1992, were enrolled in language development specialist programs approved by the commission pursuant to that article.

(e) Certificates of bilingual cross-cultural competence issued by the commission pursuant to Sections 44253.5 and 44253.6 as those sections existed on December 31, 1992, and certificates of competence as language development specialist issued by the commission pursuant to Article 3.5 (commencing with Section 44475) of Chapter 3 as it existed on December 31, 1992, shall remain valid as long as the holder's prerequisite teaching credential for those certificates as specified in Sections 44253.5 and 44253.6 and Article 3.5 (commencing with Section 44475) of Chapter 3 remain valid.

SEC. 5. Section 44257 is added to the Education Code, to read:

44257. (a) The commission shall issue single subject teaching credentials only in the following subjects:

(1) Agriculture.

(2) Art.

(3) Business.
(4) English.
(5) Foreign Language.
(6) Health Science.
(7) Home Economics.
(8) Industrial and Technology Education.
(9) Mathematics.
(10) Music.
(11) Physical Education.
(12) Science.
(13) Social Science.

(b) The commission shall issue the single subject credential in foreign language with an authorization to teach Chinese, French, German, Russian, Spanish, or any other language that the commission determines is appropriate.

(c) Subjects that are commonly taught in departmentalized classes in California public schools shall be subsumed under the credential categories in subdivision (a) of this section.

(d) The commission shall issue single subject teaching credentials in the categories that were identified in Section 44282 as of December 31, 1993, to applicants who were in the process of preparing to earn those credentials prior to the effective date of the commission's implementation of subdivision (a).

SEC. 6. Section 44257.2 is added to the Education Code, to read:

44257.2. (a) In order to ensure excellence in teaching in specific subjects, the commission may issue a multiple or single subject teaching credential with a specified concentration in a particular subject based upon the depth of an applicant's preparation in an important subject of the school curriculum. The commission shall establish and maintain standards for concentrations in particular subjects, as necessary.

(b) The commission shall determine the authorizations of teaching credentials with concentrations. The commission shall ensure that with the exception of the single subject credential specified in subdivision (c) of this section, the authorization of a credential with a specified concentration shall not be more restrictive than the authorization of the same credential without the specified concentration.

(c) The commission shall issue the single subject teaching credential in science with a specified concentration in a particular subject. The commission shall establish and maintain standards for concentrations in science that shall consist of biological sciences, chemistry, geosciences, and physics. The holder of the single subject teaching credential in science shall be qualified and authorized to teach courses in general science, introductory science, integrated science, and coordinated science in kindergarten and grades 1 to 12, inclusive.

SEC. 7. Section 44257.4 is added to the Education Code, to read:

44257.4. The commission shall periodically review and assess the

adequacy and relevance of the subjects of teaching credentials set forth in Section 44257, and shall report its findings and recommendations to the Legislature.

SEC. 8. The heading of Article 5 (commencing with Section 44280) of Chapter 2 of Part 25 of the Education Code is amended to read:

Article 5. Subject Matter Examinations and Assessments

SEC. 9. Section 44282 of the Education Code is amended to read:

44282. (a) The commission shall adopt examinations and assessments to verify the subject matter knowledge and competence of candidates for the single subject teaching credentials described in Section 44257 and the concentrations described in Section 44257.2.

(b) A general subject matter examination authorizing teaching multiple subjects shall include an examination of the candidate's knowledge of the following areas: language studies, literature, mathematics, science, social studies, history, the arts, physical education, and human development.

SEC. 10. Section 44283 of the Education Code is repealed.

SEC. 11. Section 44285 of the Education Code is amended to read:

44285. The language development requirement as set forth in Section 44259 may be satisfied by the completion of a commission-approved program of study, or passage of an appropriate examination or assessment that has been adopted for this purpose by the commission.

SEC. 12. Section 44287 of the Education Code is repealed.

SEC. 13. The heading of Article 6 (commencing with Section 44310) of Chapter 2 of Part 25 of the Education Code is amended to read:

Article 6. Subject Matter Preparation

SEC. 14. Section 44311 of the Education Code is amended to read:

44311. The commission shall evaluate any subject matter program offered by an accredited institution in satisfaction of paragraph (5) of subdivision (b) of Section 44259. The evaluation shall be based on standards of program quality and effectiveness, which shall be consistent with the assessments and examinations of subject matter knowledge and competence adopted by the commission pursuant to subdivisions (a) and (b) of Section 44282.

SEC. 15. Section 44315 of the Education Code is repealed.

SEC. 16. Section 44316 of the Education Code is repealed.

SEC. 17. Section 44317 of the Education Code is repealed.

SEC. 18. Pursuant to paragraph (1) of subdivision (d) of Section 44225 of the Education Code, a credential that was issued prior to enactment of this act shall remain in force as long as it continues to be valid under the laws and regulations that were in effect when the credential was issued. Pursuant to subdivision (e) of Section 44259 of

the Education Code, teachers who were authorized to perform teaching services on December 31, 1993, may continue to perform those services without complying with any requirements or earning any credentials that may be established by this act.

CHAPTER 810

An act to add Section 709.5 to the Insurance Code, relating to insurance.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 5, 1993.]

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

SECTION 1. Section 709.5 is added to the Insurance Code, to read:

709.5. (a) Any insurer that is organized under the laws of any other state and is admitted to do business in this state for the purpose of writing insurance may become a domestic insurer by designating its principal place of business at a place in this state. The domestic insurer shall be entitled to like certificates and licenses to transact business in this state and shall be subject to the authority and jurisdiction of this state.

(b) Any domestic insurer may, upon the prior approval of the commissioner, transfer its domicile to any other state in which it is admitted to transact the business of insurance, and upon the transfer shall cease to be a domestic insurer, and shall be admitted to this state if qualified as a foreign insurer. The commissioner shall approve any proposed transfer unless he or she determines that the transfer is not in the interest of the policyholders of this state. An insurer seeking to transfer its domicile shall provide the commissioner with information and documentation reasonably necessary to make this determination. The commissioner shall either approve or disapprove the transfer within 90 calendar days after the date of the request. The commissioner and his or her authorized representative shall be prohibited from seeking a waiver to extend the 90 calendar day period, nor shall the insurer be permitted to waive that period.

(c) The certificate of authority, agent and broker appointments and licenses, rates, and other items that the commissioner allows in his or her discretion, that are in existence at the time any insurer licensed to transact the business of insurance in this state transfers its corporate domicile to this or any other state by merger, consolidation, or any other lawful method shall continue in full force and effect upon that transfer if the insurer remains duly qualified to transact the business of insurance in this state. All outstanding policies of any transferring insurer shall remain in full force and effect and need not be endorsed as to the new name of the company

or its new location unless so ordered by the commissioner. Every transferring insurer shall file new policy forms with the commissioner on or before the effective date of the transfer, but may use existing policy forms with appropriate endorsements if allowed by, and under such conditions as approved by, the commissioner. However, every transferring insurer shall notify the commissioner of the details of the proposed transfer, and shall file promptly all resulting amendments to corporate documents filed or required to be filed with the commissioner.

(d) An insurer seeking qualification under this section shall pay to the commissioner a filing fee of four thousand two hundred fifty dollars ($4,250).

(e) Notwithstanding any other provision of the law, this section shall provide the exclusive means for an admitted insurer to change its domicile to, or transfer its domicile from, this state.

CHAPTER 811

An act to amend Section 13440 of the Business and Professions Code, relating to gasoline, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 5, 1993.]

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

SECTION 1. Section 13440 of the Business and Professions Code is amended to read:

13440. (a) The department shall adopt specifications for gasoline or automotive spark-ignition engine fuels. In adopting specifications, the department shall adopt by reference the latest standards of the American Society for Testing and Materials (ASTM) standard specification for gasoline or automotive spark-ignition engine fuel, except that no specification shall be less stringent than required by any California state law.

(b) Any blend of gasoline and ethanol that complies with Section 2258 of Title 13 of the California Code of Regulations, as it reads on the effective date of the act amending this section during the 1993–94 Regular Session, or as amended, may exceed the Reid vapor pressure limits of ASTM D-4814 for the area and season in which the blend is sold at retail by not more than 6.9 kilopascals (1.0 pounds per square inch), except the total Reid vapor pressure shall not exceed 103 kilopascals (15 pounds per square inch).

(c) Any gasoline blend containing methanol shall also contain an alcohol cosolvent (butanol (Cr) or higher molecular weight alcohol) in an amount equal to or greater than the volume percentage of methanol except those blends previously granted a waiver by the

Environmental Protection Agency.

(d) The antiknock index as defined in Section 13403 for the automotive spark-ignition engine fuel shall not be less than 87.

SEC. 1.5. Section 13440 of the Business and Professions Code is amended to read:

13440. (a) The department shall establish specifications for gasoline or automotive spark-ignition engine fuels. The department shall adopt by reference the latest standards established by a recognized consensus organization or standards writing organization such as the American Society for Testing and Materials (ASTM) or the Society of Automotive Engineers (SAE), for automotive spark-ignition engine fuel, except that no specification shall be less stringent than required by any California state law.

(b) Any blend of gasoline and ethanol that complies with Section 2258 of Title 13 of the California Code of Regulations, as it reads on the effective date of the act amending this section during the 1993–94 Regular Session, or as amended, may exceed the Reid vapor pressure limits of ASTM D-4814 for the area and season in which the blend is sold at retail by not more than 6.9 kilopascals (1.0 pounds per square inch), except the total Reid vapor pressure shall not exceed 103 kilopascals (15 pounds per square inch).

(c) Any gasoline blend containing methanol shall also contain an alcohol cosolvent (butanol (C_4) or higher molecular weight alcohol) in an amount equal to or greater than the volume percentage of methanol except those blends previously granted a waiver by the Environmental Protection Agency.

(d) The antiknock index as defined in Section 13403 for gasoline shall not be less than 87.

(e) Gasoline shall meet the latest specifications set forth in ASTM D-4814, except that no specification shall be less stringent than required by any California state law.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 13440 of the Business and Professions Code proposed by both this bill and AB 2154. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 13440 of the Business and Professions Code, and (3) this bill is enacted after AB 2154, in which case Section 13440 of the Business and Professions Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of AB 2154, at which time Section 1.5 of this bill shall become 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 to provide adequate supplies of oxygenated fuels for the 1993 fall and winter season, it is necessary that this act take effect immediately.

CHAPTER 812

An act to add Sections 21060.1, 21061.2, and 21095 to the Public Resources Code, relating to environmental quality, and making an appropriation therefor.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 5, 1993.]

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

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

(a) Agriculture is the state's leading industry and is important to the state's economy.

(b) The continued productivity of agricultural lands in California is important in maintaining a healthy agricultural economy.

(c) The conversion of agricultural lands to nonagricultural uses threatens the long-term health of the state's agricultural industry.

(d) The California Environmental Quality Act plays an important role in the preservation of agricultural lands.

(e) It is the intent of the Legislature in enacting this act to encourage wise and efficient land use decisions based on the best available information by promoting the adoption and use of land evaluation and site assessment criteria by state and local agencies based on the system developed by the United States Soil Conservation Service to implement the Farmland Protection Policy Act (7 U.S.C. Sec. 4201, et seq.).

(f) The land evaluation and site assessment model system has proven to be an effective aid to planning in over 200 state and local jurisdictions nationwide, by avoiding duplicative and unnecessary environmental review, while enabling decisionmakers to focus their analyses on significant agricultural land impacts, and providing integrity and consistency to the land use decision process.

SEC. 2. Section 21060.1 is added to the Public Resources Code, to read:

21060.1. (a) "Agricultural land" means prime farmland, farmland of statewide importance, or unique farmland, as defined by the United States Department of Agriculture land inventory and monitoring criteria, as modified for California.

(b) In those areas of the state where lands have not been surveyed for the classifications specified in subdivision (a), "agricultural land" means land that meets the requirements of "prime agricultural land" as defined in paragraph (1), (2), (3), or (4) of subdivision (c) of Section 51201 of the Government Code.

SEC. 3. Section 21061.2 is added to the Public Resources Code, to read:

21061.2. "Land evaluation and site assessment" means a decisionmaking methodology for assessing the potential

environmental impact of state and local projects on agricultural land.

SEC. 4. Section 21095 is added to the Public Resources Code, to read:

21095. (a) The Resources Agency, in consultation with the Office of Planning and Research, shall develop an amendment to Appendix G of the state guidelines, for adoption pursuant to Section 21083, to provide lead agencies an optional methodology to ensure that significant effects on the environment of agricultural land conversions are quantitatively and consistently considered in the environmental review process.

(b) The Department of Conservation, in consultation with the United States Department of Agriculture pursuant to Section 658.6 of Title 7 of the Code of Federal Regulations, and in consultation with the Resources Agency and the Office of Planning and Research, shall develop a state model land evaluation and site assessment system, contingent upon the availability of funding from non-General Fund sources. The department shall seek funding for that purpose from non-General Fund sources, including, but not limited to, the United States Department of Agriculture.

(c) In lieu of developing an amendment to Appendix G of the state guidelines pursuant to subdivision (a), the Resources Agency may adopt the state model land evaluation and site assessment system developed pursuant to subdivision (b) as that amendment to Appendix G.

SEC. 5. The sum of fifteen thousand dollars ($15,000) is hereby appropriated from the California Environmental License Plate Fund to the Department of Conservation for a grant to the Yolo County Farm Bureau for purposes of a farmlands and open-space mapping program.

CHAPTER 813

An act to amend Sections 25034.8, 25040.5, 25059, 25061, 25062, 25064, 25079.3, 25081, 25094, 25096, and 25097 of, and to add Sections 252021.7, 25049.1, 25060.1, 25060.4, and 25181.5 to, the Health and Safety Code, relating to medical waste.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 5, 1993.]

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

SECTION 1. Section 25021.7 is added to the Health and Safety Code, to read:

25021.7. "Fund" means the Medical Waste Management Fund created pursuant to Section 25036.5.

SEC. 2. Section 25034.8 of the Health and Safety Code is amended to read:

25034.8. (a) A local agency electing to implement a medical waste management program is the enforcement agency for the jurisdiction in which it is located and so designated by the department.

(b) In any local jurisdiction where the local agency does not elect to implement a medical waste management program, the department is the enforcement agency.

(c) Nothing in this chapter shall prevent a district attorney, city attorney, or city prosecutor from bringing any enforcement action for violation of this chapter.

SEC. 3. Section 25040.5 of the Health and Safety Code is amended to read:

25040.5. (a) Any common storage facility for the collection of medical waste produced by small quantity generators operating independently, but sharing common storage facilities, shall have a permit issued by the enforcement agency.

(b) A permit for any common storage facility specified in subdivision (a) may be obtained by any one of the following:

(1) A provider of health care as defined in subdivision (d) of Section 56.05 of the Civil Code.

(2) The registered hazardous waste transporter.

(3) The property owner.

(4) The property management firm responsible for providing tenant services to the medical waste generators.

SEC. 4. Section 25049.1 is added to the Health and Safety Code, to read:

25049.1. On and after January 1, 1994, when the department is the enforcement agency, except for those small quantity generators required to be registered pursuant to Section 25040, the department shall impose and collect an annual medical waste generator fee in the amount of twenty-five dollars ($25) on small quantity generators of medical waste.

SEC. 5. Section 25059 of the Health and Safety Code is amended to read:

25059. The registration and annual permit fee for large quantity generators shall be set in following amounts:

(a) (1) A general acute care hospital, as defined in subdivision (a) of Section 1250, which has one or more beds, but not more than 99 beds, shall pay six hundred dollars ($600), a facility with 100 or more beds, but not more than 199 beds, shall pay eight hundred sixty dollars ($860), a facility with 200 or more beds, but not more than 250 beds shall pay one thousand one hundred dollars ($1,100), and a facility with 251 or more beds shall pay one thousand four hundred dollars ($1,400).

(2) In addition to the fees specified in paragraph (1), a general acute care hospital which is providing onsite treatment of medical waste shall pay an annual medical waste treatment facility inspection and permit fee of three hundred dollars ($300), if the facility has one or more beds but not more than 99 beds, five hundred dollars ($500),

if the facility has 100 or more beds but not more than 250 beds, and one thousand dollars ($1,000), if the facility has 251 or more beds.

(b) A specialty clinic, providing surgical, dialysis, or rehabilitation services, as defined in subdivision (b) of Section 1204, shall pay three hundred fifty dollars ($350).

(c) A skilled nursing facility, as defined in subdivision (c) of Section 1250, which has one or more beds, but not more than 99 beds shall pay two hundred seventy-five dollars ($275), a facility with 100 or more beds, but not more than 199 beds shall pay three hundred fifty dollars ($350), and a facility with 200 or more beds shall pay four hundred dollars ($400).

(d) An acute psychiatric hospital, as defined in subdivision (b) of Section 1250, shall pay two hundred dollars ($200).

(e) An intermediate care facility, as defined in subdivision (d) of Section 1250, shall pay three hundred dollars ($300).

(f) A primary care clinic, as defined in Section 1200.1, shall pay three hundred fifty dollars ($350).

(g) A licensed clinical laboratory, as defined in paragraph (3) of subdivision (a) of Section 1206 of the Business and Professions Code, shall pay two hundred dollars ($200).

(h) A health care service plan facility, as defined in subdivision (f) of Section 1345, shall pay three hundred fifty dollars ($350).

(i) A veterinary clinic or veterinary hospital shall pay two hundred dollars ($200).

(j) A large quantity generator medical office shall pay two hundred dollars ($200).

(k) In addition to the fees specified in subdivisions (b) to (j), inclusive, a large quantity generator of medical waste which is providing onsite treatment of medical waste shall pay an annual medical waste treatment facility inspection and permit fee of three hundred dollars ($300).

SEC. 6. Section 25060.1 is added to the Health and Safety Code, to read:

25060.1. Any person who is authorized to collect solid waste, as defined in Section 40191 of the Public Resources Code, who unknowingly transports medical waste to a solid waste facility, as defined in Section 40194 of the Public Resources Code, incidental to the collection of solid waste is exempt from this article with regard to that waste.

SEC. 7. Section 25060.4 is added to the Health and Safety Code, to read:

25060.4. (a) On or before September 1, 1993, and each year thereafter on or before July 1, a registered hazardous waste transporter which transports medical waste shall so notify the department, and provide the following information:

(1) Business name, address, and telephone number.

(2) Name of owner, operator, and contact person.

(3) Hazardous waste transporter registration number.

(4) Vehicle manufacturer name, vehicle model year, vehicle

identification number, and the license plate number of each vehicle transporting medical waste.

(b) For transporters which begin transporting medical waste after September 1, 1993, notification to the department, and provision of the information required by subdivision (a) shall be provided to the department prior to transporting medical waste.

(c) On or before September 1, 1993, each registered hazardous waste transporter, and each provider of medical waste mail back systems, as defined in subdivision (b) of Section 25094, shall provide to the department a list of all medical waste generators serviced by that person during the previous 12 months. That list shall include the business name, business address, mailing address, telephone number, and other information as required by the department to collect annual fees pursuant to Section 25049.1. When the transportation of registered hazardous waste by a medical waste transporter or the provision of a medical waste mail back system begins after September 1, 1993, the initial list shall be provided to the department within 10 days of the close of the earliest calendar quarter ending September 30, December 31, March 31, or June 30, or as otherwise required by the department.

(d) Subsequent to providing the initial list pursuant to subdivision (c), registered hazardous waste transporters and providers of medical waste mail back systems shall submit to the department any changes made to the most recent list every three months, within 10 days of the close of the calendar quarters ending September 30, December 31, March 31, and June 30, or as otherwise required by the department.

SEC. 8. Section 25061 of the Health and Safety Code is amended to read:

25061. (a) Medical waste generators may apply to the enforcement agency for a limited-quantity hauling exemption, if the generator meets all of the following requirements:

(1) The generator generates less than 20 pounds of medical waste per week, transports less than 20 pounds of medical waste at any one time, and has an information document on file in the generator's office pursuant to Section 25045.1.

(2) The generator transports the waste himself or herself, or directs a member of his or her staff to transport the waste, to a permitted medical waste treatment facility, a transfer station, or to another facility for the purpose of consolidation before treatment and disposal.

(3) The generator maintains a tracking document, as specified in Section 25063.

(b) The limited-quantity hauling exemption authorized by this section is valid for a period of one year.

(c) An application for an initial or a renewal of a limited-quantity hauling exemption shall be accompanied by a fee of twenty-five dollars ($25). The application shall identify each person who will transport waste for the transporter. If the generator identifies more

than four persons who will be transporting medical waste, the generator shall pay an additional fee of five dollars ($5) for each person, up to a maximum additional fee of twenty-five dollars ($25).

SEC. 9. Section 25062 of the Health and Safety Code is amended to read:

25062. (a) Except as otherwise exempted pursuant to Section 25061, all medical waste transported to an offsite medical waste treatment facility shall be transported in accordance with this article by a registered hazardous waste transporter issued a registration certificate pursuant to Article 6 (commencing with Section 25060) of this chapter and Article 6.5 (commencing with Section 25167.1) of Chapter 6.5. A hazardous waste transporter transporting medical waste shall have a copy of the transporter's valid hazardous waste transporter registration certificate in the transporter's possession while transporting medical waste. The transporter shall show the certificate, upon demand, to any enforcement agency personnel or authorized employee of the Department of the California Highway Patrol.

(b) Except for small quantity generators transporting medical waste pursuant to Section 25061, medical waste shall be transported to a permitted offsite medical waste treatment facility or a permitted transfer station in leak-resistant and fully enclosed rigid secondary containers which are then loaded into an enclosed cargo body.

(c) A person shall not transport medical waste in the same vehicle with other waste unless the medical waste is separately contained in rigid containers or kept separate by barriers from other waste, or unless all of the waste is to be handled as medical waste in accordance with this chapter.

(d) Medical waste shall only be transported to a permitted medical waste treatment facility, or to a transfer station or another registered generator for the purpose of consolidation before treatment and disposal, pursuant to this chapter.

(e) Facilities for the transfer of medical waste shall be annually inspected and issued permits in accordance with the regulations adopted pursuant to this chapter.

(f) Any persons manually loading or unloading containers of medical waste shall be provided by their employer at the beginning of each shift with, and shall be required to wear, clean and protective gloves and coveralls, changeable lab coats, or other protective clothing. The department may require, by regulation, other protective devices appropriate to the type of medical waste being handled.

SEC. 10. Section 25064 of the Health and Safety Code is amended to read:

25064. (a) The department shall charge an application fee for a permit for a transfer station equal to one hundred dollars ($100) for each hour which the department spends on processing the application, but not more than ten thousand dollars ($10,000), or as provided in the regulations adopted by the department.

(b) In addition to the fee specified in subdivision (a), the annual permit fee for a transfer station issued a permit pursuant to subdivision (e) of Section 25062 is two thousand dollars ($2,000), or as provided in the regulations adopted pursuant to this chapter.

SEC. 11. Section 25079.3 of the Health and Safety Code is amended to read:

25079.3. (a) The department shall charge an annual permit fee for an offsite medical waste treatment facility equal to either two-tenths of a cent ($0.002) for each pound of medical waste treated or ten thousand dollars ($10,000), whichever is greater.

(b) The department shall charge an initial application fee for each type of treatment technology at an offsite medical waste treatment facility equal to one hundred dollars ($100) for each hour the department spends processing the application, but not more than fifty thousand dollars ($50,000), or as provided in the regulations adopted by the department.

SEC. 12. Section 25081 of the Health and Safety Code is amended to read:

25081. To containerize biohazard bags, a person shall do all of the following:

(a) The bags shall be tied to prevent leakage or expulsion of contents during all future storage, handling, or transport.

(b) Biohazardous waste shall be bagged in accordance with subdivision (b) of Section 25080 and placed for storage, handling, or transport in a rigid container which may be disposable, reusable, or recyclable. Containers shall be leak resistant, have tight-fitting covers, and be kept clean and in good repair. Containers may be recycled with the approval of the enforcement agency. Containers may be of any color and shall be labeled with the words "Biohazardous Waste," or with the international biohazard symbol and the word "BIOHAZARD," on the lid and on the sides so as to be visible from any lateral direction. Containers meeting the requirements specified in Section 66840 of Title 22 of the California Code of Regulations, as it read on December 31, 1990, may also be used until the replacement of the containers is necessary or existing stock has been depleted.

(c) Biohazardous waste shall not be removed from the biohazard bag until treatment as prescribed in Article 9 (commencing with Section 25090) is completed, except to eliminate a safety hazard. Biohazardous waste shall not be disposed of before being treated as prescribed in that Article 9.

(d) (1) Except as provided in paragraph (5), a person generating 20 or more pounds of medical waste per month shall not contain or store biohazardous or sharps waste above 0° Centigrade (32° Fahrenheit) at any onsite location for more than seven days unless the enforcement agency approves the containment or storage in writing. Except as provided in paragraph (5), a person generating less than 20 pounds of biohazardous waste per month shall not contain or store biohazardous waste above 0 degrees Centigrade (32

degrees Fahrenheit) at any onsite location for more than 30 days.

(2) A person may store biohazardous or sharps waste at or below 0° Centigrade (32° Fahrenheit) at an onsite location for not more than 90 days without obtaining the written approval of the enforcement agency.

(3) A person may store biohazardous or sharps waste at a permitted transfer station at or below 0° Centigrade (32° Fahrenheit) for not more than 30 days without obtaining the approval of the enforcement agency.

(4) A person shall not store biohazardous or sharps waste above 0° Centigrade (32° Fahrenheit) for more than seven days before treatment at any location or facility which is offsite from the generator.

(5) Notwithstanding paragraphs (1) to (4), inclusive, if the facility is unable to control the odor from its stored waste and the odor poses a public nuisance, the enforcement agency may require more frequent removal.

SEC. 13. Section 25094 of the Health and Safety Code is amended to read:

25094. (a) The department shall charge an application fee for evaluation of an alternative treatment technology pursuant to subdivision (d) of Section 25090 of two thousand five hundred dollars ($2,500) and shall charge an additional fee equal to one hundred dollars ($100) per hour for each hour which the department spends on processing the application, but not more than a total of five thousand dollars ($5,000), or as provided in the regulations adopted by the department.

(b) The department shall charge an application fee of one thousand dollars, ($1,000) for evaluation and approval of the use of a medical waste mail back system, which sends medical waste generated in this state to an out-of-state facility for treatment and disposal pursuant to subdivision (f) of Section 25063.

SEC. 14. Section 25096 of the Health and Safety Code is amended to read:

25096. An enforcement agency, district attorney, city attorney, or city prosecutor may bring an action to enjoin the violation, or threatened violation, of this chapter or the regulations adopted pursuant to this chapter, in the superior court in the county in which the violation occurred or is about to occur. Any proceeding under this section shall be in accordance with Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the enforcement agency, district attorney, city attorney, or city prosecutor is not required to allege facts necessary to show or tending to show the lack of an adequate remedy at law or irreparable damage or loss.

With respect to any action brought pursuant to this section alleging actual violation of this chapter or the regulations adopted pursuant to this chapter, the court shall, if it finds the allegations to be true, issue its order enjoining the continuance of the violation.

SEC. 15. Section 25097 of the Health and Safety Code is amended to read:

25097. (a) No person shall, transport, store, treat, dispose, or cause the treatment or disposal of medical waste in a manner not authorized by his or her permit or registration, this chapter, or the regulations adopted pursuant to this chapter.

(b) Any person who stores, treats, disposes, or causes the treatment or disposal of medical waste in violation of this chapter or the regulations adopted pursuant to this chapter is guilty of a public offense as follows:

(1) For a small quantity generator, a first offense is an infraction and is punishable by a fine of not more than one thousand dollars ($1,000).

(2) For a person other than a small quantity generator, a first offense is a misdemeanor punishable by a fine of not less than two thousand dollars ($2,000), or by up to one year in county jail, or by both the fine and imprisonment.

(c) A person who is convicted of a second or subsequent violation of subdivision (a) within three years of the prior conviction shall be punished by imprisonment in the county jail for not more than one year or by imprisonment in state prison for one, two, or three years or by a fine of not less than five thousand dollars ($5,000), or more than twenty-five thousand dollars ($25,000), or by both the fine and imprisonment. This section shall not apply unless any prior conviction is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact. If the defendant is a corporation which operates medical facilities in more than one geographic location, this subdivision shall apply only if the offense involves an adjacent facility involved in the prior conviction.

(d) Any person who knowingly treats or disposes, or causes the treatment or disposal of, medical waste in violation of this chapter shall be punished by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for one, two, or three years, or by a fine of not less than five thousand dollars ($5,000), or more than twenty-five thousand dollars ($25,000), or by both the fine and imprisonment.

(e) This section does not apply to a person transporting medical waste who is required to be a registered hazardous waste transporter. Those persons are subject to penalties for violations pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5.

SEC. 16. Section 25181.5 is added to the Health and Safety Code, to read:

25181.5. A registered waste transporter transporting medical waste who is not subject to Section 25097 shall be subject to penalties for violations pursuant to this article.

SEC. 17. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction,

changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. 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 814

An act to add Chapter 1.5 (commencing with Section 1795.90) to Title 1.7 of Part 4 of Division 3 of the Civil Code, and to amend Section 1808.23 of the Vehicle Code, relating to motor vehicle warranty adjustment programs.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 5, 1993.]

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

SECTION 1. Chapter 1.5 (commencing with Section 1795.90) is added to Title 1.7 of Part 4 of Division 3 of the Civil Code, to read:

CHAPTER 1.5. MOTOR VEHICLE WARRANTY ADJUSTMENT PROGRAMS

1795.90. For purposes of this chapter:

(a) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle, a lessee of a motor vehicle, any person to whom the motor vehicle is transferred during the duration of an express warranty applicable to that motor vehicle, and any person entitled by the terms of the warranty to enforce the obligations of the warranty.

(b) "Manufacturer" means any person, firm, or corporation, whether resident or nonresident, that manufactures or assembles motor vehicles for sale or distribution in this state. In the case of motor vehicles not manufactured in the United States, the term "manufacturer" shall also include any person, firm, or corporation that is engaged in the business of importing motor vehicles.

(c) "Dealer" means any person, firm, or corporation selling or agreeing to sell in this state one or more new motor vehicles under a retail agreement with a manufacturer, manufacturer branch, distributor, distributor branch, or agent of any of them.

(d) "Adjustment program" means any program or policy that expands or extends the consumer's warranty beyond its stated limit or under which a manufacturer offers to pay for all or any part of the cost of repairing, or to reimburse consumers for all or any part of the cost of repairing, any condition that may substantially affect vehicle durability, reliability, or performance, other than service provided

under a safety or emission-related recall campaign. "Adjustment program" does not include ad hoc adjustments made by a manufacturer on a case-by-case basis.

(e) "Motor vehicle" means a motor vehicle, excluding motorcycles, motor homes, and off-road vehicles, which is registered in this state.

(f) "Lessee" means any person who leases a motor vehicle pursuant to a written lease which provides that the lessee is responsible for repairs to the motor vehicle.

(g) "Service bulletin" means any notice issued by a manufacturer and filed with the National Highway Traffic Safety Administration relating to vehicle durability, reliability, or performance.

1795.91. Dealers shall have the following duties:

(a) A dealer shall provide notice to prospective purchasers and lessees that provides information on how to get copies of service bulletins. Nothing in this notice shall be construed as an admission by the dealer or manufacturer of the existence or nonexistence of a vehicle defect.

The notice shall be deemed sufficient if posted in the showroom or other area conspicuous to motor vehicle purchasers and written in the following form:

FEDERAL LAW REQUIRES MANUFACTURERS TO FURNISH THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (N.H.T.S.A.) WITH BULLETINS DESCRIBING ANY DEFECTS IN THEIR VEHICLES.

YOU MAY OBTAIN COPIES OF THESE BULLETINS, FOR A FEE, FROM EITHER OF THE FOLLOWING:

THE MANUFACTURER (ASK YOUR DEALER FOR THE TOLL-FREE NUMBER)

N.H.T.S.A.—TECHNICAL REFERENCE DIVISION
400 SEVENTH STREET, S.W.
ROOM 5110
WASHINGTON, D.C. 20590
202-366-2768

IN ADDITION, CERTAIN CONSUMER PUBLICATIONS PUBLISH THESE BULLETINS AND SOME COMPANIES WILL SEND THEM TO YOU, FOR A FEE.

(b) A dealer shall disclose to a consumer seeking repairs for a particular condition at its repair shop, the principal terms and conditions of the manufacturer's adjustment program covering the condition if the dealer has received a service bulletin concerning the adjustment program.

1795.92. Manufacturers shall have the following duties:

(a) A manufacturer shall, within 90 days of the adoption of an

adjustment program, subject to priority for safety or emission-related recalls, notify by first-class mail all owners or lessees of motor vehicles eligible under the program of the condition giving rise to and the principal terms and conditions of the program.

(b) Copies of all notices mailed in accordance with subdivision (a) shall be sent to the New Motor Vehicle Board within the Department of Motor Vehicles and made available for public inquiries.

(c) A manufacturer shall, within 30 days of the adoption of any new adjustment program, notify its dealers, in writing, of all the terms and conditions thereof.

(d) A manufacturer who establishes an adjustment program shall implement procedures to assure reimbursement of each consumer eligible under an adjustment program who incurs expenses for repair of a condition subject to the program prior to acquiring knowledge of the program. The reimbursement shall be consistent with the terms and conditions of the particular program. The manufacturer shall notify the consumer within 21 business days of receiving a claim for reimbursement whether the claim will be allowed or denied. If the claim is denied, the specific reasons for the denial shall be stated in writing.

(e) Any consumer who, prior to acquiring knowledge of an adjustment program, incurs expenses for repair of a condition subject to the adjustment program may file a claim for reimbursement under subdivision (d). The claim shall be made in writing to the manufacturer within two years of the date of the consumer's payment for repair of the condition.

1795.93. Nothing in this chapter shall be construed to exclude, modify, or otherwise limit any other remedy provided by law to a consumer or lessee.

SEC. 2. Section 1808.23 of the Vehicle Code is amended to read:

1808.23. (a) Section 1808.21 does not apply to a vehicle manufacturer licensed to do business in this state if the manufacturer, or its agent, under penalty of perjury, requests and uses the information only for the purpose of safety, warranty, including a warranty issued in compliance with Section 1795.92 of the Civil Code, emission, or product recall if the manufacturer offers to make and makes any changes at no cost to the vehicle owner.

(b) Section 1808.21 does not apply to a dealer licensed to do business in this state if the dealer, or its agent, under penalty of perjury, requests and uses the information only for the purpose of completing registration transactions and documents.

(c) Section 1808.21 does not apply to a person who, under penalty of perjury, requests and uses the information as permitted under subdivision (h) of Section 1798.24 of the Civil Code, if the request specifies that no persons will be contacted by mail or otherwise at the address included with the information released. The information released by the department under this subdivision shall not be in a form that identifies any person.

(d) Residential addresses released under this section shall not be

used for direct marketing or solicitation for the purchase of any consumer product or service.

CHAPTER 815

An act to amend Sections 32100.1 and 32125 of the Health and Safety Code, relating to local hospital districts.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 5, 1993.]

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

SECTION 1. Section 32100.1 of the Health and Safety Code is amended to read:

32100.1. A petition for election of directors by zones may be signed and filed with the board of directors by registered voters residing within a local hospital district, equal in number to at least 15 percent of the number of votes cast in that district for the office of Governor at the last preceding election at which a Governor was elected. Upon receipt of this petition the board of directors shall, by resolution, divide the local hospital district into zones and number the zones consecutively.

Alternatively, and without a petition, the board of directors may adopt a resolution to divide the district into zones and number the zones consecutively.

In establishing these zones the board of directors shall provide for representation in accordance with demographic, including population, and geographic factors of the entire area of the local hospital district. The board of directors shall fix the time and place for a hearing on the proposed establishment of zones. At this hearing any elector of the district may present his or her views and plans in relation to the proposed zoning, but the board of directors shall not be bound thereby and their decision, in the resolution adopted, shall be final.

The zones shall be effective for the next district election after the resolution of the board for which there is time to implement the zones and elections within the zones, unless a petition requesting an election on the resolution containing the signatures of not less than 5 percent of the qualified registered voters of the district is filed with the county clerk within 60 days after passage of the resolution. The form of the petition and the requirements and procedures applicable thereto shall be governed by Article 2 (commencing with Section 3750) of Chapter 2 of Division 5 of the Elections Code, except that all computations referred to in those sections shall be construed to refer to comparable computations of the district, and references to "ordinance" shall be construed to refer to "resolution." For purposes of this section, the electors of the district shall be the electors of the

territory entitled to vote at elections for members of the board. If a valid and timely petition is filed with the county clerk, then the board shall prepare a measure to be printed on the ballots used at the next general hospital district election, or at a special election to be held for that purpose. The measure shall be printed on the ballots substantially as follows:

"Shall members of the board of directors be elected by zones, as described in the resolution of the board of directors dated _____?", with the words "Yes" and "No" so printed in connection therewith that the voters may express their choice.

The county clerk of the county shall accept arguments for and against the measure to be mailed to each registered voter in the district, in accordance with the procedure in Article 3 (commencing with Section 3780) of Chapter 2 of Division 5 of the Elections Code.

The returns of the election shall be canvassed and declared as at other general hospital district elections, and if it appears that a majority of the votes cast in the election are in favor of the measure the board of directors shall by resolution declare the zones established and shall describe the boundaries of the zones. At the expiration of the terms of office of the members of the board of directors then in office, and thereafter, these members of the board of directors shall be elected by zones. One member of the board of directors shall be elected by the electors of each of the zones. No person shall be eligible to hold the office of member of the board of directors unless he or she shall have resided in the zone from where he or she is elected for 30 days next preceding the date of the election.

The formation of a local hospital district may provide for the election of members of the board of directors by zones as above provided for by substantially including in the petition for formation the provisions hereinabove required to be included in the measure, and the members of the board of directors shall be elected from the zones as described in the petition, except that the first board of directors shall be appointed, upon the formation of the district, by the board of supervisors of the county in which the land or a greater part of the land in the district is situated. One member of the board shall be appointed from each zone.

The terms of the members of the first board of directors appointed under this section shall be determined by lot. Three members shall hold office for four years, and two members shall hold office for two years. Thereafter, the term of office for all members shall be four years.

Any vacancy upon the board shall be filled by appointment by the remaining members of the board, from the zone left unrepresented on the board of directors. Any person appointed to fill the vacancy shall hold office for the unexpired term.

SEC. 4. Section 32125 of the Health and Safety Code is amended to read:

32125. (a) The board of directors shall be responsible for the

operation of all hospitals owned or leased by the district, according to the best interests of the public health and shall make and enforce all rules, regulations and bylaws necessary for the administration, government, protection and maintenance of hospitals under their management and all property belonging thereto and may prescribe the terms upon which patients may be admitted thereto. Minimum standards of operation as prescribed in this article shall be established and enforced by the board of directors.

(b) A district shall not contract to care for indigent county patients at below the cost for care. In setting the rates the board shall, insofar as possible, establish rates as will permit the hospital to be operated upon a self-supporting basis. The board may establish different rates for residents of the district than for persons who do not reside within the district.

(c) Notwithstanding any other provision of law, unless prohibited from doing so by action of the board of directors, the hospital administrator may establish a task force to assist the hospital administrator in operating the district's facilities. The hospital administrator shall, if required to do so by action of the board, select task force members from individuals nominated by the board. Once established, the task force may be dissolved by action of the hospital administrator or the board. Any action by the board under this subdivision shall require four votes from a board on which there are five members or five votes from a board on which there are seven members.

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 816

An act to repeal and add Division 12.2 (commencing with Section 15000) of the Public Resources Code, relating to batteries.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 5, 1993.]

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

SECTION 1. Division 12.2 (commencing with Section 15000) of the Public Resources Code is repealed.

SEC. 2. Division 12.2 (commencing with Section 15000) is added to the Public Resources Code, to read:

DIVISION 12.2. DRY CELL BATTERIES

CHAPTER 1. GENERAL

15000. This division shall be known, and may be cited, as the Dry Cell Battery Management Act.

15001. The Legislature hereby finds and declares as follows:

(a) On the basis of available scientific and medical evidence, exposure to toxic materials, including mercury, cadmium, and lead, is of significant concern to human health and safety and to the environment.

(b) The presence of toxic metals in certain dry cell batteries is of special concern, in light of the substantial quantity of used dry cell and rechargeable batteries that are discarded annually, and the potential health and environmental consequences associated with that disposal.

(c) It is in the public interest to reduce or eliminate the quantity and toxicity of metals in dry cell batteries, to recycle or properly dispose of rechargeable batteries which contain toxic metals, and to educate the public concerning the collection, recycling, and proper disposal of those batteries.

(d) Manufacturers and dealers of rechargeable batteries should be encouraged to promote the recycling and proper disposal of used rechargeable batteries through retail displays and collection programs.

(e) The use of uniform labeling requirements for rechargeable batteries, rechargeable consumer products, and product packaging will assist in battery collection and recycling, and thus benefit human health and safety and the environment.

CHAPTER 2. DEFINITIONS

15002. The definitions in this chapter govern the construction of this division.

15003. "Battery pack" means any combination of dry cell batteries containing one or more rechargeable batteries that is usually assembled for a particular application and commonly has wire leads, terminals, and dielectric housing.

15004. "Board" means the California Integrated Waste Management Board.

15005. "Dry cell battery" means any type of enclosed device or sealed container consisting of one or more voltaic or galvanic cells, electrically connected to produce electric energy, composed of lead, lithium, manganese, mercury, mercuric oxide, silver oxide, cadmium, zinc, copper, or other metals, or any combination thereof, of any shape, including, but not limited to, button, coin, cylindrical, or rectangular, and of a liquid starved or gel electrolyte, that is designed for commercial industrial, medical, institutional, or household use, including any alkaline, manganese, lithium, mercuric

oxide, silver oxide, zinc-air, or zinc-carbon battery, or any rechargeable battery.

15006. "Easily removable," with respect to a rechargeable battery or battery pack, means that the rechargeable battery or battery pack is either detachable or readily removable from a consumer product by a consumer with the use of common household tools at the end of the life of the product, the rechargeable battery or battery pack.

15007. "Manufacturer" means any person who manufactures dry cell batteries, rechargeable batteries or battery packs, or rechargeable consumer products.

15010. (a) "Rechargeable battery" means any dry cell battery containing an electrode composed of cadmium or lead, or any combination thereof, of any shape that is designed for reuse, and is capable of being recharged after repeated uses.

(b) "Rechargeable battery" does not include either of the following:

(1) Any dry cell battery that is used as the principal power source for transportation, including, but not limited to, automobiles, motorcycles, or boats.

(2) Any battery that is used only as a backup power source for memory or program instruction storage, timekeeping, or any similar purpose that requires uninterrupted electrical power in order to function if the primary energy supply fails or fluctuates momentarily.

15011. "Rechargeable consumer product" means any product, including any laptop computer or cordless electric tool or appliance, which, when sold at retail, contains, or is sold with, a rechargeable battery as its primary power supply, and that is commonly used for personal or household purposes. A rechargeable consumer product does not include remanufactured products.

15012. "Remanufactured product" means a rechargeable consumer product manufactured prior to July 1, 1994, which has been returned to the manufacturer for refurbishment and either returned to the consumer or resold.

CHAPTER 3. REMOVAL AND LABELING REQUIREMENTS

15013. (a) On and after January 1, 1995, no person shall sell or offer for sale in this state any rechargeable consumer product unless the product meets all of the following requirements:

(1) The rechargeable battery is easily removable from the rechargeable consumer product or is contained in a battery pack that is easily removable from, the product.

(2) The rechargeable consumer product and the rechargeable battery are labeled in accordance with subdivision (b).

(3) The rechargeable battery, battery pack, or rechargeable consumer product, if the product has a nonremovable rechargeable battery, has a brand name affixed to it.

(4) The instruction manual for the rechargeable consumer

product includes information regarding the proper recycling or disposal of the used rechargeable battery.

(b) On and after July 1, 1994, each rechargeable battery, consumer product package containing a rechargeable battery or battery pack, and the package for each such item, which is sold or offered for sale in this state, shall meet all of the following requirements:

(1) Be labeled in a conspicuous manner that is visible to consumers.

(2) Include the chemical name or the standard abbreviation for the chemical composition of the battery or battery pack.

(3) Contain the following statement:

(A) On each easily removable battery or easily removable battery pack: "NICKEL-CADMIUM BATTERY. MUST BE RECYCLED OR DISPOSED OF PROPERLY." OR "SEALED LEAD BATTERY. MUST BE RECYCLED OR DISPOSED OF PROPERLY."

(B) On each rechargeable consumer product, granted an exemption pursuant to Section 15014, without an easily removable battery or battery pack: "CONTAINS NICKEL-CADMIUM BATTERY. BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY." OR "CONTAINS SEALED LEAD BATTERY. BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY."

(C) On the packaging of each rechargeable consumer product, rechargeable battery, or battery pack, unless the specified label is clearly visible through the packaging: "CONTAINS NICKEL-CADMIUM BATTERY. BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY." OR "CONTAINS SEALED LEAD BATTERY. BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY."

(4) The label and messages specified in paragraphs (1), (2), and (3) shall use contrasting colors to differentiate the label message and background to enhance readability.

(5) No political subdivision of this state may enact or enforce any environmental labeling requirement for a rechargeable battery or battery pack, or a rechargeable consumer product, that is not identical to the labeling requirements contained in this subdivision or any regulations adopted by the board pursuant to this subdivision.

(c) The board may adopt regulations that require substantially similar labeling requirements for rechargeable batteries with chemistries that are different from those covered by subdivision (a) and the battery packs and products containing those batteries. Any regulations shall be adopted, amended, or repealed in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) Any violation of this section is a misdemeanor.

15014. (a) Any manufacturer of, or any manufacturer trade organization with respect to, any rechargeable battery or rechargeable consumer product may submit an application to the

board for an exemption from the requirements of paragraph (1) of subdivision (a) of Section 51013 in accordance with the procedures prescribed in subdivision (b). Within 60 days of receipt of an application for an exemption, the board shall either approve or deny the request. The exemption shall be issued for a period that is determined to be appropriate by the board, but shall not exceed two years.

(b) The application for an exemption shall include both of the following:

(1) A statement of the specified basis for the exemption.

(2) The name, business address, and telephone number of the applicant.

(c) The board shall grant the exemption if the board finds that the manufacturer has been unable to commence manufacture of the rechargeable consumer product in compliance with this chapter and with an equivalent level of product performance without causing either of the following:

(1) Danger to human health and safety or to the environment.

(2) Violation of requirements for approvals from governmental agencies or the Underwriters Laboratories or a similar widely recognized private standard-setting organization.

(d) The board may, by regulation, establish an application fee in an amount sufficient to offset the cost of processing requests for exemptions.

(e) A manufacturer or manufacturer trade organization granted an exemption may apply for an extension of the exemption in accordance with the requirements and procedures in subdivisions (b) and (c). However, in considering an extension of any exemption, the board shall evaluate whether other rechargeable consumer product manufacturers have developed technology or methods that permit access to the rechargeable battery in the same or similar type application. The board may grant up to three extensions of not more than two years each after the date of the original exemption.

15016. Any action solely to increase the recycling of rechargeable batteries or battery packs by any person or entity that affects the types or quantities being recycled, or the cost and structure of any return program, pursuant to this chapter 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) or the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code).

15018. For purposes of carrying out the collection, storage, transportation, and recycling of used rechargeable batteries or consumer products containing used rechargeable batteries, persons involved in returning used rechargeable batteries or consumer products containing used rechargeable batteries to a facility for recycling or proper disposal shall be subject to Section 25201 or 25216.1 of the Health and Safety Code or any successor section.

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 817

An act to add Sections 15008 and 15009 to, and to add Chapter 4 (commencing with Section 15020) to Division 12.2 of, the Public Resources Code, relating to batteries.

[Approved by Governor October 3, 1993. Filed with Secretary of State October 5, 1993.]

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

SECTION 1. Section 15008 is added to the Public Resources Code, to read:

15008. "Mercuric oxide button cell battery" means a battery which contains mercuric oxide electrodes, resembles buttons in size and shape, and is used in consumer products such as hearing aids.

SEC. 2. Section 15009 is added to the Public Resources Code, to read:

15009. "Mercuric oxide battery" means a battery containing mercuric oxide electrodes, except that mercuric oxide button cells are excluded from this definition.

SEC. 3. Chapter 4 (commencing with Section 15020) is added to Division 12.2 of the Public Resources Code, to read:

CHAPTER 4. MERCURY IN BATTERIES

15020. No person shall sell any dry cell battery manufactured on and after January 1, 1994, for household use in which the mercury content, by weight, exceeds the following limits:

(a) In an alkaline battery, 0.025 percent.

(b) In a carbon-zinc battery, 0.0 percent intentionally introduced mercury, as distinguished from mercury which may be incidentally present in other materials.

15021. On and after January 1, 1994, no person shall manufacture or sell any mercuric oxide button cell battery of any type or for any use.

15022. No person shall sell any alkaline manganese battery manufactured on or after January 1, 1996, if the battery contains any

intentionally introduced mercury, as distinguished from mercury which may be incidentally present in other materials. However, the mercury content in alkaline manganese button cell batteries shall not exceed 25 milligrams of mercury per button cell.

15023. No person shall sell any zinc-carbon battery manufactured on or after January 1, 1994, if the battery contains any intentionally introduced mercury, as distinguished from mercury which may be incidentally present in other materials.

15024. Any violation of this chapter is a misdemeanor.

SEC. 4. Sections 1 to 3, inclusive, of this act shall not become operative unless Assembly Bill 1769 is enacted and takes effect on or before January 1, 1994, and Assembly Bill 1769 repeals and adds Division 12.2 (commencing with Section 15000) of the Public Resources Code.

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 818

An act to add Section 53069.75 to the Government Code, relating to immigration, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 4, 1993. Filed with Secretary of State October 5, 1993.]

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

SECTION 1. Section 53069.75 is added to the Government Code, to read:

53069.75. In order to comply with state law requirements mandated by Section 3753 of Title 42 of the United States Code, which bases eligibility of federal grants under the Omnibus Control and Safe Streets Act, no local law shall prohibit a peace officer or custodial officer from identifying and reporting to the United States Immigration and Naturalization Service any person, pursuant to federal law or regulation, to whom both of the following apply:

(a) The person was arrested and booked, based upon the arresting officer's probable cause to believe that the person arrested had committed a felony.

(b) After the arrest and booking in subdivision (a), the officer reasonably suspects that the person arrested has violated the civil provisions of the federal immigration laws.

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 guarantee continued federal support for local law enforcement activities, it is necessary that this act take effect immediately.

CHAPTER 819

An act to add Sections 9601.5 and 9601.7 to the Unemployment Insurance Code, relating to employment.

[Approved by Governor October 4, 1993. Filed with Secretary of State October 5, 1993.]

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

SECTION 1. Section 9601.5 is added to the Unemployment Insurance Code, to read:

9601.5. Each state or local government agency or community action agency, or any private organization contracting with a state or local government agency, that provides employment services, including, but not limited to, job training, retraining, or placement, shall verify an individual's legal status or authorization to work prior to providing services to that individual in accordance with procedures established under federal law. For purposes of this section, proof of legal status or authorization to work includes, but is not limited to, a social security card, immigration visa, birth certificate, passport, or other valid document providing evidence of legal residence or authorization to work in the United States. This section shall not apply to employment services offered by school districts under secondary school and adult education programs.

SEC. 2. Section 9601.7 is added to the Unemployment Insurance Code, to read:

9601.7. (a) Each state or local government agency or community action agency, or any private organization contracting with a state or local government agency, that enters into an agreement with the department to provide employment services including, but not limited to, job training, retraining, or placement, shall post in a prominent location in the workplace, a notice stating that only citizens or those persons legally authorized to work in the United States will be permitted to use the agency's or organization's employment services that are funded by the federal or state government

(b) The notice shall read:

NOTICE: Attention All Job Seekers

The Immigration and Reform Control Act of 1986 (IRCA) requires that all employers verify the identity and employment authorization of all individuals hired after November 6, 1986. An employer is required to examine documents provided by the job seeker establishing identity and authorization for employment in the United States. In addition, it is a violation of both state and federal law to discriminate against job seekers on the basis of ancestry, race, or national origin. This agency provides employment services funded by the federal or state government that are available only to individuals who are United States citizens or who are legally authorized to work in the United States.

SEC. 3. 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.

CHAPTER 820

An act to amend Section 12800.5 of, and to add Sections 12801.5 and 14610.7 to, the Vehicle Code, relating to residency.

[Approved by Governor October 4, 1993. Filed with Secretary of State October 5, 1993.]

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

SECTION 1. Section 12800.5 of the Vehicle Code is amended to read:

12800.5. (a) A license issued after January 1, 1981, shall bear a fullface engraved picture or photograph of the licensee.

(b) A license issued on or after July 1, 1995, including a temporary license issued pursuant to Section 12506, shall bear the following notice: "This license is issued solely as a license to drive a motor vehicle in this state; it does not establish eligibility for employment, voter registration, or public benefits."

(c) The department may demand proof of age prior to the issuance of a license.

SEC. 2. Section 12801.5 is added to the Vehicle Code, to read:

12801.5. (a) Notwithstanding any other provision of law, the department shall require every applicant for an original driver's license or identification card to submit satisfactory proof that the applicant's presence in the United States is authorized under federal law.

(b) The department shall not issue an original driver's license or identification card to any person who does not submit satisfactory proof that the applicant's presence in the United States is authorized under federal law.

(c) The department shall adopt regulations to carry out the purposes of this section, including procedures for, but not limited to, (1) verifying that the applicant's presence in the United States is authorized under federal law, (2) issuance of temporary licenses pending verification of status, and (3) appeals hearings from denials of licenses or temporary licenses.

(d) The department shall, not later than March 1, 1994, submit a report to the Legislature on the feasibility and costs of entering into an agreement with the United States Immigration and Naturalization Service to electronically verify the alien registration number of those applicants who are residents who have been issued such a number, and to manually verify the status of those applicants who have not been issued such a number.

(e) On January 10, 1995, and on January 10 of each subsequent year thereafter, the department shall submit a supplemental budget report to the Governor and the Legislature detailing the costs of verifying the citizenship or legal residency of applicants for driver's licenses and identification cards, in order for the state to request reimbursement from the federal government.

(f) Notwithstanding Section 40300 or any other provision of law, a peace officer shall not detain or arrest a person solely on the belief that the person is an unlicensed driver, unless the officer has reasonable cause to believe the person driving is under the age of 16 years.

(g) The inability to obtain a driver's license pursuant to this section does not abrogate or diminish in any respect the legal requirement of every driver in this state to obey the motor vehicle laws of this state, including laws with respect to licensing, motor vehicle registration, and financial responsibility.

(h) This section shall become operative March 1, 1994.

SEC. 3. Section 14610.7 is added to the Vehicle Code, to read:

14610.7. It is a misdemeanor for any person to knowingly assist in obtaining a driver's license or identification card for any person whose presence in the United States is not authorized under federal law.

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 821

An act to amend Section 653f of the Penal Code, relating to Medi-Cal.

[Approved by Governor October 4, 1993. Filed with Secretary of State October 5, 1993.]

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

SECTION 1. Section 653f of the Penal Code is amended to read:

653f. (a) Every person who, with the intent that the crime be committed, solicits another to offer or accept or join in the offer or acceptance of a bribe, or to commit or join in the commission of robbery, burglary, grand theft, receiving stolen property, extortion, perjury, subornation of perjury, forgery, kidnapping, arson or assault with a deadly weapon or instrument or by means of force likely to produce great bodily injury, or, by the use of force or a threat of force, to prevent or dissuade any person who is or may become a witness from attending upon, or testifying at, any trial, proceeding, or inquiry authorized by law, shall be punished by imprisonment in a county jail for not more than one year or in the state prison, or by a fine of not more than ten thousand dollars ($10,000), or the amount which could have been assessed for commission of the offense itself, whichever is greater, or by both the fine and imprisonment.

(b) Every person who, with the intent that the crime be committed, solicits another to commit or join in the commission of murder shall be punished by imprisonment in the state prison for three, six, or nine years.

(c) Every person who, with the intent that the crime be committed, solicits another to commit rape by force or violence, sodomy by force or violence, oral copulation by force or violence, or any violation of Section 264.1, 288, or 289, shall be punished by imprisonment in the state prison for two, three, or four years.

(d) Every person who, with the intent that the crime be committed, solicits another to commit an offense specified in Section 11352, 11379, 11379.5, 11379.6, or 11391 of the Health and Safety Code shall be punished by imprisonment in a county jail not exceeding six months. Every person, who, having been convicted of soliciting another to commit an offense specified in this subdivision, is subsequently convicted of the proscribed solicitation, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison.

This subdivision does not apply where the term of imprisonment imposed under other provisions of law would result in a longer term of imprisonment.

(e) Every person who, with the intent that the crime be committed, solicits another to commit an offense specified in Section 14014 of the Welfare and Institutions Code shall be punished by

imprisonment in a county jail for not exceeding six months. Every person who, having been convicted of soliciting another to commit an offense specified in this subdivision, is subsequently convicted of the proscribed solicitation, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison.

(f) An offense charged in violation of subdivision (a), (b), or (c) shall be proven by the testimony of two witnesses, or of one witness and corroborating circumstances. An offense charged in violation of subdivision (d) or (e) shall be proven by the testimony of one witness and corroborating circumstances.

SEC. 1.5. Section 653f of the Penal Code is amended to read:

653f. (a) Every person who, with the intent that the crime be committed, solicits another to offer, accept, or join in the offer or acceptance of a bribe, or to commit or join in the commission of carjacking, robbery, burglary, grand theft, receiving stolen property, extortion, perjury, subornation of perjury, forgery, kidnapping, arson or assault with a deadly weapon or instrument or by means of force likely to produce great bodily injury, or, by the use of force or a threat of force, to prevent or dissuade any person who is or may become a witness from attending upon, or testifying at, any trial, proceeding, or inquiry authorized by law, shall be punished by imprisonment in a county jail for not more than one year or in the state prison, or by a fine of not more than ten thousand dollars ($10,000), or the amount which could have been assessed for commission of the offense itself, whichever is greater, or by both the fine and imprisonment.

(b) Every person who, with the intent that the crime be committed, solicits another to commit or join in the commission of murder shall be punished by imprisonment in the state prison for three, six, or nine years.

(c) Every person who, with the intent that the crime be committed, solicits another to commit rape by force or violence, sodomy by force or violence, oral copulation by force or violence, or any violation of Section 264.1, 288, or 289, shall be punished by imprisonment in the state prison for two, three, or four years.

(d) Every person who, with the intent that the crime be committed, solicits another to commit an offense specified in Section 11352, 11379, 11379.5, 11379.6, or 11391 of the Health and Safety Code shall be punished by imprisonment in a county jail not exceeding six months. Every person, who, having been convicted of soliciting another to commit an offense specified in this subdivision, is subsequently convicted of the proscribed solicitation, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison.

This subdivision does not apply where the term of imprisonment imposed under other provisions of law would result in a longer term of imprisonment.

(e) Every person who, with the intent that the crime be committed, solicits another to commit an offense specified in Section 14014 of the Welfare and Institutions Code shall be punished by

imprisonment in a county jail for not exceeding six months. Every person who, having been convicted of soliciting another to commit an offense specified in this subdivision, is subsequently convicted of the proscribed solicitation, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison.

(f) An offense charged in violation of subdivision (a), (b), or (c) shall be proven by the testimony of two witnesses, or of one witness and corroborating circumstances. An offense charged in violation of subdivision (d) or (e) shall be proven by the testimony of one witness and corroborating circumstances.

SEC. 1.7. Section 653f of the Penal Code is amended to read:

653f. (a) Every person who, with the intent that the crime be committed, solicits another to offer, accept, or join in the offer or acceptance of a bribe, or to commit or join in the commission of robbery, premises invasion, burglary, grand theft, receiving stolen property, extortion, perjury, subornation of perjury, forgery, kidnapping, arson or assault with a deadly weapon or instrument or by means of force likely to produce great bodily injury, or, by the use of force or a threat of force, to prevent or dissuade any person who is or may become a witness from attending upon, or testifying at, any trial, proceeding, or inquiry authorized by law, shall be punished by imprisonment in a county jail for not more than one year or in the state prison, or by a fine of not more than ten thousand dollars ($10,000), or the amount that could have been assessed for commission of the offense itself, whichever is greater, or by both the fine and imprisonment.

(b) Every person who, with the intent that the crime be committed, solicits another to commit or join in the commission of murder shall be punished by imprisonment in the state prison for three, six, or nine years.

(c) Every person who, with the intent that the crime be committed, solicits another to commit rape by force or violence, sodomy by force or violence, oral copulation by force or violence, or any violation of Section 264.1, 288, or 289, shall be punished by imprisonment in the state prison for two, three, or four years.

(d) Every person who, with the intent that the crime be committed, solicits another to commit an offense specified in Section 11352, 11379, 11379.5, 11379.6, or 11391 of the Health and Safety Code shall be punished by imprisonment in a county jail not exceeding six months. Every person, who, having been convicted of soliciting another to commit an offense specified in this subdivision, is subsequently convicted of the proscribed solicitation, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison.

This subdivision does not apply where the term of imprisonment imposed under other provisions of law would result in a longer term of imprisonment.

(e) Every person who, with the intent that the crime be committed, solicits another to commit an offense specified in Section

14014 of the Welfare and Institutions Code shall be punished by imprisonment in a county jail for not exceeding six months. Every person who, having been convicted of soliciting another to commit an offense specified in this subdivision, is subsequently convicted of the proscribed solicitation, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison.

(f) An offense charged in violation of subdivision (a), (b), or (c) shall be proven by the testimony of two witnesses, or of one witness and corroborating circumstances. An offense charged in violation of subdivision (d) or (e) shall be proven by the testimony of one witness and corroborating circumstances.

SEC. 1.9. Section 653f of the Penal Code is amended to read:

653f. (a) Every person who, with the intent that the crime be committed, solicits another to offer, accept, or join in the offer or acceptance of a bribe, or to commit or join in the commission of carjacking, robbery, premises invasion, burglary, grand theft, receiving stolen property, extortion, perjury, subornation of perjury, forgery, kidnapping, arson or assault with a deadly weapon or instrument or by means of force likely to produce great bodily injury, or, by the use of force or a threat of force, to prevent or dissuade any person who is or may become a witness from attending upon, or testifying at, any trial, proceeding, or inquiry authorized by law, shall be punished by imprisonment in a county jail for not more than one year or in the state prison, or by a fine of not more than ten thousand dollars ($10,000), or the amount that could have been assessed for commission of the offense itself, whichever is greater, or by both the fine and imprisonment.

(b) Every person who, with the intent that the crime be committed, solicits another to commit or join in the commission of murder shall be punished by imprisonment in the state prison for three, six, or nine years.

(c) Every person who, with the intent that the crime be committed, solicits another to commit rape by force or violence, sodomy by force or violence, oral copulation by force or violence, or any violation of Section 264.1, 288, or 289, shall be punished by imprisonment in the state prison for two, three, or four years.

(d) Every person who, with the intent that the crime be committed, solicits another to commit an offense specified in Section 11352, 11379, 11379.5, 11379.6, or 11391 of the Health and Safety Code shall be punished by imprisonment in a county jail not exceeding six months. Every person, who, having been convicted of soliciting another to commit an offense specified in this subdivision, is subsequently convicted of the proscribed solicitation, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison.

This subdivision does not apply where the term of imprisonment imposed under other provisions of law would result in a longer term of imprisonment.

(e) Every person who, with the intent that the crime be

committed, solicits another to commit an offense specified in Section 14014 of the Welfare and Institutions Code shall be punished by imprisonment in a county jail for not exceeding six months. Every person who, having been convicted of soliciting another to commit an offense specified in this subdivision, is subsequently convicted of the proscribed solicitation, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison.

(f) An offense charged in violation of subdivision (a), (b), or (c) shall be proven by the testimony of two witnesses, or of one witness and corroborating circumstances. An offense charged in violation of subdivision (d) or (e) shall be proven by the testimony of one witness and corroborating circumstances.

SEC. 2. (a) Section 1.5 of this bill incorporates amendments to Section 653f of the Penal Code proposed by both this bill, and AB 6 and SB 60. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 653f of the Penal Code, (3) AB 1957 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 6 and SB 60, in which case Section 653f of the Penal Code, as amended by AB 6 or SB 60, whichever is chaptered last, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative and Sections 1, 1.7, and 1.9 of this bill shall not become operative.

(b) Section 1.7 of this bill incorporates amendments to Section 653f of the Penal Code proposed by both this bill and AB 1957. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 653f of the Penal Code, (3) AB 6 and SB 60 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1957, at which time Section 1.7 of this bill shall become operative and Sections 1, 1.5, and 1.9 of this bill shall not become operative.

(c) Section 1.9 of this bill incorporates amendments to Section 653f of the Penal Code proposed by this bill, AB 1957, and AB 6 and SB 60. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 653f of the Penal Code, and (3) this bill is enacted last, in which case Section 653f of the Penal Code, as amended by AB 6 or SB 60, whichever is chaptered last, shall remain operative only until the operative date of this bill, at which time Section 1.9 of this bill shall become operative and Sections 1, 1.5, and 1.7 of this bill shall not become operative.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 822

An act to add Section 309.6 to the Public Utilities Code, relating to public utilities.

[Approved by Governor October 4, 1993. Filed with Secretary of State October 5, 1993.]

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

SECTION 1. Section 309.6 is added to the Public Utilities Code, to read:

309.6. (a) The commission shall adopt procedures on the disqualification of administrative law judges due to bias or prejudice similar to those of other state agencies and superior courts.

(b) The commission shall develop the procedures with the opportunity for public review and comment, and submit a report to the Legislature on or before February 28, 1994, on the adopted procedures.

CHAPTER 823

An act to amend Section 146a of the Penal Code, relating to crime.

[Approved by Governor October 4, 1993. Filed with Secretary of State October 5, 1993.]

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

SECTION 1. Section 146a of the Penal Code is amended to read:

146a. (a) Any person who falsely represents himself or herself to be a deputy or clerk in any state department and who, in that assumed character, does any of the following is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, by a fine not exceeding two thousand five hundred dollars ($2,500), or both the fine and imprisonment:

(1) Arrests, detains, or threatens to arrest or detain any person.

(2) Otherwise intimidates any person.

(3) Searches any person, building, or other property of any person.

(4) Obtains money, property, or other thing of value.

(b) Any person who falsely represents himself or herself to be a public officer, investigator, or inspector in any state department and who, in that assumed character, does any of the following shall be

punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding two thousand five hundred dollars ($2,500), or by both that fine and imprisonment, or by imprisonment in the state prison:

(1) Arrests, detains, or threatens to arrest or detain any person.

(2) Otherwise intimidates any person.

(3) Searches any person, building, or other property of any person.

(4) Obtains money, property, or other thing of value.

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 824

An act to add Section 11177.2 to the Penal Code, relating to parole, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 4, 1993. Filed with Secretary of State October 5, 1993.]

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

SECTION 1. Section 11177.2 is added to the Penal Code, to read:

11177.2. (a) No parolee may be released on parole to reside in any other receiving state if the parolee is subject to an unsatisfied order of restitution to a victim within the sending state.

(b) A parolee may be granted an exception to the prohibition in subdivision (a) if the parolee posts a bond for the amount of the restitution order.

(c) A parolee may petition the court for a hearing to determine whether, in the interests of justice, the prohibition in subdivision (a) should be waived.

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 safeguard the victims of crime in this state and to assure these victims receive timely restitution, it is necessary that this act take effect immediately.

CHAPTER 825

An act relating to state employees.

[Approved by Governor October 4, 1993. Filed with Secretary of State October 5, 1993.]

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

SECTION 1. The provisions of the State Bargaining Unit 14 memorandum of understanding prepared pursuant to Section 3517.5 of the Government Code and entered into by the state employer and the California State Employees' Association that require the expenditure of funds are hereby approved for the purposes of Section 3517.6 of the Government Code.

SEC. 2. Any provision in a memorandum of understanding approved by Section 1 that is scheduled to take effect on or after July 1, 1993, and that requires the expenditure of funds, shall not take effect unless funds for these provisions are specifically appropriated by the Legislature. In the event that funds for these provisions are not specifically appropriated by the Legislature, the state employer, and the affected employee organization shall meet and confer to renegotiate over the affected provisions.

SEC. 3. Notwithstanding Section 3517.6 of the Government Code, the provisions of any memorandum of understanding that require the expenditure of funds shall become effective even if the provisions of the memorandum of understanding are approved by the Legislature in legislation other than the annual Budget Act.

SEC. 4. Notwithstanding any other provisions of law, the Department of Finance may adjust departmental appropriations to reflect the salary, personal leave, and benefit changes made pursuant to this act or pursuant to a memorandum of understanding entered into by the state employer and a recognized employee organization pursuant to Section 3517.5 of the Government Code that has been approved and ratified by the Legislature.

CHAPTER 826

An act to amend Sections 17932, 18431, 18431.2, 18684.7, 19401.5, 19405, 25403, 25403.5, and 25962 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 4, 1993. Filed with Secretary of State October 5, 1993.]

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

SECTION 1. Section 17932 of the Revenue and Taxation Code is

amended to read:

17932. (a) Every partnership shall, within three months and 15 days after the close of the partnership taxable year, make a return for that taxable year, stating specifically the items of gross income and the deductions allowed by this part. The return shall include the names, addresses, and taxpayer identification numbers of the persons, whether residents or nonresidents, who would be entitled to share in the net income if distributed and the amount of the distributive share of each person. Except as otherwise provided in Section 18432.2, the return shall contain or be verified by a written declaration that it is made under the penalties of perjury, signed by one of the partners.

(b) Each partnership required to file a return under subdivision (a) for any partnership taxable year shall (on or before the day on which the return for that taxable year was required to be filed) furnish to each person who is a partner or who holds an interest in that partnership as a nominee for another person at any time during that taxable year a copy of that information required to be shown on that return as may be required by regulations.

(c) Any person who holds an interest in a partnership as a nominee for another person shall do both of the following:

(1) Furnish to the partnership, in the manner prescribed by the Franchise Tax Board, the name and address of that other person, and any other information for that taxable year as the Franchise Tax Board may by form and regulation prescribe.

(2) Furnish in the manner prescribed by the Franchise Tax Board that other person the information provided by that partnership under subdivision (b).

(d) The provisions of Section 6031(d) of the Internal Revenue Code, relating to the separate statement of items of unrelated business taxable income, shall apply.

SEC. 2. Section 18431 of the Revenue and Taxation Code is amended to read:

18431. Except as otherwise provided by the Franchise Tax Board and in Section 18431.2, any return, declaration, statement, or other document required to be made under any provision of this part or regulations shall contain, or be verified by, a written declaration that it is made under the penalties of perjury. Those returns, and all other returns, declarations, statements, or other documents or copies thereof required by this part, shall be in any form as the Franchise Tax Board may from time to time prescribe, including, but not limited to, on paper, on magnetic media pursuant to Section 19272, or by electronic technology or electronic imaging technology pursuant to Section 18431.2, and shall be filed with the Franchise Tax Board. The Franchise Tax Board shall prepare blank forms for the returns, declarations, statements, or other documents and shall distribute them throughout the state and furnish them upon application. Failure to receive or secure the form does not relieve any taxpayer from making any return, declaration, statement or

other document required.

SEC. 3. Section 18431.2 of the Revenue and Taxation Code is amended to read:

18431.2. (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic technology shall be in a form as the Franchise Tax Board may prescribe and is not complete, and therefore not filed, unless an electronic filing declaration is signed by the taxpayer, in accordance with Section 18431 in the case of individuals, subdivision (a) of Section 18405 in the case of estates and trusts, or subdivision (a) of Section 17932 in the case of a partnership. The Franchise Tax Board may prescribe forms and instructions for requiring the electronic filing declaration to be retained by the preparer or the taxpayer and may require the declaration to be furnished to the Franchise Tax Board upon request.

(b) Notwithstanding any other provision of law, any return, declaration, statement, or other document otherwise required to be signed that is filed in a traditional medium and captured using electronic imaging technology shall be deemed to be a signed, valid original document upon reproduction to paper form by the Franchise Tax Board.

(c) Notwithstanding any other provision of law, any return, declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic technology in a form as required by the Franchise Tax Board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the Franchise Tax Board.

(d) "Electronic imaging technology" means a system of microphotography, optical disk, or reproduction by other technique which does not permit additions, deletions, or changes to the original document. The system may include, but is not limited to, any magnetic media or other machine readable form.

(e) "Traditional medium" means any return, declaration, statement, or other document required to be made pursuant to this article other than those made using electronic technology or electronic imaging technology.

(f) "Electronic technology" includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

SEC. 4. Section 18684.7 of the Revenue and Taxation Code is amended to read:

18684.7. A penalty shall be imposed under this section for any of the following:

(a) In accordance with Section 6695(a) of the Internal Revenue Code, for failure to furnish a copy of the return to the taxpayer, as required by Section 18935.

(b) In accordance with Section 6695(c) of the Internal Revenue Code, for failure to furnish an identifying number, as required by Section 18934.

(c) In accordance with Section 6695(d) of the Internal Revenue Code, for failure to retain a copy or list, as required by Section 18935, or for failure to retain an electronic filing declaration, as required by Section 18431.2.

SEC. 5. Section 19401.5 of the Revenue and Taxation Code is amended to read:

19401.5. (a) Any person who signs his or her spouse's name on any income tax return, or any schedules or attachments thereto, or who files electronically pursuant to Section 18431.2, without the consent of the spouse as provided in subdivision (b), is guilty of a misdemeanor and shall upon conviction be fined an amount not to exceed five thousand dollars ($5,000) or be imprisoned for a term not to exceed one year, or both, at the discretion of the court, together with costs of investigation and prosecution.

(b) Notwithstanding subdivision (a), any person who signs his or her spouse's name shall not be guilty of a misdemeanor when one spouse is physically unable by reason of disease or injury to sign a joint return, the other spouse may with the oral consent of the one who is incapacitated, sign the incapacitated spouse's name in the proper place on the return followed by the words "By _____, Husband (or Wife)," and by the signature of the signing spouse in his or her own right, provided that a dated statement signed by the spouse who is signing the return is attached to and made a part of the return stating each of the following:

(1) The name of the return being filed.

(2) The taxable year.

(3) The reason for the inability of the spouse who is incapacitated to sign the return.

(4) That the spouse who is incapacitated consented to the signing of the return and that the taxpayer and his or her agent, if any, are responsible for the return as made and incur liability for the penalties provided for erroneous, false, or fraudulent returns.

(c) The penalties provided by this section are cumulative and shall not be construed as restricting any other penalty provided by law based upon the same facts, including any penalty under Section 470 of the Penal Code. However, an act or omission which is made punishable in different ways by this section and different provisions of the Penal Code shall not be punished under more than one provision.

SEC. 6. Section 19405 of the Revenue and Taxation Code is amended to read:

19405. (a) Any person who does any of the following shall be guilty of a felony, and upon conviction, shall be fined not more than twenty thousand dollars ($20,000) or imprisoned not more than three years, or both, together with the costs of prosecution:

(1) Willfully makes and subscribes any return, statement, or other document, that contains or is verified by a written declaration that it is made under the penalties of perjury, and that he or she does not believe to be true and correct as to every material matter.

(2) Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the Personal Income Tax Law, of a return, affidavit, claim, or other document, that is fraudulent or is false as to any material matter, whether or not that falsity or fraud is with the knowledge or consent of the person authorized or required to present that return, affidavit, claim, or document.

(3) Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the Personal Income Tax Law, or by any regulation pursuant to that law, or procures the same to be falsely or fraudulently executed or advises, aids in, or connives at that execution.

(4) Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by Chapter 19 (commencing with Section 18801) of this part, or Chapter 5 (commencing with Section 706.010) of Division 2 of, and Chapter 8 (commencing with Section 688.010) of Division 1 of, Title 9 of the Code of Civil Procedure, with intent to evade or defeat the assessment or collection of any tax imposed by this part.

(5) In connection with any settlement under Section 19133, or offer of that settlement, or in connection with any closing agreement under Section 19132 or offer to enter into that agreement, willfully does any of the following:

(A) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(B) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(b) The fact that an individual's name is signed to a return, statement, or other document filed, including a return, statement, or other document filed using electronic technology pursuant to Section 18431.2, shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him or her.

(c) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, or any agent, fiduciary, or representative of, or any other individual acting on behalf of, the taxpayer.

SEC. 7. Section 25403 of the Revenue and Taxation Code is amended to read:

25403. Except as otherwise provided in Section 25403.5, every return required by this part to be filed with the Franchise Tax Board shall be signed by a principal officer of the taxpayer and contain or be verified by a written declaration that it is made under the penalties of perjury.

In cases where receivers, trustees in a case under Title 11 of the United States Code, or assignees are operating the property or business of a bank or corporation such receivers, trustees, or assignees shall make returns for such bank or corporation in the same manner and form as such a bank or corporation is required to make a return.

SEC. 8. Section 25403.5 of the Revenue and Taxation Code is amended to read:

25403.5. (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic technology shall be in a form as the Franchise Tax Board may prescribe and is not complete, and therefore not filed, unless an electronic filing declaration is signed by the taxpayer, in accordance with Section 25403. The Franchise Tax Board may prescribe forms and instructions for requiring the electronic filing declaration to be retained by the preparer or the taxpayer and may require the declaration to be furnished to the Franchise Tax Board upon request.

(b) Notwithstanding any other provision of law, any return, declaration, statement, or other document otherwise required to be signed that is filed in a traditional medium and captured using electronic imaging technology shall be deemed to be a signed, valid original document upon reproduction to paper form by the Franchise Tax Board.

(c) Notwithstanding any other provision of law, any return, declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic technology in a form as required by the Franchise Tax Board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the Franchise Tax Board.

(d) "Electronic imaging technology" means a system of microphotography, optical disk, or reproduction by other technique which does not permit additions, deletions, or changes to the original document. The system may include, but is not limited to, any magnetic media or other machine readable form.

(e) "Traditional medium" means any return, declaration, statement, or other document required to be made pursuant to this article other than those made using electronic technology or electronic imaging technology.

(f) "Electronic technology" includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

SEC. 9. Section 25962 of the Revenue and Taxation Code is amended to read:

25962. (a) Any person who does any of the following shall be guilty of a felony, and upon conviction, shall be fined not more than one hundred thousand dollars ($100,000) or imprisoned not more than three years, or both, together with the costs of prosecution:

(1) Willfully makes and subscribes any return, statement, or other document, that contains or is verified by a written declaration that

it is made under the penalties of perjury, and that he or she does not believe to be true and correct as to every material matter.

(2) Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the Bank and Corporation Tax Law, of a return, affidavit, claim, or other document, that is fraudulent or is false as to any material matter, whether or not that falsity or fraud is with the knowledge or consent of the person authorized or required to present that return, affidavit, claim, or document.

(3) Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the Bank and Corporation Tax Law, or by any regulation pursuant to that law, or procures the same to be falsely or fraudulently executed, or advises, aids in, or connives at that execution.

(4) Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by Chapter 23 (commencing with Section 26131) of this part, with intent to evade or defeat the assessment or collection of any tax imposed by this part.

(5) In connection with any settlement under Section 25782, or offer of that settlement, or in connection with any closing agreement under Section 25781 or offer to enter into that agreement, willfully does any of the following:

(A) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(B) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(b) The fact that an individual's name is signed to a return, statement, or other document filed, including a return, statement, or other document filed using electronic technology pursuant to Section 25403.5, shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him or her.

(c) For purposes of this section, "person" means the taxpayer, any corporation, agent, fiduciary, or representative of, or any other entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

CHAPTER 827

An act to amend Section 12945.2 of the Government Code, relating to fair employment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 4, 1993. Filed with Secretary of State October 5, 1993.]

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

SECTION 1. Section 12945.2 of the Government Code is amended to read:

12945.2. (a) Except as provided in subdivision (b), it shall be an unlawful employment practice for any employer, as defined in paragraph (2) of subdivision (c), to refuse to grant a request by any employee with more than 12 months of service with the employer, and who has at least 1,250 hours of service with the employer during the previous 12-month period, to take up to a total of 12 workweeks in any 12-month period for family care and medical leave. Family care and medical leave requested pursuant to this subdivision shall not be deemed to have been granted unless the employer provides the employee, upon granting the leave request, a guarantee of employment in the same or a comparable position upon the termination of the leave. The commission shall adopt a regulation specifying the elements of a reasonable request.

(b) Notwithstanding subdivision (a), it shall not be an unlawful employment practice for an employer to refuse to grant a request for family care and medical leave by an employee if the employer employs less than 50 employees within 75 miles of the worksite where that employee is employed.

(c) For purposes of this section:

(1) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either of the following:

(A) Under 18 years of age.

(B) An adult dependent child.

(2) "Employer" means either of the following:

(A) Any person who directly employs 50 or more persons to perform services for a wage or salary.

(B) The state, and any political or civil subdivision of the state and cities.

(3) "Family care and medical leave" means any of the following:

(A) Leave for reason of the birth of a child of the employee, the placement of a child with an employee in connection with the adoption or foster care of the child by the employee, or the serious health condition of a child of the employee.

(B) Leave to care for a parent or a spouse who has a serious health condition.

(C) Leave because of an employee's own serious health condition that makes the employee unable to perform the functions of the position of that employee, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions.

(4) "Employment in the same or a comparable position" means employment in a position that has the same or similar duties and pay which can be performed at the same or similar geographic location as the position held prior to the leave.

(5) "Health care provider" means any of the following:

(A) An individual holding either a physician's and surgeon's certificate issued pursuant to Article 4 (commencing with Section 2080) of Chapter 5 of Division 2 of the Business and Professions Code, an osteopathic physician's and surgeon's certificate issued pursuant to Article 4.5 (commencing with Section 2099.5) of Chapter 5 of Division 2 of the Business and Professions Code, or an individual duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, who directly treats or supervises the treatment of the serious health condition.

(B) Any other person determined by the United States Secretary of Labor to be capable of providing health care services under the federal Family and Medical Leave Act of 1993.

(6) "Parent" means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.

(7) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either of the following:

(A) Inpatient care in a hospital, hospice, or residential health care facility.

(B) Continuing treatment or continuing supervision by a health care provider.

(d) An employer shall not be required to pay an employee for any leave taken pursuant to subdivision (a), except as required by subdivision (e).

(e) An employee taking a leave permitted by subdivision (a) may elect, or an employer may require the employee, to substitute for leave allowed under subdivision (a), any of the employee's accrued vacation leave or other accrued time off during this period or any other paid or unpaid time off negotiated with the employer. If an employee takes a leave because of the employee's own serious health condition, the employee may also elect, or the employer may also require the employee, to substitute accrued sick leave during the period of the leave. However, an employee shall not use sick leave during a period of leave in connection with the birth, adoption, or foster care of a child, or to care for a child, parent, or spouse with a serious health condition, unless mutually agreed to by the employer and the employee.

(f) (1) During any period that an eligible employee takes leave pursuant to subdivision (a) or takes leave that qualifies as leave taken

under the federal Family and Medical Leave Act of 1993 (FMLA), the employer shall maintain and pay for coverage under a "group health plan," as defined in Section 5000(b)(1) of the Internal Revenue Code of 1986, for the duration of the leave, not to exceed 12 workweeks in a 12-month period, commencing on the date leave taken under the FMLA commences, at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of the leave. Nothing in the preceding sentence shall preclude an employer from maintaining and paying for coverage under a "group health plan" beyond 12 workweeks. An employer may recover the premium that the employer paid as required by this subdivision for maintaining coverage for the employee under the group health plan if both of the following conditions occur:

(A) The employee fails to return from leave after the period of leave to which the employee is entitled has expired.

(B) The employee's failure to return from leave is for a reason other than the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under subdivision (a) or other circumstances beyond the control of the employee.

(2) Any employee taking leave pursuant to subdivision (a) shall continue to be entitled to participate in employee health plans for any period during which coverage is not provided by the employer under paragraph (1), employee benefit plans, including life, short-term or long-term disability or accident insurance, pension and retirement plans, and supplemental unemployment benefit plans to the same extent and under the same conditions as apply to an unpaid leave taken for any purpose other than those described in subdivision (a). In the absence of these conditions an employee shall continue to be entitled to participate in these plans, and in the case of health and welfare employee benefit plans, including life, short-term or long-term disability or accident insurance, or other similar plans, the employer may, at his or her discretion, require the employee to pay premiums, at the group rate, during the period of leave not covered by any accrued vacation leave, or other accrued time off, or any other paid or unpaid time off negotiated with the employer, as a condition of continued coverage during the leave period. However, the nonpayment of premiums by an employee shall not constitute a break in service, for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan.

For purposes of pension and retirement plans, an employer shall not be required to make plan payments for an employee during the leave period, and the leave period shall not be required to be counted for purposes of time accrued under the plan. However, an employee covered by a pension plan may continue to make contributions in accordance with the terms of the plan during the period of the leave.

(g) During a family care and medical leave period, the employee shall retain employee status with the employer, and the leave shall

not constitute a break in service, for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan. An employee returning from leave shall return with no less seniority than the employee had when the leave commenced, for purposes of layoff, recall, promotion, job assignment, and seniority-related benefits such as vacation.

(h) If the employee's need for a leave pursuant to this section is foreseeable, the employee shall provide the employer with reasonable advance notice of the need for the leave.

(i) If the employee's need for leave pursuant to this section is foreseeable due to a planned medical treatment or supervision, the employee shall make a reasonable effort to schedule the treatment or supervision to avoid disruption to the operations of the employer, subject to the approval of the health care provider of the individual requiring the treatment or supervision.

(j) (1) An employer may require that an employee's request for leave to care for a child, a spouse, or a parent who has a serious health condition be supported by a certification issued by the health care provider of the individual requiring care. That certification shall be sufficient if it includes all of the following:

(A) The date on which the serious health condition commenced.

(B) The probable duration of the condition.

(C) An estimate of the amount of time that the health care provider believes the employee needs to care for the individual requiring the care.

(D) A statement that the serious health condition warrants the participation of a family member to provide care during a period of the treatment or supervision of the individual requiring care.

(2) Upon expiration of the time estimated by the health care provider in subparagraph (C) of paragraph (1), the employer may require the employee to obtain recertification in accordance with the procedure provided in paragraph (1), if additional leave is required.

(k) (1) An employer may require that an employee's request for leave because of the employee's own serious health condition be supported by a certification issued by his or her health care provider. That certification shall be sufficient if it includes all of the following:

(A) The date on which the serious health condition commenced.

(B) The probable duration of the condition.

(C) A statement that, due to the serious health condition, the employee is unable to perform the function of his or her position.

(2) The employer may require that the employee obtain subsequent recertification regarding the employee's serious health condition on a reasonable basis, in accordance with the procedure provided in paragraph (1), if additional leave is required.

(3) (A) In any case in which the employer has reason to doubt the validity of the certification provided pursuant to this section, the employer may require, at the employer's expense, that the employee obtain the opinion of a second health care provider, designated or

approved by the employer, concerning any information certified under paragraph (1).

(B) The health care provider designated or approved under subparagraph (A) shall not be employed on a regular basis by the employer.

(C) In any case in which the second opinion described in subparagraph (A) differs from the opinion in the original certification, the employer may require, at the employer's expense, that the employee obtain the opinion of a third health care provider, designated or approved jointly by the employer and the employee, concerning the information certified under paragraph (1).

(D) The opinion of the third health care provider concerning the information certified under paragraph (1) shall be considered to be final and shall be binding on the employer and the employee.

(4) As a condition of an employee's return from leave taken because of the employee's own serious health condition, the employer may have a uniformly applied practice or policy that requires the employee to obtain certification from his or her health care provider that the employee is able to resume work. Nothing in this paragraph shall supersede a valid collective bargaining agreement that governs the return to work of that employee.

(*l*) It shall be an unlawful employment practice for an employer to refuse to hire, or to discharge, fine, suspend, expel, or discriminate against, any individual because of any of the following:

(1) An individual's exercise of the right to family care and medical leave provided by subdivision (a).

(2) An individual's giving information or testimony as to his or her own family care and medical leave, or another person's family care and medical leave, in any inquiry or proceeding related to rights guaranteed under this section.

(m) This section shall not be construed to require any changes in existing collective bargaining agreements during the life of the contract, or until January 1, 1993, whichever occurs first.

(n) The amendments made to this section by the act adding this subdivision shall not be construed to require any changes in existing collective bargaining agreements during the life of the contract, or until February 5, 1994, whichever occurs first.

(o) The provisions of this section shall be construed as separate and distinct from those of Section 12945.

(p) Leave provided for pursuant to this section may be taken in one or more periods. The 12-month period during which 12 workweeks of leave may be taken under this section shall run concurrently with the 12-month period under the FMLA, and shall commence the date leave taken under the FMLA commences.

(q) In any case in which both parents entitled to leave under subdivision (a) are employed by the same employer, the employer shall not be required to grant leave in connection with the birth, adoption, or foster care of a child that would allow the parents family care and medical leave totaling more than the amount specified in

subdivision (a).

(r) (1) Notwithstanding subdivision (a), an employer may refuse to reinstate an employee returning from leave to the same or a comparable position if all of the following apply:

(A) The employee is a salaried employee who is among the highest paid 10 percent of the employer's employees who are employed within 75 miles of the worksite at which that employee is employed.

(B) The refusal is necessary to prevent substantial and grievous economic injury to the operations of the employer.

(C) The employer notifies the employee of the intent to refuse reinstatement at the time the employer determines the refusal is necessary under subparagraph (B).

(2) In any case in which the leave has already commenced, the employer shall give the employee a reasonable opportunity to return to work following the notice prescribed by subparagraph (C).

(s) Leave taken by an employee pursuant to this section shall run concurrently with leave taken pursuant to the federal Family and Medical Leave Act of 1993 (FMLA), except for any leave taken under the FMLA for disability on account of pregnancy, childbirth, or related medical conditions. The aggregate amount of leave taken under this section or the FMLA, or both, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions, shall not exceed 12 workweeks in a 12-month period. An employee is entitled to take, in addition to the leave provided for under this section and the FMLA, the leave provided for in Section 12945, if the employee is otherwise qualified for that leave.

SEC. 2. In adopting regulations required by Section 12945.2 of the Government Code with respect to the appropriate minimum duration of family care and medical leave, the Fair Employment and Housing Commission may establish different minimum duration requirements for different types of leave. However, the commission shall permit any employee electing to take leave pursuant to Section 12945.2 of the Government Code to take that leave in increments of at least one day for recurring medical treatment certified by a health care provider.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to conform California law to existing federal law regarding family care and medical leave, it is necessary that this act take effect immediately.

CHAPTER 828

An act to amend, repeal, and add Sections 22, 23, 2500, 2501, 2551, 2552, 2601, 6005, 6008, 6010, 6013, 6110, 6113, 6120, 6123, 6139, 6210.5, 6211, 6214, 6220, 6222, 6223, 6261, 6264, 6305, 6311, 6316, 6328.3, 6329, 6342, 6360, and 6363 of the Elections Code, relating to elections.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 5, 1993.]

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

SECTION 1. The Legislature finds and declares that in order to improve public confidence in government at the local, state, and federal levels, every effort must be made to arrest the significant decline in voter participation that has occurred in the past decade, and that holding both the presidential primary and the direct primary elections the same day will help to maximize voter participation in the electoral process and increase public confidence in these various levels of government.

By moving the California presidential primary election date to the fourth Tuesday in March pursuant to this act, it is the intent of the Legislature to encourage the Congress and the major political parties to devise and implement a regional presidential primary system for the western states.

SEC. 2. Section 22 of the Elections Code is amended to read:

22. "Presidential primary" is the primary election that is held on the fourth Tuesday in March in any year which is evenly divisible by the number four, and at which delegations to national party conventions are to be chosen.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 2.5. Section 22 is added to the Elections Code, to read:

22. "Presidential primary" is the primary election that is consolidated with the direct primary held in any year which is evenly divisible by the number 4, and at which delegations to national party conventions are to be chosen.

This section shall become operative on January 1, 1998.

SEC. 3. Section 23 of the Elections Code is amended to read:

23. "Direct primary" is the primary election held on the first Tuesday after the first Monday in June in each even-numbered year, and on the fourth Tuesday in March in any year which is evenly divisible by the number four, to nominate candidates to be voted for at the ensuing general election or to elect members of a party central committee.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 3.5. Section 23 is added to the Elections Code, to read:

23. "Presidential primary" is the primary election that is consolidated with the direct primary held in any year which is evenly divisible by the number 4, and at which delegations to national party conventions are to be chosen.

This section shall become operative on January 1, 1998.

SEC. 4. Section 2500 of the Elections Code is amended to read:

2500. The regular election dates in each year are as follows:

(a) The second Tuesday of April of each even-numbered year.

(b) The first Tuesday after the first Monday in March of each odd-numbered year.

(c) The fourth Tuesday in March in any year which is evenly divisible by the number four.

(d) The first Tuesday after the first Monday in June of each year.

(e) The first Tuesday after the first Monday in November of each year.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 4.5. Section 2500 is added to the Elections Code, to read:

2500. Three regular election dates shall be established in each year as follows:

(1) The second Tuesday of April of each even-numbered year.

(2) The first Tuesday after the first Monday in March of each odd-numbered year.

(3) The first Tuesday after the first Monday in June of each year.

(4) The first Tuesday after the first Monday in November of each year.

This section shall become operative on January 1, 1998.

SEC. 5. Section 2501 of the Elections Code is amended to read:

2501. Elections held in June and November of each even-numbered year, and in March of any year evenly divisible by the number four, shall be statewide elections and these dates shall be considered statewide election dates.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 5.5. Section 2501 is added to the Elections Code, to read:

2501. Elections held in June and November of each even-numbered year shall be statewide elections and these dates shall be considered statewide election dates.

This section shall become operative on January 1, 1998.

SEC. 6. Section 2551 of the Elections Code is amended to read:

2551. (a) The statewide direct primary shall be held on the first Tuesday after the first Monday in June in each even-numbered year.

(b) Notwithstanding subdivision (a), in any year which is evenly divisible by the number four, the statewide direct primary shall be held on the fourth Tuesday in March and shall be consolidated with the presidential primary held in that year.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 6.5. Section 2551 is added to the Elections Code, to read:

2551. The statewide direct primary shall be held on the first Tuesday after the first Monday in June in each even-numbered year.

This section shall become operative on January 1, 1998.

SEC. 7. Section 2552 of the Elections Code is amended to read:

2552. The presidential primary shall be held on the fourth Tuesday in March any year evenly divisible by the number four.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 7.3. Section 2552 is added to the Elections Code, to read:

2552. The presidential primary shall be consolidated with the statewide direct primary held in any year evenly divisable by the whole number four.

This section shall become operative on January 1, 1998.

SEC. 7.5. Section 2601 of the Elections Code is amended to read:

2601. (a) Except as provided in Sections 35443, 36503.5, and 36504 of the Government Code, a general municipal election shall be held on the second Tuesday in April of even-numbered years, or on the first Tuesday after the first Monday in March of odd-numbered years.

(b) A city council may enact an ordinance to move the date of its general municipal election from the second Tuesday in April of even-numbered years to the first Tuesday after the first Monday in March of odd-numbered years.

(c) As the result of the adoption of an ordinance pursuant to this section, no term of office shall be increased or decreased by more than 12 months. As used in this subdivision, "12 months" means the period between the day upon which the term of office otherwise would have commenced and the first Tuesday after the first Monday in March of the odd-numbered year in which the election is held, inclusive.

(d) If an election is held pursuant to subdivision (a) and the election is consolidated with another election, Part 2.5 (commencing with Section 23300) of Division 14, except Section 23302, shall govern the consolidation, and, if the county clerk is requested to conduct the municipal election, Section 22003 shall be applicable to that election.

(e) Within 30 days after the ordinance becomes operative pursuant to subdivision (a), the city clerk shall cause a notice to be mailed to all registered voters informing the voters of the change in the election date. The notice shall also inform the voters that as a result in the change in election date, elected city officeholders' terms in office will be changed.

(f) If a city adopts an ordinance pursuant to subdivision (a), the municipal election following the adoption of the ordinance and each municipal election thereafter shall be conducted on the date

specified by the city council, in accordance with subdivision (a), unless the ordinance in question is later repealed by the city council.

(g) If the date of a general municipal election is changed pursuant to this section, at least one election shall be held before the ordinance may be subsequently repealed or amended.

SEC. 8. Section 6005 of the Elections Code is amended to read:

6005. The chairperson of the state central committee shall notify the Secretary of State on or before the 120th day preceding the presidential primary as to the number of delegates to represent the state in the next national convention of his or her party.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 8.5. Section 6005 is added to the Elections Code, to read:

6005. The chairman of the state central committee shall notify the Secretary of State on or before the first day of February immediately preceding the presidential primary as to the number of delegates to represent the state in the next national convention of his party.

This section shall become operative on January 1, 1998.

SEC. 9. Section 6008 of the Elections Code is amended to read:

6008. The Secretary of State shall, on or before the 110th day preceding the presidential primary, certify to the county clerk of each county the number of delegates to be elected by the Republican Party.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 9.5. Section 6008 is added to the Elections Code, to read:

6008. The Secretary of State shall, on or before the 10th day of February of the year of the presidential primary, certify to the county clerk of each county the number of delegates to be elected by the Republican Party.

This section shall become operative on January 1, 1998.

SEC. 10. Section 6010 of the Elections Code is amended to read:

6010. The Secretary of State shall place the name of a candidate upon the Republican presidential primary ballot when the Secretary of State has determined that the candidate is generally recognized throughout the United States or California as a candidate for the nomination of the Republican Party for President of the United States.

On or before the 120th day preceding a presidential primary election the Secretary of State shall publicly announce and distribute to the news media for publication a list of the candidates he or she intends to place on the ballot at the following presidential primary election. Following this announcement he or she may add candidates to his or her selection, but he or she may not delete any candidate whose name appears on the announced list.

This section shall remain in effect only until January 1, 1998, and

as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 10.5. Section 6010 is added to the Elections Code, to read:

6010. The Secretary of State shall place the name of a candidate upon the Republican presidential primary ballot when the Secretary of State shall have determined that such a candidate is generally recognized throughout the United States or California as a candidate for the nomination of the Republican Party for President of the United States.

On or before February 1 immediately preceding a presidential primary election the Secretary of State shall publicly announce and distribute to the news media for publication a list of the candidates he intends to place on the ballot at the following presidential primary election. Following this announcement he may add candidates to his selection, but he may not delete any candidate whose name appears on the announced list.

This section shall become operative on January 1, 1998.

SEC. 11. Section 6013 of the Elections Code is amended to read:

6013. Any unselected candidate desiring to have his or her name placed on the presidential primary ballot shall have nomination papers circulated in his or her behalf. In order to qualify his or her name for placement on the presidential primary ballot, the candidate's nomination papers shall be signed by voters registered as affiliated with the Republican Party equal in number to not less than 1 percent of the number of persons registered as members of the Republican Party, as reflected in the report of registration issued by the Secretary of State on the 135th day preceding the presidential primary election.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 11.5. Section 6013 is added to the Elections Code, to read:

6013. Any unselected candidate desiring to have his name placed on the presidential primary ballot shall have nomination papers circulated in his behalf. In order to qualify his name for placement on the presidential primary ballot, the candidate's nomination papers shall be signed by voters registered as affiliated with the Republican Party equal in number to not less than 1 percent of the number of persons registered as members of the Republican Party, as reflected in the report of registration issued by the Secretary of State in January of the year of the presidential primary election.

This section shall become operative on January 1, 1998.

SEC. 12. Section 6110 of the Elections Code is amended to read:

6110. The Secretary of State shall place the name of a candidate upon the American Independent Party presidential preference ballot when the Secretary of State has determined that the candidate is generally advocated for or recognized in the news media throughout the United States or California as actively seeking the nomination of the American Independent Party for President of the

United States.

On or before the 120th day preceding a presidential primary election the Secretary of State shall publicly announce and distribute to the news media for publication a list of the candidates he or she intends to place on the ballot at the following presidential primary election. Following this announcement he or she may add candidates to his or her selection, but he or she may not delete any candidate whose name appears on the announced list.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 12.5. Section 6110 is added to the Elections Code, to read:

6110. The Secretary of State shall place the name of a candidate upon the American Independent Party presidential preference ballot when the Secretary of State shall have determined that such a candidate is generally advocated for or recognized in the news media throughout the United States or California as actively seeking the nomination of the American Independent Party for President of the United States.

On or before February 1 immediately preceding a presidential primary election the Secretary of State shall publicly announce and distribute to the news media for publication a list of the candidates he intends to place on the ballot at the following presidential primary election. Following this announcement he may add candidates to his selection, but he may not delete any candidate whose name appears on the announced list.

This section shall become operative on January 1, 1998.

SEC. 13. Section 6113 of the Elections Code is amended to read:

6113. Any unselected candidate desiring to have his or her name placed on the presidential preference primary ballot without filing a group of candidates for delegates, shall have nomination papers circulated in his or her behalf. In order to qualify his or her name for placement on the presidential preference primary ballot, the candidate's nomination papers shall be signed by voters registered as affiliated with the American Independent Party equal in number to not less than 1 percent of the number of persons registered as members of the American Independent Party as reflected in the report of registration issued by the Secretary of State on the 135th day preceding the presidential primary election.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 13.5. Section 6113 is added to the Elections Code, to read:

6113. Any unselected candidate desiring to have his name placed on the presidential preference primary ballot without filing a group of candidates for delegates, shall have nomination papers circulated in his behalf. In order to qualify his name for placement on the presidential preference primary ballot, the candidate's nomination papers shall be signed by voters registered as affiliated with the

American Independent Party equal in number to not less than 1 percent of the number of persons registered as members of the American Independent Party as reflected in the report of registration issued by the Secretary of State in January of the year of the presidential primary election.

This section shall become operative on January 1, 1998.

SEC. 14. Section 6120 of the Elections Code is amended to read:

6120. The chairperson of the state central committee of the American Independent Party shall notify the Secretary of State on or before the 120th day preceding the presidential primary as to the number of delegates to represent the state in the next national convention of his or her party.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 14.5. Section 6120 is added to the Elections Code, to read:

6120. The chairman of the state central committee of the American Independent Party shall notify the Secretary of State on or before the first day of February immediately preceding the presidential primary as to the number of delegates to represent the state in the next national convention of his party.

This section shall become operative on January 1, 1998.

SEC. 15. Section 6123 of the Elections Code is amended to read:

6123. The Secretary of State shall, on or before the 110th day preceding the presidential primary, certify to the county clerk of each county the number of delegates to be elected by the American Independent Party.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 15.5. Section 6123 is added to the Elections Code, to read:

6123. The Secretary of State shall, on or before the 10th day of February of the year of the presidential primary, certify to the county clerk of each county the number of delegates to be elected by the American Independent Party.

This section shall become operative on January 1, 1998.

SEC. 16. Section 6139 of the Elections Code is amended to read:

6139. Nomination papers for candidates for delegates shall be signed by voters registered as affiliated with the American Independent Party equal in number to not less than 1 percent of the number of persons registered as members of the American Independent Party as reflected in the report of registration issued by the Secretary of State on the 135th day preceding the presidential primary election.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 16.5. Section 6139 is added to the Elections Code, to read:

6139. Nomination papers for candidates for delegates shall be

signed by voters registered as affiliated with the American Independent Party equal in number to not less than 1 percent of the number of persons registered as members of the American Independent Party as reflected in the report of registration issued by the Secretary of State in January of the year of the presidential primary election.

This section shall become operative on January 1, 1998.

SEC. 17. Section 6210.5 of the Elections Code is amended to read:

6210.5. On or before the 150th day preceding each presidential election year, the Secretary of State shall send a letter by first-class mail to the chairpeople of record of the Peace and Freedom Party state and county central committees, informing them that, while a response is not required, any information they wish to submit will be considered by the Secretary of State in the determination of candidates to be placed on the Peace and Freedom Party presidential preference primary ballot pursuant to Section 6210.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 17.5. Section 6210.5 is added to the Elections Code, to read:

6210.5. On or before January 7 of each presidential election year, the Secretary of State shall send a letter by first-class mail to the chairpeople of record of the Peace and Freedom Party State and County Central Committees, informing them that, while a response is not required, any information they wish to submit will be considered by the Secretary of State in the determination of candidates to be placed on the Peace and Freedom Party presidential preference primary ballot pursuant to Section 6210.

This section shall become operative on January 1, 1998.

SEC. 18. Section 6211 of the Elections Code is amended to read:

6211. On or before the 120th day preceding a presidential primary election, the Secretary of State shall publicly announce and distribute to the news media for publication a list of the candidates he or she intends to place on the ballot at the following presidential primary election. Following this announcement, the Secretary of State may add to his or her selection, but he or she may not delete any candidate whose name appears on the announced list. The Secretary of State shall mail a copy of the list and any subsequent additions thereto to the chairpersons of the Peace and Freedom Party State and County Central Committees.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 18.5. Section 6211 is added to the Elections Code, to read:

6211. On or before February 1 immediately preceding a presidential primary election, the Secretary of State shall publicly announce and distribute to the news media for publication a list of the candidates she or he intends to place on the ballot at the following presidential primary election. Following this

announcement, the Secretary of State may add to her or his selection, but she or he may not delete any candidate whose name appears on the announced list. The Secretary of State shall mail a copy of the list and any subsequent additions thereto to the chairpeople of the Peace and Freedom Party State and County Central Committees.

This section shall become operative on January 1, 1998.

SEC. 19. Section 6214 of the Elections Code is amended to read:

6214. Any unselected candidate desiring to have his or her name placed on the presidential preference primary ballot without filing a group of candidates for delegates, shall have nomination papers circulated in his or her behalf. In order to qualify the candidate's name for placement on the presidential preference primary ballot, the candidate's nomination papers shall be signed by voters registered as affiliated with the Peace and Freedom Party equal in number to not less than 1 percent of the number of persons registered as members of the Peace and Freedom Party as reflected in the report of registration issued by the Secretary of State on the 135th day preceding the presidential primary election.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 19.5. Section 6214 is added to the Elections Code, to read:

6214. Any unselected candidate desiring to have her or his name placed on the presidential preference primary ballot without filing a group of candidates for delegates, shall have nomination papers circulated in her or his behalf. In order to qualify such a candidate's name for placement on the presidential preference primary ballot, the candidate's nomination papers shall be signed by voters registered as affiliated with the Peace and Freedom Party equal in number to not less than 1 percent of the number of persons registered as members of the Peace and Freedom Party as reflected in the report of registration issued by the Secretary of State in January of the year of the presidential primary election.

This section shall become operative on January 1, 1998.

SEC. 20. Section 6220 of the Elections Code is amended to read:

6220. The chairperson of the Peace and Freedom Party State Central Committee shall notify the Secretary of State on or before the 120th day preceding the presidential primary as to the following:

(a) The name of that national party with which the Peace and Freedom Party has affiliated, by vote of its state central committee, and the address and telephone number of that national party's principal office.

(b) The number of delegates to represent the Peace and Freedom Party of California at the next national convention of that national party.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 20.5. Section 6220 is added to the Elections Code, to read:

6220. The chairperson of the Peace and Freedom Party State Central Committee shall notify the Secretary of State on or before the 1st of February immediately preceding the presidential primary as to:

(a) The name of that national party with which the Peace and Freedom Party has affiliated, by vote of its state central committee, and the address and telephone number of that national party's principal office, and

(b) The number of delegates to represent the Peace and Freedom Party of California at the next national convention of that national party.

This section shall become operative on January 1, 1998.

SEC. 21. Section 6222 of the Elections Code is amended to read:

6222. If the chairperson of the Peace and Freedom Party State Central Committee fails to file the notice required by Section 6221 by the 120th day preceding the presidential primary, the Secretary of State shall ascertain the party's national affiliation and the number of delegates from the chairperson or any other officer of record of the party state central committee or from the national party with which the Peace and Freedom Party was affiliated as indicated by the most recent statement of affiliation on file by the chairperson of the party state central committee.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 21.5. Section 6222 is added to the Elections Code, to read:

6222. If the chairperson of the Peace and Freedom Party State Central Committee fails to file the notice required by Section 6221 by the first day of February immediately preceding the presidential primary, the Secretary of State shall ascertain the party's national affiliation and the number of delegates from the chairperson or any other officer of record of the party state central committee or from the national party with which the Peace and Freedom Party was affiliated as indicated by the most recent statement of such affiliation on file by the chairperson of the party state central committee.

This section shall become operative on January 1, 1998.

SEC. 22. Section 6223 of the Elections Code is amended to read:

6223. On or before the 110th day before the presidential primary, the Secretary of State shall certify the following to the county clerk of each county:

(a) The name of that national party with which the Peace and Freedom Party is presently affiliated and the address and telephone number of that national party's principal office.

(b) The number of delegates to represent the Peace and Freedom Party of California in the next national convention of that national party.

(c) The number of delegate candidates to be selected from each territory pursuant to Sections 6224 and 6225 by each committee proposing a group of national convention delegates.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 22.5. Section 6223 is added to the Elections Code, to read:

6223. On or before the 10th of February before the presidential primary, the Secretary of State shall certify the following to the county clerk of each county:

(a) The name of that national party with which the Peace and Freedom Party is presently affiliated and the address and telephone number of that national party's principal office.

(b) The number of delegates to represent the Peace and Freedom Party of California in the next national convention of that national party.

(c) The number of delegate candidates to be selected from each territory pursuant to Sections 6224 and 6225 by each committee proposing a group of national convention delegates.

This section shall become operative on January 1, 1998.

SEC. 23. Section 6261 of the Elections Code is amended to read:

6261. The certified list required by Section 6260 shall be in substantially the following form:

CERTIFIED LIST OF CANDIDATES FOR PRESIDENTIAL PREFERENCE PRIMARY AND CANDIDATES FOR NATIONAL CONVENTION DELEGATE

To the County Clerk of _____ County:

I, _____, Secretary of State, do hereby certify that the names of the candidates to appear on the March _____, 19__, Peace and Freedom Party presidential preference primary ballot, in the order which they are to appear, are:

_____	_____
_____	_____
etc.	etc.

I further certify that the following list contains the name and post office address of each person who is entitled to be voted for at the March _____, 19__, Peace and Freedom Party presidential primary election as a candidate for delegate to the next national convention of the _____ Party with which the Peace and Freedom Party of California is affiliated on the national level. I further certify that the groups of candidates for delegate each appear under the name of the person for whom the group has expressed a preference as nominee of the Peace and Freedom Party for President, or under the name of the group chairperson in case of a group not expressing a preference, and that the groups are listed in the order in which they are to appear on the national convention delegate portion of the Peace and Freedom Party presidential primary ballot.

LIST OF CANDIDATES FOR NATIONAL CONVENTION DELEGATE

PEACE AND FREEDOM PARTY

Candidates preferring	
Name	Address
Top of group	
1. _____	_____
2. _____	_____
3. _____	_____
etc.	etc.

Candidates expressing no preference (Name of chairperson) _____	
Name	Address
Top of group	
1. _____	_____
2. _____	_____
3. _____	_____
etc.	etc.

Dated at Sacramento, California, this _____ day of _____, 19__.

_____

(SEAL) Secretary of State

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 23.5. Section 6261 is added to the Elections Code, to read:

6261. The certified list required by Section 6260 shall be in substantially the following form:

CERTIFIED LIST OF CANDIDATES FOR PRESIDENTIAL PREFERENCE PRIMARY AND CANDIDATES FOR NATIONAL CONVENTION DELEGATE

To the County Clerk of _____ County:

I, _____, Secretary of State, do hereby certify that the names of the candidates to appear on the June _____, 19__, Peace and Freedom Party presidential preference primary ballot, in the order which they are to appear, are:

_____	_____
_____	_____
etc.	etc.

I further certify that the following list contains the name and post office address of each person who is entitled to be voted for at the June _____, 19__, Peace and Freedom Party presidential primary election as a candidate for delegate to the next national convention of the _____ Party with which the Peace and Freedom Party of California is affiliated on the national level. I further certify that the groups of candidates for delegate each appear under the name of the person for whom the group has expressed a preference as nominee of the Peace and Freedom Party for President, or under the name of the group chairperson in case of a group not expressing a preference, and that the groups are listed in the order in which they are to appear on the national convention delegate portion of the Peace and Freedom Party presidential primary ballot.

LIST OF CANDIDATES FOR NATIONAL CONVENTION DELEGATE

PEACE AND FREEDOM PARTY

Candidates preferring	
Name	Address
Top of group	
1 _____	_____
2 _____	_____
3 _____	_____
etc.	etc.

Candidates expressing
no preference
(Name of chairperson)

Name	Address
Top of group	
1	
2	
3	
etc.	etc.

Dated at Sacramento, California, this _____ day of _____, 19__.

(SEAL) Secretary of State

This section shall become operative on January 1, 1998.

SEC. 24. Section 6264 of the Elections Code is amended to read:

6264. The notice of the list of candidates published by the county clerk shall be in substantially the following form:

NOTICE BY COUNTY CLERK OF TIME AND PLACE OF PEACE AND FREEDOM PARTY PRESIDENTIAL PRIMARY ELECTION AND NAMES OF CANDIDATES

Notice is hereby given that a Peace and Freedom Party presidential primary election is to be held in the County of _____ on the _____ day of March, 19__, and that the names of the candidates, in the order of their appearance on the Peace and Freedom Party presidential preference primary ballots, are:

etc.	etc.

and that the following list contains the name and address of each person who is entitled to be voted for at the March _____, 19__, Peace and Freedom Party presidential primary election as a candidate for delegate to the national convention of the _____ Party, with which the Peace and Freedom Party of California is affiliated on the national level, and that the groups of candidates for delegate, each appear under the name of the person for whom the group has expressed a preference as nominee of the Peace and

Freedom Party for President or under the name of the group chairperson in the case of a group expressing no preference for a particular candidate, and that the groups appear in the order in which they are to appear on the national convention delegate portion of the Peace and Freedom Party presidential primary ballot:

LIST OF CANDIDATES FOR NATIONAL CONVENTION DELEGATE

PEACE AND FREEDOM PARTY

Candidates preferring

Name	Address
Top of group	
1. _____	_____
2. _____	_____
3. _____	_____
etc.	etc.

Candidates expressing no preference (Name of chairperson)

Name	Address
Top of group	
1. _____	_____
2. _____	_____
3. _____	_____
etc.	etc.

Notice is also given that at the presidential primary the polls will be open from 7 a.m. to 8 p.m. on the day thereof.

Dated this _____ day of _____, 19__.

_____

County Clerk

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 24.5. Section 6264 is added to the Elections Code, to read:

6264. The notice of the list of candidates published by the county clerk shall be in substantially the following form:

NOTICE BY COUNTY CLERK OF TIME AND PLACE OF PEACE AND FREEDOM PARTY PRESIDENTIAL PRIMARY ELECTION AND NAMES OF CANDIDATES

Notice is hereby given that a Peace and Freedom Party presidential primary election is to be held in the County of _____ on the _____ day of June, 19__, and that the names of the candidates, in the order of their appearance on the Peace and Freedom Party presidential preference primary ballots, are:

_____	_____
_____	_____
etc.	etc.

and that the following list contains the name and address of each person who is entitled to be voted for at the June _____, 19__, Peace and Freedom Party presidential primary election as a candidate for delegate to the national convention of the _____ Party, with which the Peace and Freedom Party of California is affiliated on the national level, and that the groups of candidates for delegate, each appear under the name of the person for whom the group has expressed a preference as nominee of the Peace and Freedom Party for President or under the name of the group chairperson in the case of a group expressing no preference for a particular candidate, and that the groups appear in the order in which they are to appear on the national convention delegate portion of the Peace and Freedom Party presidential primary ballot:

LIST OF CANDIDATES FOR NATIONAL CONVENTION DELEGATE

PEACE AND FREEDOM PARTY

Candidates preferring

Name	Address
Top of group	
1.	
2.	
3.	
etc.	etc.

Candidates expressing no preference (Name of chairperson)

Name	Address
Top of group	
1.	
2.	
3.	
etc.	etc.

Notice is also given that at the presidential primary the polls will be open from 7 a.m. to 8 p.m. on the day thereof.

Dated this _____ day of _____, 19__.

_____

County Clerk

This section shall become operative on January 1, 1998.

SEC. 25. Section 6305 of the Elections Code is amended to read:

6305. (a) The chairperson of the Democratic State Central Committee shall notify the Secretary of State on or before the 120th day preceding the presidential primary as to the number of delegates and alternates to represent the state in the next national convention of the Democratic Party.

(b) The chairperson shall notify each statewide-elected

officeholder, each Member of the Legislature, each United States Senator from California, and each Member of the House of Representatives from California who is affiliated with the Democratic Party as to the officeholder's right to serve as a pledged elected official delegate to the Democratic National Convention.

(c) The chairperson shall also notify the Secretary of State at the time prescribed in subdivision (a) as to the number of delegates which may be selected from each congressional district in connection with the presidential primary. The number of delegates which may be selected from each congressional district shall be based on a formula which apportions 75 percent of the state's base delegation allocated by the Democratic National Committee, among the congressional districts in a manner which gives equal weight to the vote for the Democratic candidates in the most recent presidential and gubernatorial elections.

The number of delegates allocated to each congressional district shall be rounded off to the nearest whole integer. The remaining delegates and alternates shall be selected pursuant to Article 10 (commencing with Section 6365).

(d) Delegates and alternate delegates apportioned to each congressional district shall be selected based on the proportion of the vote a presidential candidate or uncommitted delegation receives within the congressional district pursuant to Section 6365.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 25.5. Section 6305 is added to the Elections Code, to read:

6305. (a) The chairperson of the Democratic State Central Committee shall notify the Secretary of State on or before the first of February immediately preceding the presidential primary as to the number of delegates and alternates to represent the state in the next national convention of the Democratic Party.

(b) The chairperson shall notify each statewide-elected officeholder, each Member of the Legislature, each United States Senator from California, and each Member of the House of Representatives from California who is affiliated with the Democratic Party as to the officeholder's right to serve as a pledged elected official delegate to the Democratic National Convention.

(c) The chairperson shall also notify the Secretary of State at the time prescribed in subdivision (a) as to the number of delegates which may be selected from each congressional district in connection with the presidential primary. The number of delegates which may be selected from each congressional district shall be based on a formula which apportions 75 percent of the state's base delegation allocated by the Democratic National Committee, among the congressional districts in a manner which gives equal weight to the vote for the Democratic candidates in the most recent presidential and gubernatorial elections.

The number of delegates allocated to each congressional district

shall be rounded off to the nearest whole integer. The remaining delegates and alternates shall be selected pursuant to Article 10 (commencing with Section 6365).

(d) Delegates and alternate delegates apportioned to each congressional district shall be selected based on the proportion of the vote a presidential candidate or uncommitted delegation receives within the congressional district pursuant to Section 6365.

This section shall become operative on January 1, 1998.

SEC. 26. Section 6311 of the Elections Code is amended to read:

6311. The Secretary of State shall place the name of a candidate upon the presidential primary ballot when he or she has determined that the candidate is generally advocated for or recognized throughout the United States or California as actively seeking the nomination of the Democratic Party for President of the United States. The Secretary of State shall include as criteria for selecting candidates the fact of qualifying for funding under the Federal Elections Campaign Act as amended in 1974.

Between the 150th day and the 120th day preceding a presidential primary election, the Secretary of State shall publicly announce and distribute to the news media for publication a list of the selected candidates that he or she intends to place on the ballot at the following presidential primary election. Following this announcement the Secretary of State may add candidates to the selection, but he or she may not delete any presidential candidate whose name appears on the announced list except as provided in Section 6313.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 26.5. Section 6311 is added to the Elections Code, to read:

6311. The Secretary of State shall place the name of a candidate upon the presidential primary ballot when he or she has determined that such a candidate is generally advocated for or recognized throughout the United States or California as actively seeking the nomination of the Democratic Party for President of the United States. The Secretary of State shall include as criteria for selecting candidates the fact of qualifying for funding under the Federal Elections Campaign Act as amended in 1974.

After January 1, but on or before February 1, immediately preceding a presidential primary election, the Secretary of State shall publicly announce and distribute to the news media for publication a list of the selected candidates that he or she intends to place on the ballot at the following presidential primary election. Following this announcement the Secretary of State may add candidates to the selection, but he or she may not delete any presidential candidate whose name appears on the announced list except as provided in Section 6313.

This section shall become operative on January 1, 1998.

SEC. 27. Section 6316 of the Elections Code is amended to read:

6316. Any unselected candidate or uncommitted delegation desiring to be placed on the presidential primary ballot shall have nomination papers circulated on behalf of the candidacy. In order to qualify for placement on the presidential primary ballot, the candidate's or uncommitted delegation's nomination papers shall be signed by voters registered as affiliated with the Democratic Party equal in number to not less than 1 percent or 500, whichever is fewer, in each congressional district of the number of persons registered as members of the Democratic Party in the report of registration issued by the Secretary of State on the 135th day preceding the presidential primary election.

The unselected candidates or uncommitted delegations shall meet the statewide signature requirements from each congressional district in order to be eligible for placement on the ballot in any one congressional district.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 27.5. Section 6316 is added to the Elections Code, to read:

6316. Any unselected candidate or uncommitted delegation desiring to be placed on the presidential primary ballot shall have nomination papers circulated on behalf of the candidacy. In order to qualify for placement on the presidential primary ballot, the candidate's or uncommitted delegation's nomination papers shall be signed by voters registered as affiliated with the Democratic Party equal in number to not less than 1 percent or 500, whichever is fewer, in each congressional district of the number of persons registered as members of the Democratic Party in the report of registration issued by the Secretary of State in January of the presidential primary year.

The unselected candidates or uncommitted delegations shall meet the statewide signature requirements from each congressional district in order to be eligible for placement on the ballot in any one congressional district.

This section shall become operative on January 1, 1998.

SEC. 28. Section 6328.3 of the Elections Code is amended to read:

6328.3. On or before the 50th day preceding the presidential primary, the Democratic State Central Committee shall transmit to the steering committee of each presidential candidate and uncommitted delegation a list of all persons who have filed a declaration of candidate for delegate pledged to that presidential candidate or uncommitted delegation.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 28.5. Section 6328.3 is added to the Elections Code, to read:

6328.3. On or before the third Tuesday in April, the Democratic State Central Committee shall transmit to the steering committee of each presidential candidate and uncommitted delegation a list of all persons who have filed a declaration of candidate for delegate

pledged to that presidential candidate or uncommitted delegation.

This section shall become operative on January 1, 1998.

SEC. 29. Section 6329 of the Elections Code is amended to read:

6329. On or before the 40th day preceding the presidential primary election, at 3 p.m., the caucus chairperson in each congressional district shall convene a caucus for the purpose of electing potential delegates and alternate delegates. The steering committee of each candidate or uncommitted delegation shall have sole authority to establish rules and procedures, including the naming of caucus chairpersons, by which the caucuses of that candidate or uncommitted delegation shall be conducted. The rules and procedures shall be uniform statewide, and in compliance with the Democratic State Central Committee's delegate selection and affirmative action plan. Each caucus shall elect a slate of delegate nominees in each congressional district pursuant to Article 2 (commencing with Section 6305), ranked in the manner specified by this section. The slate shall be transmitted to the steering committee of each candidate and uncommitted delegation.

Each participant at each caucus shall reside in and be a registered Democrat of the congressional district of the caucus he or she attends and each shall sign a statement of support for that presidential candidate or uncommitted delegation. Within five days after the convening of the caucus, the steering committee of each candidate or uncommitted delegation shall rank the delegate candidates from the slate of delegate candidates provided by each caucus. The delegate candidate receiving the greatest number of votes shall be ranked as the first delegate candidate. The delegate candidate of the opposite sex as the first ranked delegate candidate receiving the greatest number of votes shall be ranked as the second delegate candidate. The remaining delegate candidates to be ranked shall continue to be alternated between sexes in the order of vote totals. Immediately, thereafter, the chairperson of a steering committee shall file with the Secretary of State a statement containing the names of delegate candidates in ranked order from each congressional district. In all cases, the slate for each congressional district shall be equal to the number of delegates and alternate delegates allotted to each congressional district pursuant to Section 6306.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 29.5. Section 6329 is added to the Elections Code, to read:

6329. On the first Sunday in May of the presidential primary year, at 3 p.m., the caucus chairperson in each congressional district shall convene a caucus for the purpose of electing potential delegates and alternate delegates. The steering committee of each candidate or uncommitted delegation shall have sole authority to establish rules and procedures, including the naming of caucus chairpersons, by which the caucuses of that candidate or uncommitted delegation

shall be conducted. Such rules and procedures shall be uniform statewide, and in compliance with the Democratic State Central Committee's delegate selection and affirmative action plan. Each caucus shall elect a slate of delegate nominees in each congressional district pursuant to Article 2 (commencing with Section 6305), ranked in the manner specified by this section. Such slate shall be transmitted to the steering committee of each candidate and uncommitted delegation.

Each participant at each caucus shall reside in and be a registered Democrat of the congressional district of the caucus he or she attends and each shall sign a statement of support for that presidential candidate or uncommitted delegation. Within five days after the convening of the caucus, the steering committee of each candidate or uncommitted delegation shall rank the delegate candidates from the slate of delegate candidates provided by each caucus. The delegate candidate receiving the greatest number of votes shall be ranked as the first delegate candidate. The delegate candidate of the opposite sex as the first ranked delegate candidate receiving the greatest number of votes shall be ranked as the second delegate candidate. The remaining delegate candidates to be ranked shall continue to be alternated between sexes in the order of vote totals. Immediately, thereafter, the chairperson of a steering committee shall file with the Secretary of State a statement containing the names of delegate candidates in ranked order from each congressional district. In all cases, the slate for each congressional district shall be equal to the number of delegates and alternate delegates allotted to each congressional district pursuant to Section 6306.

This section shall become operative on January 1, 1998.

SEC. 30. Section 6342 of the Elections Code is amended to read:

6342. Circulators may obtain signatures to the nomination paper for which they were appointed, at any time not before 120 days nor after 75 days prior to the presidential primary election.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 30.5. Section 6342 is added to the Elections Code, to read:

6342. Circulators may obtain signatures to the nomination paper for which they were appointed, at any time not before February 1 nor after 75 days prior to the presidential primary election.

This section shall become operative on January 1, 1998.

SEC. 31. Section 6360 of the Elections Code is amended to read:

6360. At least 59 days before a presidential primary election, the Secretary of State shall transmit to each county clerk a certified list containing the name of each candidate who is entitled to be voted for on the ballot at the presidential primary and the name of each chairperson of a steering committee of an uncommitted delegation who is to be voted for on the same ballot.

If no uncommitted delegation has qualified pursuant to Article 4

(commencing with Section 6315), the Secretary of State shall inform the county clerks to provide for an uncommitted delegate space on the ballot.

The certified list shall be in substantially the following form:

Certified List of Presidential Candidates and Uncommitted Delegations

To the County Clerk of _____ County:

I, _____, Secretary of State, do hereby certify that the following list contains the name of each person who is entitled to be voted for as a candidate of the Democratic Party at the presidential primary election to be held on the _____ day of March, 19__, and the name of each chairperson of a steering committee of an uncommitted delegation which is entitled to be voted for on the ballot.

List of Presidential Candidates and Uncommitted Delegations

Linda Adams
Joseph Black
John Reardon
Unpledged delegation
Paul Minor,
Chairperson

Dated at Sacramento, California, this _____ day of _____, 19__.

_____

(SEAL) Secretary of State

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 31.5. Section 6360 is added to the Elections Code, to read:

6360. At least 59 days before a presidential primary election, the Secretary of State shall transmit to each county clerk a certified list containing the name of each candidate who is entitled to be voted for on the ballot at the presidential primary, and the name of each chairperson of a steering committee of an uncommitted delegation who is to be voted for on the same ballot.

If no uncommitted delegation has qualified pursuant to Article 4 (commencing with Section 6315), the Secretary of State shall inform the county clerks to provide for an uncommitted delegate space on the ballot.

The certified list shall be in substantially the following form:

Certified List of Presidential Candidates and Uncommitted Delegations

To the County Clerk of _____ County:

I, _____, Secretary of State, do hereby certify that the following list contains the name of each person who is entitled to be voted for as a candidate of the Democratic Party at the presidential primary election to be held on the _____ day of June, 19__, and the name of each chairperson of a steering committee of an uncommitted delegation which is entitled to be voted for on the ballot.

List of Presidential Candidates and Uncommitted Delegations

Linda Adams
Joseph Black
John Reardon
Unpledged delegation
Paul Minor,
Chairperson

Dated at Sacramento, California, this _____ day of _____, 19__.

_____

(SEAL) Secretary of State

This section shall become operative on January 1, 1998.

SEC. 32. Section 6363 of the Elections Code is amended to read:

6363. The notice of the list of presidential candidates and uncommitted delegations published by the county clerk shall be in substantially the following form:

Notice by County Clerk of Time and Place of Presidential Primary Election, and Names of Democratic Presidential Candidates and Uncommitted Delegations

Notice is hereby given that the presidential primary election is to be held in the County of _____ on the _____ day of March, 19__, and that hereinafter there is stated the name of each person and each uncommitted delegation which is entitled to be voted for on the ballot at the election.

List of Presidential Candidates and Uncommitted Delegations
Democratic Party

Linda Adams
Joseph Black
John Reardon
Unpledged delegation
Paul Minor,
Chairperson

Notice is also hereby given that at the presidential primary election the polls will be open from 7 a.m. to 8 p.m. on the day thereof.

Dated this _____ day of _____, 19__.

_____, County Clerk

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 32.5. Section 6363 is added to the Elections Code, to read:

6363. The notice of the list of presidential candidates and uncommitted delegations published by the county clerk shall be in substantially the following form:

Notice by County Clerk of Time and Place of Presidential Primary Election, and Names of Democratic Presidential Candidates and Uncommitted Delegations.

Notice is hereby given that the presidential primary election is to be held in the County of _____ on the _____ day of June, 19__, and that hereinafter there is stated the name of each person and each uncommitted delegation which is entitled to be voted for on the ballot at the election.

List of Presidential Candidates and Uncommitted Delegations

Democratic Party

Linda Adams
Joseph Black
John Reardon
Unpledged delegation
Paul Minor,
Chairperson

Notice is also hereby given that at the presidential primary election the polls will be open from 7 a.m. to 8 p.m. on the day thereof.

Dated this _____ day of _____, 19__.

_____, County Clerk

This section shall become operative on January 1, 1998.

SEC. 33. Notwithstanding any other provision of law, if Senate Bill 535 is chaptered and takes effect on or before January 1, 1994, whether Senate Bill 535 is chaptered prior to, or subsequent to, this act, any sections of Senate Bill 535 that repeal Sections 6264 and 6363 of the Elections Code shall prevail over Sections 24 24.5, 32, and 32.5 of this act, and Sections 24, 24.5, 32, and 32.5 of this act shall not become operative.

SEC. 34. Notwithstanding any other provision of law, if Assembly Bill 1173 is chaptered and takes effect on or before January 1, 1994, whether Assembly Bill 1173 is chaptered prior to, or subsequent to, this act, any section of Assembly Bill 1173 that amends Section 6342 of the Elections Code shall prevail over Sections 30 and 30.5 of this act, and Sections 30 and 30.5 of this act shall not become operative.

CHAPTER 829

An act to amend Section 4686 of the Welfare and Institutions Code, relating to developmental disabilities.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 4686 of the Welfare and Institutions Code is amended 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.

CHAPTER 830

An act to amend Section 51.2 of the Civil Code, and to amend Section 12995 of, and to add Section 12955.9 to, the Government Code, relating to discrimination, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 51.2 of the Civil Code is amended to read:

51.2. (a) Section 51 shall be construed to prohibit a business establishment from discriminating in the sale or rental of housing based upon age. Where accommodations are designed to meet the physical and social needs of senior citizens, a business establishment may establish and preserve that housing for senior citizens, pursuant to Section 51.3, except housing as to which Section 51.3 is preempted by the prohibition in the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and implementing regulations against discrimination on the basis of familial status. Where accommodations constructed before February 8, 1982, meet the criteria for senior citizen housing specified in Section 51.4, a business establishment may establish and preserve that housing for senior citizens until January 1, 2000, in accordance with Section 51.4.

(b) This section is intended to clarify the holdings in Marina Point, Ltd. v. Wolfson (1982), 30 Cal. 3d 72, and O'Connor v. Village Green Owners Association (1983), 33 Cal. 3d 790.

SEC. 2. Section 12955.9 is added to the Government Code, to read:

12955.9. (a) The provisions of this part respecting discrimination on the basis of familial status do not apply to housing for older persons, as defined in subdivision (b).

(b) "Housing for older persons," for purposes of subdivision (a), means any of the following:

(1) Housing provided under any state or federal program that the United State Secretary of Housing and Urban Development determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program.

(2) Housing that meets the standards for senior housing specified in Section 51.2 and Section 51.3 or 51.4 of the Civil Code, except housing as to which those provisions are preempted by the prohibition against familial status discrimination in the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and implementing regulations.

(3) Mobilehomes in mobilehome parks that meet the standards for "housing for older persons," as defined in the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and implementing regulations.

(c) In any action or proceeding involving the application of provisions of this part respecting discrimination on the basis of familial status, a person asserting the application of subdivision (a) to housing shall have the burden of proof to show that the housing is housing for older persons within the meaning of subdivision (b).

SEC. 3. Section 12995 of the Government Code is amended to

read:

12995. Nothing contained in this part relating to discrimination in housing shall be construed to:

(a) Affect the title or other interest of a person who purchases, leases, or takes an encumbrance on a housing accommodation in good faith and without knowledge that the owner or lessor of the property has violated any provision of this part.

(b) Prohibit any postsecondary educational institution, whether private or public, from providing housing accommodations reserved for either male or female students so long as no individual person is denied equal access to housing accommodations, or from providing separate housing accommodations reserved primarily for married students or for students with minor dependents who reside with them.

(c) Prohibit selection based upon factors other than race, color, religion, sex, marital status, national origin, ancestry, familial status, disability, or other basis prohibited by the Unruh Civil Rights Act.

(d) Promote housing accommodations on a preferential or quota basis.

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 clarify statutory provisions on housing discrimination without delay, it is necessary that this act go into immediate effect.

CHAPTER 831

An act to amend Section 50281 of the Government Code, and to amend Sections 439.1, 439.2, and 439.3 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 50281 of the Government Code is amended to read:

50281. Any contract entered into under this article shall contain the following provisions:

(a) The term of the contract shall be for a minimum period of 10 years.

(b) Where applicable, the contract shall provide the following:

(1) For the preservation of the qualified historical property and, when necessary, to restore and rehabilitate the property to conform to the rules and regulations of the Office of Historic Preservation of the Department of Parks and Recreation, the United States

Secretary of the Interior's Standards for Rehabilitation, and the State Historical Building Code.

(2) For the periodic examinations of the interior and exterior of the premises by the assessor, the Department of Parks and Recreation, and the State Board of Equalization as may be necessary to determine the owner's compliance with the contract.

(3) For it to be binding upon, and inure to the benefit of, all successors in interest of the owner. A successor in interest shall have the same rights and obligations under the contract as the original owner who entered into the contract.

(c) The owner or agent of an owner shall provide written notice of the contract to the Office of Historic Preservation within six months of entering into the contract.

SEC. 2. Section 439.1 of the Revenue and Taxation Code is amended to read:

439.1. For purposes of this article "restricted historical property" means qualified historical property, as defined in Section 50280.1 of the Government Code, that is subject to a historical property contract executed pursuant to Article 12 (commencing with Section 50280) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code. For purposes of this section, "qualified historical property" includes qualified historical improvements and any land on which the qualified historical improvements are situated, as specified in the historical property contract. If the historical property contract does not specify the land that is to be included, "qualified historical property" includes only that area of reasonable size that is used as a site for the historical improvements.

SEC. 3. Section 439.2 of the Revenue and Taxation Code is amended to read:

439.2. When valuing enforceably restricted historical property, the county assessor shall not consider sales data on similar property, whether or not enforceably restricted, and shall value that restricted historical property by the capitalization of income method in the following manner:

(a) The annual income to be capitalized shall be determined as follows:

(1) Where sufficient rental information is available, the income shall be the fair rent that can be imputed to the restricted historical property being valued based upon rent actually received for the property by the owner and upon typical rentals received in the area for similar property in similar use where the owner pays the property tax. When the restricted historical property being valued is actually encumbered by a lease, any cash rent or its equivalent considered in determining the fair rent of the property shall be the amount for which the property would be expected to rent were the rental payment to be renegotiated in the light of current conditions, including applicable provisions under which the property is enforceably restricted.

(2) Where sufficient rental information is not available, the

income shall be that which the restricted historical property being valued reasonably can be expected to yield under prudent management and subject to applicable provisions under which the property is enforceably restricted.

(3) If the parties to an instrument that enforceably restricts the property stipulate therein an amount that constitutes the minimum annual income to be capitalized, then the income to be capitalized shall not be less than the amount so stipulated.

For purposes of this section, income shall be determined in accordance with rules and regulations issued by the board and with this section and shall be the difference between revenue and expenditures. Revenue shall be the amount of money or money's worth, including any cash rent or its equivalent, that the property can be expected to yield to an owner-operator annually on the average from any use of the property permitted under the terms by which the property is enforceably restricted.

Expenditures shall be any outlay or average annual allocation of money or money's worth that can be fairly charged against the revenue expected to be received during the period used in computing the revenue. Those expenditures to be charged against revenue shall be only those which are ordinary and necessary in the production and maintenance of the revenue for that period. Expenditures shall not include depletion charges, debt retirement, interest on funds invested in the property, property taxes, corporation income taxes, or corporation franchise taxes based on income.

(b) The capitalization rate to be used in valuing owner-occupied single family dwellings pursuant to this article shall not be derived from sales data and shall be the sum of the following components:

(1) An interest component to be determined by the board and announced no later than September 1 of the year preceding the assessment year and that was the yield rate equal to the effective rate on conventional mortgages as determined by the Federal Home Loan Bank Board, rounded to the nearest ¼ percent.

(2) A historical property risk component of 4 percent.

(3) A component for property taxes that shall be a percentage equal to the estimated total tax rate applicable to the property for the assessment year times the assessment ratio.

(4) A component for amortization of the improvements that shall be a percentage equivalent to the reciprocal of the remaining life.

(c) The capitalization rate to be used in valuing all other restricted historical property pursuant to this article shall not be derived from sales data and shall be the sum of the following components:

(1) An interest component to be determined by the board and announced no later than September 1 of the year preceding the assessment year and that was the yield rate equal to the effective rate on conventional mortgages as determined by the Federal Home Loan Bank Board, rounded to the nearest ¼ percent.

(2) A historical property risk component of 2 percent.

(3) A component for property taxes that shall be a percentage equal to the estimated total tax rate applicable to the property for the assessment year times the assessment ratio.

(4) A component for amortization of the improvements that shall be a percentage equivalent to the reciprocal of the remaining life.

(d) Unless a party to an instrument that creates an enforceable restriction expressly prohibits the valuation, the valuation resulting from the capitalization of income method described in this section shall not exceed the lesser of either the valuation that would have resulted by calculation under Section 110, or the valuation that would have resulted by calculation under Section 110.1, as though the property was not subject to an enforceable restriction in the base year.

(e) The value of the restricted historical property shall be the quotient of the income determined as provided in subdivision (a) divided by the capitalization rate determined as provided in subdivision (b) or (c).

(f) The ratio prescribed in Section 401 shall be applied to the value of the property determined in subdivision (d) to obtain its assessed value.

SEC. 4. Section 439.3 of the Revenue and Taxation Code is amended to read:

439.3. Notwithstanding any provision of Section 439.2 to the contrary, if either the county or city or the owner of restricted historical property subject to contract has served notice of nonrenewal as provided in Section 50282 of the Government Code, the county assessor shall value that restricted historical property as provided in this section.

(a) Following the hearing conducted pursuant to Section 50285 of the Government Code, subdivision (b) shall apply until the termination of the period for which the restricted historical property is enforceably restricted.

(b) The board or assessor in each year until the termination of the period for which the property is enforceably restricted shall do all of the following:

(1) Determine the full cash value of the property pursuant to Section 110.1. If the property is not subject to Section 110.1 when the restriction expires, the value shall be determined pursuant to Section 110 as if the property were free of contractual restriction. If the property will be subject to a use for which this chapter provides a special restricted assessment, the value of the property shall be determined as if it were subject to the new restriction.

(2) Determine the value of the property by the capitalization of income method as provided in Section 439.2 and without regard to the fact that a notice of nonrenewal or cancellation has occurred.

(3) Subtract the value determined in paragraph (2) of this subdivision by capitalization of income from the full cash value determined in paragraph (1).

(4) Using the rate announced by the board pursuant to paragraph (1) of subdivision (b) of Section 439.2, discount the amount obtained in paragraph (3) for the number of years remaining until the termination of the period for which the property is enforceably restricted.

(5) Determine the value of the property by adding the value determined by the capitalization of income method as provided in paragraph (2) and the value obtained in paragraph (4).

(6) Apply the ratios prescribed in Section 401 to the value of the property determined in paragraph (5) to obtain its assessed value.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 6. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 832

An act to amend Section 3103 of, and to add Section 3104 to, the Family Code, relating to family law.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 3103 of the Family Code, as added by Section 116.78 of Chapter 219 of the Statutes of 1993, is amended to read:

3103. (a) Notwithstanding any other provision of law, in a proceeding described in Section 3021, the court may grant reasonable visitation to a grandparent of a minor child of a party to the proceeding if the court determines that visitation by the grandparent is in the best interest of the child.

(b) If a protective order as defined in Section 6218 has been directed to the grandparent during the pendency of the proceeding, the court shall consider whether the best interest of the child requires that visitation by the grandparent be denied.

(c) The petitioner shall give notice of the petition to each of the

parents of the child, any stepparent, and any person who has physical custody of the child, by certified mail, return receipt requested, postage prepaid, to the person's last known address, or to the attorneys of record of the parties to the proceeding.

(d) There is a rebuttable presumption affecting the burden of proof that the visitation of a grandparent is not in the best interest of a minor child if the child's parents agree that the grandparent should not be granted visitation rights.

(e) Visitation rights may not be ordered under this section if that would conflict with a right of custody or visitation of a birth parent who is not a party to the proceeding.

(f) Visitation ordered pursuant to this section shall not create a basis for or against a change of residence of the child, but shall be one of the factors for the court to consider in ordering a change of residence.

(g) When a court orders grandparental visitation pursuant to this section, the court in its discretion may, based upon the relevant circumstances of the case:

(1) Allocate the percentage of grandparental visitation between the parents for purposes of the calculation of child support pursuant to the statewide uniform guideline (Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9).

(2) Notwithstanding Sections 3930 and 3951, order a parent or grandparent to pay to the other, an amount for the support of the child or grandchild. For purposes of this paragraph, "support" means costs related to visitation such as any of the following:

(A) Transportation.

(B) Provision of basic expenses for the child or grandchild, such as medical expenses, day care costs, and other necessities.

(h) As used in this section, "birth parent" means "birth parent" as defined in Section 8512.

SEC. 2. Section 3104 is added to the Family Code, to read:

3104. (a) On petition to the court by a grandparent of a minor child, the court may grant reasonable visitation rights to the grandparent if the court does both of the following:

(1) Finds that there is a preexisting relationship between the grandparent and the grandchild that has engendered a bond such that visitation is in the best interest of the child.

(2) Balances the interest of the child in having visitation with the grandparent against the right of the parents to exercise their parental authority.

(b) A petition for visitation under this section may not be filed while the natural or adoptive parents are married, unless one or more of the following circumstances exist:

(1) The parents are currently living separately and apart on a permanent or indefinite basis.

(2) One of the parents has been absent for more than one month without the other spouse knowing the whereabouts of the absent spouse.

(3) One of the parents joins in the petition with the grandparents.

(4) The child is not residing with either parent.

At any time that a change of circumstances occurs such that none of these circumstances exist, the parent or parents may move the court to terminate grandparental visitation and the court shall grant the termination.

(c) The petitioner shall give notice of the petition to each of the parents of the child, any stepparent, and any person who has physical custody of the child, by personal service pursuant to Section 415.10 of the Code of Civil Procedure.

(d) If a protective order as defined in Section 6218 has been directed to the grandparent during the pendency of the proceeding, the court shall consider whether the best interest of the child requires that any visitation by that grandparent should be denied.

(e) There is a rebuttable presumption that the visitation of a grandparent is not in the best interest of a minor child if the natural or adoptive parents agree that the grandparent should not be granted visitation rights.

(f) There is a rebuttable presumption affecting the burden of proof that the visitation of a grandparent is not in the best interest of a minor child if the parent who has been awarded sole legal and physical custody of the child in another proceeding or with whom the child resides if there is currently no operative custody order objects to visitation by the grandparent.

(g) Visitation rights may not be ordered under this section if that would conflict with a right of custody or visitation of a birth parent who is not a party to the proceeding.

(h) Visitation ordered pursuant to this section shall not create a basis for or against a change of residence of the child, but shall be one of the factors for the court to consider in ordering a change of residence.

(i) When a court orders grandparental visitation pursuant to this section, the court in its discretion may, based upon the relevant circumstances of the case:

(1) Allocate the percentage of grandparental visitation between the parents for purposes of the calculation of child support pursuant to the statewide uniform guideline (Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9).

(2) Notwithstanding Sections 3930 and 3951, order a parent or grandparent to pay to the other, an amount for the support of the child or grandchild. For purposes of this paragraph, "support" means costs related to visitation such as any of the following:

(A) Transportation.

(B) Provision of basic expenses for the child or grandchild, such as medical expenses, day care costs, and other necessities.

(j) As used in this section, "birth parent" means "birth parent" as defined in Section 8512.

CHAPTER 833

An act to add Article 4.1 (commencing with Section 17759) to Chapter 22 of Part 10 of the Education Code, relating to school facilities.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Article 4.1 (commencing with Section 17759) is added to Chapter 22 of Part 10 of the Education Code, to read:

Article 4.1. Alternative Use of Apportionments

17759. The Legislature finds and declares as follows:

(a) In many areas of the state, overcrowding in the schools has created a need for new school facilities in neighborhoods where little or no vacant land exists. School districts are compelled, therefore, to acquire property that already has been developed with structures, then demolish these structures and construct classroom space.

(b) With an estimated statewide need for school facilities within the next five years that exceeds fourteen billion dollars ($14,000,000,000), neither state nor local funds reasonably can be anticipated to meet this need.

(c) In many of the areas having overcrowded schools, a significant supply exists of vacant space in structures meeting current building codes.

(d) Use of this vacant space by schools can be a cost-effective means of providing classroom space for the students of California.

(e) This chapter and Section 4-306 of Part 1 of Title 24 of the California Code of Regulations authorize the reconstruction of existing commercial buildings for school facility purposes.

(f) No existing commercial building shall be considered for reconstruction for school facility classroom purposes unless it was designed and constructed according to the standards established in the 1976 Uniform Building Code or subsequent editions of that code.

17759.1. In a manner that is consistent with this chapter and the California Code of Regulations, a school district that is eligible for an apportionment for project funding for new construction under this chapter may use that apportionment for the acquisition and conversion of an existing commercial building to school facility purposes.

17759.2. The State Allocation Board in conjunction with the office of the State Architect shall advise all school districts in the state of the existence of the procedure for reconstructing existing commercial buildings for school facility purposes and shall upon request assist in the interpretation and successful implementation of

the pertinent regulations in the California Code of Regulations.

CHAPTER 834

An act to add Sections 76361 and 82322 to the Education Code, and to add Section 545.1 to the Vehicle Code, relating to schoolbuses, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 76361 is added to the Education Code, to read:

76361. (a) Notwithstanding subdivisions (d), (e), (f), (g), and (h) of Section 76360, the governing board of the Butte Community College District may require students in attendance and employees at a campus of the district to pay a fee for purposes of partially or fully recovering transportation costs incurred by the district or of reducing fares for services provided by common carriers or municipally owned transit systems to these students and employees, as provided in subdivision (b).

(b) Fees authorized by subdivision (a) for transportation services may be required to be paid only by students and employees using the services, or, in the alternative, by either of the following groups of people:

(1) Upon the favorable vote of a majority of the students and a majority of the employees of a campus of the district, who voted at an election on the question of whether or not the governing board should require all students and employees at the campus to pay a fee for transportation services for a period of time to be determined by the governing board of the district, the fees may be required to be paid by all students and all employees of the campus of the community college district.

(2) Upon the favorable vote of a majority of the students at a campus of the district, who voted at an election on the question of whether or not the governing board should require all students to pay a fee for transportation services for a period of time to be determined by the governing board of the district, the fees may be required to be paid by all students at the campus of the community college district. However, the employees shall not be entitled to use the services.

(3) When an election is held pursuant to either paragraph (1) or (2), the governing board shall, at the time of the election, provide every voter with notice that, if approved, the fee shall continue in effect until terminated by the governing board.

(c) If fees are required to be paid by all students and employees

or all students as provided in paragraphs (1) and (2) of subdivision (b) for a period of time to be determined by the governing board of the district, those fees may be continued for additional periods by the governing board maintaining the campus.

(d) If a fee is required to be paid by students for transportation services, the governing board may adopt rules and regulations governing the exemption of low-income students from required fees, and may adopt rules and regulations that provide for the exemption of other persons from the fee.

(e) The total fees to be fixed periodically by the governing board pursuant to this section shall not exceed the amount necessary to reimburse the district for transportation costs incurred by the district in providing the transportation service. The sum of the fee authorized pursuant to this section for transportation services and the fee authorized pursuant to Section 76360 for transportation services and parking services shall not exceed sixty dollars ($60) per semester or thirty dollars ($30) per intersession, or the proportionate equivalent for part-time enrollment.

(f) This section applies only to the Butte Community College District.

SEC. 2. Section 82322 is added to the Education Code, to read:

82322. (a) Notwithstanding Section 82321, a motor vehicle is not a schoolbus if it is operated for the purpose of transporting any pupil to or from a community college or to or from activities at that college, irrespective of the age of the pupil or the grade level of the pupil, if the pupil is a current enrollee in classes of the college providing the transportation.

(b) A driver of a motor vehicle that meets the criteria established by subdivision (a) shall escort pupils as required by paragraph (3) of subdivision (c) of Section 22112 of the Vehicle Code.

(c) This section applies only to the Butte Community College District.

SEC. 3. Section 545.1 is added to the Vehicle Code, to read:

545.1. (a) Notwithstanding Section 545, a motor vehicle is not a schoolbus if it is operated for the purpose of transporting any pupil to or from a community college or to or from activities at that college, irrespective of the age of the pupil or the grade level of the pupil, if the pupil is a current enrollee in classes of the college providing the transportation.

(b) A driver of a motor vehicle that meets the criteria established by subdivision (a) shall escort pupils as required by paragraph (3) of subdivision (c) of Section 22112 of the Vehicle Code.

(c) This section applies only to the Butte Community College District.

SEC. 4. Due to the unique circumstances concerning the transportation of students by the Butte Community College District, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

SEC. 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 avoid any delay or disruption with respect to the education programs that require transportation of students by the Butte Community College District, it is necessary that this act take effect immediately.

CHAPTER 835

An act to add Chapter 5 (commencing with Section 1797.90) to Title 1.7 of Part 4 of Division 3 of the Civil Code, relating to warranties.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Chapter 5 (commencing with Section 1797.90) is added to Title 1.7 of Part 4 of Division 3 of the Civil Code, to read:

CHAPTER 5. HOME ROOF WARRANTIES

1797.90. This chapter shall apply to all contracts and warranties for roofing materials used on a residential structure, including, but not limited to, a manufactured home or mobilehome, and to all contracts and warranties for the installation, repair, or replacement of all or any portion of the roof of a residential structure, including, but not limited to, a manufactured home or mobilehome.

1797.91. Any contract for roofing materials, or for the installation, repair, or replacement of all or any portion of the roof of a residential structure, including, but not limited to, a manufactured home or mobilehome, shall be in writing if the contract includes any warranty of the materials or workmanship that extends for any period of time beyond completion of the work.

1797.92. For any contract subject to this chapter that is entered into on or after January 1, 1994, the warranty obligations shall inure to the benefit of, and shall be directly enforceable by, all subsequent purchasers and transferees of the residential structure, without limitation, unless the contract contains a clear and conspicuous provision limiting transferability of the warranty.

1797.93. If any warranty subject to this chapter, uses the term "lifetime," "life," or a similar representation to describe the duration of the warranty, then the warranty shall disclose with such clarity and prominence as will be noticed and understood by prospective purchasers, the life to which the representation refers.

1797.94. Any warranty subject to this chapter, shall inure to the benefit of, and shall be directly enforceable by, all subsequent purchasers and transferees of the residential structure, without limitation, unless the warranty contains a provision limiting transferability of the warranty. A provision limiting transferability shall be set forth at the top of the first page of the warranty in 14-point boldface type, and shall be enclosed in a rectangular box in at least 4-point type.

(b) Any disclosure required by Section 1797.93 shall also be set forth at the top of the first page of the warranty in 14-point boldface type, and shall be enclosed in a rectangular box in at least 4-point type. This disclosure may be included in a disclosure required under subdivision (a).

1797.95. A warrantor who provides roof warranties in multiple states may standardize the warranty to meet warranty requirements of other states. However, those standardized warranties shall meet requirements which are no less than those imposed by this chapter.

1797.96. Where a warranty subject to this chapter is provided for the benefit of the purchaser of a newly constructed residential structure, the seller shall provide the warranty disclosures required by this chapter to the purchaser prior to the close of escrow. No transfer shall be invalidated for failure to comply with this section.

CHAPTER 836

An act to amend Section 3423 of the Civil Code, and to amend Section 526 of the Code of Civil Procedure, relating to remedies.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 3423 of the Civil Code is amended to read:

3423. An injunction may not be granted:

(a) To stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded, unless this restraint is necessary to prevent a multiplicity of proceedings.

(b) To stay proceedings in a court of the United States.

(c) To stay proceedings in another state upon a judgment of a court of that state.

(d) To prevent the execution of a public statute, by officers of the law, for the public benefit.

(e) To prevent the breach of a contract the performance of which would not be specifically enforced, other than a contract in writing for the rendition of personal services from one to another where the promised service is of a special, unique, unusual, extraordinary, or intellectual character, which gives it peculiar value, the loss of which

cannot be reasonably or adequately compensated in damages in an action at law, and where the compensation for the personal services is as follows:

(1) As to contracts entered into on or before December 31, 1993, the minimum compensation provided in the contract for the personal services shall be at the rate of six thousand dollars ($6,000) per annum.

(2) As to contracts entered into on or after January 1, 1994, the criteria of subparagraph (A) or (B), as follows, are satisfied:

(A) The compensation is as follows:

(i) The minimum compensation provided in the contract shall be at the rate of nine thousand dollars ($9,000) per annum for the first year of the contract, twelve thousand dollars ($12,000) per annum for the second year of the contract, and fifteen thousand dollars ($15,000) per annum for the third to seventh years, inclusive, of the contract.

(ii) In addition, after the third year of the contract, there shall actually have been paid for the services through and including the contract year during which the injunctive relief is sought, over and above the minimum contractual compensation specified in clause (i), the amount of fifteen thousand dollars ($15,000) per annum during the fourth and fifth years of the contract, and thirty thousand dollars ($30,000) per annum during the sixth and seventh years of the contract. As a condition to petitioning for an injunction, amounts payable under this clause may be paid at any time prior to seeking injunctive relief.

(B) The aggregate compensation actually received for the services provided under a contract that does not meet the criteria of subparagraph (A), is at least 10 times the applicable aggregate minimum amount specified in clauses (i) and (ii) of subparagraph (A) through and including the contract year during which the injunctive relief is sought. As a condition to petitioning for an injunction, amounts payable under this subparagraph may be paid at any time prior to seeking injunctive relief.

(3) Compensation paid in any contract year in excess of the minimums specified in subparagraphs (A) and (B) of paragraph (2) shall apply to reduce the compensation otherwise required to be paid under those provisions in any subsequent contract years.

However, an injunction may be granted to prevent the breach of a contract entered into between any nonprofit cooperative corporation or association and a member or stockholder thereof in respect to any provision regarding the sale or delivery to the corporation or association of the products produced or acquired by the member or stockholder.

(f) To prevent the exercise of a public or private office, in a lawful manner, by the person in possession.

(g) To prevent a legislative act by a municipal corporation.

SEC. 2. Section 526 of the Code of Civil Procedure is amended to read:

526. (a) An injunction may be granted in the following cases:

(1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.

(2) When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action.

(3) When it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual.

(4) When pecuniary compensation would not afford adequate relief.

(5) Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief.

(6) Where the restraint is necessary to prevent a multiplicity of judicial proceedings.

(7) Where the obligation arises from a trust.

(b) An injunction cannot be granted in the following cases:

(1) To stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded, unless the restraint is necessary to prevent a multiplicity of proceedings.

(2) To stay proceedings in a court of the United States.

(3) To stay proceedings in another state upon a judgment of a court of that state.

(4) To prevent the execution of a public statute by officers of the law for the public benefit.

(5) To prevent the breach of a contract the performance of which would not be specifically enforced, other than a contract in writing for the rendition of personal services from one to another where the promised service is of a special, unique, unusual, extraordinary, or intellectual character, which gives it peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action at law, and where the compensation for the personal services is as follows:

(A) As to contracts entered into on or before December 31, 1993, the minimum compensation provided in the contract for the personal services shall be at the rate of six thousand dollars ($6,000) per annum.

(B) As to contracts entered into on or after January 1, 1994, the criteria of clause (i) or (ii), as follows, are satisfied:

(i) The compensation is as follows:

(I) The minimum compensation provided in the contract shall be at the rate of nine thousand dollars ($9,000) per annum for the first year of the contract, twelve thousand dollars ($12,000) per annum for the second year of the contract, and fifteen thousand dollars ($15,000) per annum for the third to seventh years, inclusive, of the

contract.

(II) In addition, after the third year of the contract, there shall actually have been paid for the services through and including the contract year during which the injunctive relief is sought, over and above the minimum contractual compensation specified in subclause (I), the amount of fifteen thousand dollars ($15,000) per annum during the fourth and fifth years of the contract, and thirty thousand dollars ($30,000) per annum during the sixth and seventh years of the contract. As a condition to petitioning for an injunction, amounts payable under this clause may be paid at any time prior to seeking injunctive relief.

(ii) The aggregate compensation actually received for the services provided under a contract that does not meet the criteria of subparagraph (A), is at least 10 times the applicable aggregate minimum amount specified in subclauses (I) and (II) of clause (i) through and including the contract year during which the injunctive relief is sought. As a condition to petitioning for an injunction, amounts payable under this subparagraph may be paid at any time prior to seeking injunctive relief.

(C) Compensation paid in any contract year in excess of the minimums specified in clauses (i) and (ii) of subparagraph (B) shall apply to reduce the compensation otherwise required to be paid under those provisions in any subsequent contract years. However, an injunction may be granted to prevent the breach of a contract entered into between any nonprofit cooperative corporation or association and a member or stockholder thereof, in respect to any provision regarding the sale or delivery to the corporation or association of the products produced or acquired by the member or stockholder.

(6) To prevent the exercise of a public or private office, in a lawful manner, by the person in possession.

(7) To prevent a legislative act by a municipal corporation.

CHAPTER 837

An act to add Section 1033.1 to the Penal Code, relating to trials, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 1033.1 is added to the Penal Code, to read:

1033.1. In any criminal action or proceeding in which the place of trial has been changed for any of the reasons set forth in Section 1033, the court, upon its own motion or upon the motion of any party, may return the action or proceeding to the original place of trial if

both of the following conditions apply:

(a) The action or proceeding is pending before the court after reversal of the original judgment by the appellate court.

(b) The court finds that the conditions which originally required the order to change venue, as set forth in Section 1033, no longer apply. Prior to making such a finding, the court shall conduct a hearing, upon notice to all parties. At the hearing, the burden shall be on the prosecution to establish that the conditions which originally required the order to change venue no longer apply, unless the defendant and his or her attorney consent to the return of the action or proceeding to the original place of trial.

SEC. 2. 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. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that counties may benefit immediately from the fiscal savings provided by this bill, it is necessary that this act take effect immediately.

CHAPTER 838

An act to amend Section 18512 of the Revenue and Taxation Code, relating to taxpayer contributions.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 18512 of the Revenue and Taxation Code is amended to read:

18512. (a) All money transferred to the California Fund for Senior Citizens pursuant to Section 18511, upon appropriation by the Legislature, shall be allocated as follows:

(1) To the Franchise Tax Board and the Controller for reimbursement of all costs incurred by the Franchise Tax Board and the Controller in connection with their duties under this article.

(2) The balance to the California Commission on Aging for allocation as follows:

(A) To the California Senior Legislature, in the 1988–89 fiscal year,

and each succeeding fiscal year thereafter, the sum of seventy-five thousand dollars ($75,000), or the balance of the fund if less than that amount remains in the fund, for the conduct of sessions of the California Senior Legislature.

(B) The balance, if any, but not to exceed two hundred fifty thousand dollars ($250,000), to the California Senior Legislature for its ongoing activities on behalf of older persons.

Thirty-three thousand dollars ($33,000) of the balance allocated under this subparagraph, or the entire balance allocated under this subparagraph if the balance is less than thirty-three thousand dollars ($33,000), shall be specifically allocated annually for the conduct of elections of members of the California Senior Legislature. That amount may be carried over from fiscal years in which there are no elections and accumulated, in an amount not to exceed sixty-six thousand dollars ($66,000), for use in election years, and any portion of that amount not used in an election year shall be reallocated pursuant to subparagraph (C).

(C) The balance, if any, to the commission for senior citizen direct service programs through contracts with the Department of Aging and Long-Term Care.

(b) All moneys allocated pursuant to paragraph (2) of subdivision (a) may be carried over from the year in which they were received and encumbered in any following year.

(c) The amount allocated pursuant to subparagraphs (A) and (B) of paragraph (2) of subdivision (a) may be adjusted annually, as determined by the Department of Finance, to reflect changes in salary adjustments, price increases, and travel reimbursement adjustments included for all state agencies in the annual Budget Act.

(d) The funds allocated to the commission for the purposes of funding the activities of the California Senior Legislature shall be spent pursuant to an agreement that is approved by both the commission and the Joint Rules Committee of the California Senior Legislature no later than March 1, 1994, and whose terms are consistent with the by-laws of the California Senior Legislature, established through a majority vote of the California Senior Legislature.

CHAPTER 839

An act relating to economic development policy.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. It is the intent of the Legislature that the California Office of Trade Policy and Research work with other appropriate state agencies to develop a foreign market development strategy, to target industries for foreign market development assistance that have high levels of economic activity and which show the greatest potential for success and highest level of job creation, and to develop an agency strategy for identifying and creating emerging markets for California products. The secretary shall include initial policy and implementation of this strategy as part of the secretary's first annual report to the Governor and the Legislature.

SEC. 2. It is also the intent of the Legislature that the California Export Finance Office seek matching federal funds for the purpose of defense conversion through the Defense Deversification, Conversion and Economic Adjustment Program of the federal Department of Commerce and Defense. The California Export Finance Office shall make a quarterly report to the Export Finance Board on the selection of projects to receive financing assistance on the basis of defense conversion criteria. These export-related projects shall be either classified defense conversion projects or technology applications, or qualified unemployed defense industry experienced personnel involved in one-year startups of new businesses, or companies that employ displaced defense related personnel. Approval of financing assistance for defense conversion shall require unanimous approval of the three-person credit committee.

CHAPTER 840

An act to add Section 494 to the Business and Professions Code, relating to business and professions.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 494 is added to the Business and Professions Code, to read:

494. (a) A board or an administrative law judge sitting alone, as

provided in subdivision (h), may, upon petition, issue an interim order suspending any licentiate or imposing license restrictions, including, but not limited to, mandatory biological fluid testing, supervision, or remedial training. The petition shall include affidavits that demonstrate to the satisfaction of the board both of the following:

(1) The licentiate has engaged in acts or omissions constituting a violation of a provision of this code or has been convicted of a crime substantially related to licensed activity.

(2) Permitting the licentiate to continue to engage in the licensed activity, or permitting the licentiate to continue in the licensed activity without restrictions, would endanger the public health, safety, or welfare.

(b) No interim order provided for in this section shall be issued without notice to the licentiate unless it appears from the petition and supporting documents that serious injury would result to the public before the matter could be heard on notice.

(c) Except as provided in subdivision (b), the licentiate shall be given at least 15 days' notice of the hearing on the petition for an interim order. The notice shall include documents submitted to the board in support of the petition. If the order was initially issued without notice as provided in subdivision (b), the licentiate shall be entitled to a hearing on the petition within 20 days of the issuance of the interim order without notice. The licentiate shall be given notice of the hearing within two days after issuance of the initial interim order, and shall receive all documents in support of the petition. The failure of the board to provide a hearing within 20 days following the issuance of the interim order without notice, unless the licentiate waives his or her right to the hearing, shall result in the dissolution of the interim order by operation of law.

(d) At the hearing on the petition for an interim order, the licentiate may:

(1) Be represented by counsel.

(2) Have a record made of the proceedings, copies of which shall be available to the licentiate upon payment of costs computed in accordance with the provisions for transcript costs for judicial review contained in Section 11523 of the Government Code.

(3) Present affidavits and other documentary evidence.

(4) Present oral argument.

(e) The board, or an administrative law judge sitting alone as provided in subdivision (h), shall issue a decision on the petition for interim order within five business days following submission of the matter. The standard of proof required to obtain an interim order pursuant to this section shall be a preponderance of the evidence standard. If the interim order was previously issued without notice, the board shall determine whether the order shall remain in effect, be dissolved, or modified.

(f) The board shall file an accusation within 15 days of the issuance of an interim order. In the case of an interim order issued without

notice, the time shall run from the date of the order issued after the noticed hearing. If the licentiate files a Notice of Defense, the hearing shall be held within 30 days of the agency's receipt of the Notice of Defense. A decision shall be rendered on the accusation no later than 30 days after submission of the matter. Failure to comply with any of the requirements in this subdivision shall dissolve the interim order by operation of law.

(g) Interim orders shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure and shall be heard only in the superior court in and for the Counties of Sacramento, San Francisco, Los Angeles, or San Diego. The review of an interim order shall be limited to a determination of whether the board abused its discretion in the issuance of the interim order. Abuse of discretion is established if the respondent board has not proceeded in the manner required by law, or if the court determines that the interim order is not supported by substantial evidence in light of the whole record.

(h) The board may, in its sole discretion, delegate the hearing on any petition for an interim order to an administrative law judge in the Office of Administrative Hearings. If the board hears the noticed petition itself, an administrative law judge shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the board on matters of law. The board shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the administrative law judge. When the petition has been delegated to an administrative law judge, he or she shall sit alone and exercise all of the powers of the board relating to the conduct of the hearing. A decision issued by an administrative law judge sitting alone shall be final when it is filed with the board. If the administrative law judge issues an interim order without notice, he or she shall preside at the noticed hearing, unless unavailable, in which case another administrative law judge may hear the matter. The decision of the administrative law judge sitting alone on the petition for an interim order is final, subject only to judicial review in accordance with subdivision (g).

(i) Failure to comply with an interim order issued pursuant to subdivision (a) or (b) shall constitute a separate cause for disciplinary action against any licentiate, and may be heard at, and as a part of, the noticed hearing provided for in subdivision (f). Allegations of noncompliance with the interim order may be filed at any time prior to the rendering of a decision on the accusation. Violation of the interim order is established upon proof that the licentiate was on notice of the interim order and its terms, and that the order was in effect at the time of the violation. The finding of a violation of an interim order made at the hearing on the accusation shall be reviewed as a part of any review of a final decision of the agency.

If the interim order issued by the agency provides for anything less than a complete suspension of the licentiate from his or her business

or profession, and the licentiate violates the interim order prior to the hearing on the accusation provided for in subdivision (f), the agency may, upon notice to the licentiate and proof of violation, modify or expand the interim order.

(j) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section. A certified record of the conviction shall be conclusive evidence of the fact that the conviction occurred. A board may take action under this section notwithstanding the fact that an appeal of the conviction may be taken.

(k) The interim orders provided for by this section shall be in addition to, and not a limitation on, the authority to seek injunctive relief provided in any other provision of law.

(*l*) In the case of a board, a petition for an interim order may be filed by the executive officer. In the case of a bureau or program, a petition may be filed by the chief or program administrator, as the case may be.

(m) "Board," as used in this section, shall include an allied health agency within the jurisdiction of the Medical Board of California. Board shall also include the Osteopathic Medical Board of California and the State Board of Chiropractic Examiners. The provisions of this section shall not be applicable to the Medical Board of California, the Board of Podiatric Medicine, or the State Athletic Commission.

CHAPTER 841

An act to add Article 4.5 (commencing with Section 53506) to Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code, relating to bonds.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Article 4.5 (commencing with Section 53506) is added to Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code, to read:

Article 4.5. General Obligation Bonds

53506. (a) This article is full authority for the issuance of bonds or refunding bonds by any city, county, city and county, school district, community college district, or special district, secured by the levy of ad valorem taxes, authorized in accordance with the Constitution and, in the case of a chartered city, county, or city and county, with the charter thereof, or in the case of a special district, with the district's principal act.

(b) This article is intended to provide a complete additional and alternative method for doing the things authorized by this article. The powers conferred by this article are supplemental and additional to the powers conferred by any other laws, and the limitations imposed by this article do not affect the powers conferred by any other law.

53506.5. This article shall be liberally construed to promote its objectives. If inconsistent with any other law, this article shall be controlling.

53507. As used in this article, the following terms shall have the meanings assigned to them in this section.

(a) "Bonds" means bonds, notes, warrants, or other evidence of indebtedness payable, both principal and interest, from the proceeds of ad valorem taxes that may be levied without limitation as to rate or amount upon property subject to taxation by the legislative body.

(b) "Issuer" means a city, county, city and county, school district, community college district, or special district, secured by the levy of ad valorem taxes, authorized to issue bonds pursuant to this article.

(c) "Legislative body" means the governing body of the issuer.

53507.5. (a) The legislative body may, by resolution, provide for the issuance of bonds pursuant to this article.

(b) The resolution shall state that the bonds are being issued pursuant to this article.

53508. The resolution authorizing any bonds or any issue of bonds may provide for any of the following:

(a) The form of the bonds to be issued as serial bonds, or sinking fund bonds, with serial or term maturities, or any combination thereof.

(b) The number of series in which the bonds are to be issued.

(c) The form of the bonds as coupon, registered, or book entry.

(d) The interest on the bonds, either fixed or variable, and the interest rate or rates, payable at the times and in the manner specified therein, and whether all or part of any series of the bonds shall be issued as zero coupon or capital appreciation bonds; provided, however, that under no conditions may the annual interest rate, whether fixed or variable, exceed the maximum rate permitted by Section 53531 or 53532.

(e) The time, medium, and place or places of payment.

(f) The time or times of maturity of the bonds, not exceeding 40 years from their respective dates.

(g) The date or dates to be borne by the bonds of each series.

(h) The denomination of the bonds.

(i) The registration and conversion privileges of the bonds.

(j) The manner in which the bonds are to be executed.

(k) The terms of redemption, with or without premium.

(*l*) Other terms and conditions of the bonds and of their execution, issuance, and sale deemed necessary and appropriate by the legislative body.

53508.3. (a) No bond shall be subject to mandatory tender for

purchase or redemption prior to its fixed maturity date unless it contains a recital to that effect.

(b) Any bond protected by its terms or by the terms of this section from mandatory tender for purchase or redemption prior to its fixed maturity date or for a specified period of time after issuance, may specify terms upon which the issuer may sell or transfer its right to require the bond to be tendered for purchase or redemption prior to its fixed maturity date.

53508.5. (a) Annual payments of the principal and interest on an issue of bonds shall be structured to amortize the bonds in a manner whereby the maximum annual debt service payment on the bonds does not exceed the minimum annual debt service payment on the bonds by more than 10 percent. Notwithstanding the provisions of this subdivision, a deviation in annual debt service in excess of 10 percent is allowable if the excess deviation is the result of an accelerated repayment of principal on the bonds.

(b) The restrictions set forth in subdivision (a) shall not apply if, as a result of the issuance of the particular bond issue, the overall outstanding general obligation bond debt of the issuer will be amortized in a more level manner.

53508.7. (a) The bonds shall be sold at a public sale and at a price at, above, or below par, as the legislative body determines.

(b) Any bonds sold at a discount below the par value of the bonds shall be sold in compliance with the provisions of Section 53532.

53509. (a) Any bond issued under the authority of this article may be refunded pursuant to this or any other applicable law. Any bond may be refunded pursuant to this article regardless of whether the bond or the legislation under which its issuance was authorized explicitly provides that the bond may be refunded.

(b) Refunding bonds shall not be issued if the total net interest cost to maturity on the refunding bonds plus the principal amount of the refunding bonds exceeds the total net interest cost to maturity on the bonds to be refunded plus the principal amount of the bonds to be refunded. Subject to that limitation, the principal amount of the refunding bonds may be more than, less than, or the same as the principal amount of the bonds to be refunded.

53509.3. Nothing in this article shall limit the authority of the legislative body to enter into any contract in connection with the issuance of the bonds which it is permitted by Section 5922 to enter into.

CHAPTER 842

An act to amend Sections 14538 and 14571 of the Public Resources Code, relating to beverage containers.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 14538 of the Public Resources Code is amended to read:

14538. (a) The department shall certify the operators of recycling centers pursuant to this section. The director shall adopt, by regulation, a procedure for the certification of recycling centers, including standards and requirements for certification. These regulations shall require that all information be submitted to the department under penalty of perjury. A recycling center shall meet all of the standards and requirements contained in the regulations for certification. The regulations shall require, but shall not be limited to requiring, that both of the following conditions be met for certification:

(1) The operator of the recycling center demonstrates, to the satisfaction of the department, that the operator will operate in accordance with this division.

(2) The operator of the recycling center shall notify the department promptly of any material change in the nature of his or her operations which conflicts with information submitted in the operator's application for certification.

(b) A certified recycling center shall comply with all of the following requirements for operation:

(1) The operator of the recycling center shall not pay a refund value for, or receive a refund value from any processor for, any food or drink packaging material or any beverage container or other product which does not have a refund value established pursuant to Section 14560.

(2) The operator of a recycling center shall take those actions which satisfy the department to prevent the payment of a refund value for any food or drink packaging material or any beverage container or other product which does not have a refund value established pursuant to Section 14560.

(3) Unless exempted pursuant to subdivision (b) of Section 14572, a certified recycling center shall accept, and pay at least the refund value for, all empty beverage containers, regardless of type.

(4) A certified recycling center shall not pay any refund values, processing fees, or administrative fees to a noncertified recycler.

(5) A certified recycling center shall not pay any refund values, processing fees, or administrative fees on empty beverage containers or other containers which the certified recycling center knew, or

should have known, were coming into the state from out of the state.

(6) A certified recycling center shall not claim refund values, processing fees, or administrative fees on empty beverage containers which the certified recycling center knew, or should have known, were received from noncertified recyclers or on beverage containers which the certified recycling center knew, or should have known, come from out of the state.

(7) A certified recycling center shall prepare and maintain the following documents involving empty beverage containers, as specified by the department by regulation:

(A) Shipping reports which are required to be prepared by the recycling center, or which are required to be obtained from other recycling centers.

(B) Consumer transaction receipts.

(C) Consumer transaction logs.

(D) Rejected container receipts on materials subject to this division.

(E) Receipts for transactions with beverage manufacturers on materials subject to this division.

(F) Receipts for transactions with beverage distributors on materials subject to this division.

(G) Documents authorizing the recycling center to cancel empty beverage containers.

(H) Weight tickets.

(8) In addition to the requirements of paragraph (7), a certified recycling center shall cooperate with the department and make available its records of scrap transactions when the review of these records is necessary for an audit or investigation by the department.

(c) The department may recover, in restitution pursuant to paragraph (5) of subdivision (c) of Section 14591.2, payments made from the fund to the certified recycling center pursuant to Section 14573.5 which are based on the documents specified in paragraph (7) and which are not prepared or maintained in compliance with the department's regulations and which do not allow the department to verify claims for program payments.

(d) The department may certify a recycling center which will operate less than 30 hours a week, as specified in subdivision (b) of Section 14571.

SEC. 2. 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) (1) Notwithstanding subdivision (a), the department may require a certified recycling center to operate 15 of its 30 hours of

operation other than during 9 a.m. to 5 p.m.

(2) Notwithstanding subdivision (a) and paragraph (1), the department may certify a recycling center which will operate less than 30 hours per week, if all of the following conditions are met:

(A) The recycling center is in a rural region and is not in a convenience zone. For purposes of this subparagraph, "rural region" means a nonurban area identified by the department on an annual basis using Farmers Home Loan Administration criteria. Those criteria include, but are not limited to, places, open country, cities, towns, or census designated places with populations that are less than 10,000 persons. The department may designate an area with a population of between 10,000 and 50,000 persons as a rural region, unless the area is identified as part of, or associated with, an urban area, as determined by the department on an individual basis.

(B) The recycling center to be certified is open to conduct a business other than recycling.

(C) The recycling center agrees to post a sign indicating the location of the nearest recycling center which is open at least 30 hours per week and which will accept all material types.

(D) The needs of the community and the goals of this division will be best served by certification of the operation as a recycling center.

(c) Before establishing operating hours for a certified recycling center pursuant to subdivision (b), the department shall make a determination that this action is necessary to further the goals of this division and shall also conduct a public hearing which will 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.

(d) 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 (h), 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.

(e) Except as provided in subdivision (f), 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.

(f) 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.

(g) 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 (h).

(h) In addition to the sign specified in paragraph (2) of subdivision (d), 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 (g). The department shall determine the size and location of the sign and the message required to be printed on the sign.

CHAPTER 843

An act to add Section 1947.15 to the Civil Code, relating to rent control.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 1947.15 is added to the Civil Code, to read:

1947.15. (a) The Legislature declares the purpose of this section is to:

(1) Ensure that owners of residential rental units that are subject to a system of controls on the price at which the units may be offered for rent or lease, or controls on the adjustment of the rent level, are not precluded or discouraged from obtaining a fair return on their properties as guaranteed by the United States Constitution and California Constitution because the professional expenses reasonably required in the course of the administrative proceedings, in order to obtain the rent increases necessary to provide a fair return, are not treated as a legitimate business expense.

(2) Encourage agencies which administer a system of controls on the price at which residential rental units may be offered for rent or lease, or controls the adjustment of the rent level, to enact streamlined administrative procedures governing rent adjustment petitions which minimize, to the extent possible, the cost and

expense of these administrative proceedings.

(3) Ensure that the cost of professional services reasonably incurred and required by owners of residential rental units subject to a system of controls in the price at which the units may be offered for rent or lease, or controls on the adjustments of the rent level in the course of defending rights related to the rent control system, be treated as a legitimate business expense.

(b) Any city, county, or city and county, including a charter city, which administers an ordinance, charter provision, rule, or regulation that controls or establishes a system of controls on the price at which all or any portion of the residential rental units located within the city, county, or city and county, may be offered for rent or lease, or controls the adjustment of the rent level, and which does not include a system of vacancy decontrol, as defined in subdivision (i), shall permit reasonable expenses, fees, and other costs for professional services, including, but not limited to, legal, accounting, appraisal, bookkeeping, consulting, property management, or architectural services, reasonably incurred in the course of successfully pursuing rights under or in relationship to, that ordinance, charter provision, rule, or regulation, or the right to a fair return on an owner's property as protected by the United States Constitution or California Constitution, to be included in any calculation of net operating income and operating expenses used to determine a fair return to the owner of the property. All expenses, fees, and other costs reasonably incurred by an owner of property in relation to administrative proceedings for purposes specified in this subdivision shall be included in the calculation specified in this subdivision.

(c) Reasonable fees that are incurred by the owner in successfully obtaining a judicial reversal of an adverse administrative decision regarding a petition for upward adjustment of rents shall be assessed against the respondent public agency which issued the adverse administrative decision, and shall not be included in the calculations specified in subdivisions (b) and (d).

(d) (1) Notwithstanding subdivision (b), the city, county, or city and county, on the basis of substantial evidence in the record that the expenses reasonably incurred in the underlying proceeding will not reoccur annually, may amortize the expenses for a period not to exceed five years, except that in extraordinary circumstances, the amortization period may be extended to a period of eight years. The extended amortization period shall not apply to vacant units and shall end if the unit becomes vacant during the period that the expense is being amortized. An amortization schedule shall include a reasonable sale of interest.

(2) Any determination of the reasonableness of the expenses claimed, of an appropriate amortization period, or of the award of an upward adjustment of rents to compensate the owner for expenses and costs incurred shall be made as part of, or immediately following, the decision in the underlying administrative proceeding.

(e) Any and all of the following factors shall be considered in the determination of the reasonableness of the expenses, fees, or other costs authorized by this section:

(1) The rate charged for those professional services in the relevant geographic area.

(2) The complexity of the matter.

(3) The degree of administrative burden or judicial burden, or both, imposed upon the property owner.

(4) The amount of adjustment sought or the significance of the rights defended and the results obtained.

(5) The relationship of the result obtained to the expenses, fees, and other costs incurred (that is, whether professional assistance was reasonably related to the result achieved).

(f) This section shall not be applicable to any ordinance, rule, regulation, or charter provision of any city, county, or city and county, including a charter city, to the extent that the ordinance, rule, or regulation, or charter provision places a limit on the amount of rent that an owner may charge a tenant of a mobilehome park.

(g) For purposes of this section, the rights of a property owner shall be deemed to be successfully pursued or defended if the owner obtains an upward adjustment in rents, successfully defends his or her rights in an administrative proceeding brought by the tenant or the local rent board, or prevails in a proceeding, brought pursuant to Section 1947.7, concerning certification of maximum lawful rents.

(h) (1) If it is determined that a landlord petition assisted by attorneys or consultants is wholly without merit, the tenant shall be awarded a reduction in rent to compensate for the reasonable costs of attorneys or consultants retained by the tenant to defend the petition brought by the landlord. The reasonableness of the costs of the tenant's defense of the action brought by the landlord shall be determined pursuant to the same provisions established by this section for determining the reasonableness of the landlord's costs for the professional services. The determination of the reasonableness of the expenses claimed, an appropriate amortization period, and the award of a reduction in rents to compensate the tenant for costs incurred shall be made immediately following the decision in the underlying administrative proceeding.

(2) If it is determined that a landlord's appeal of an adverse administrative decision is frivolous or solely intended to cause unnecessary delay, the public agency which defended the action shall be awarded its reasonably incurred expenses, including attorney's fees, in defending the action. As used in this paragraph, "frivolous" means either (A) totally and completely without merit; or (B) for the sole purpose of harassing an opposing party.

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

(1) "Vacancy decontrol" means a system of controls on the price at which residential rental units may be offered for rent or lease which permits the rent to be increased to its market level, without

restriction, each time a vacancy occurs. "Vacancy decontrol" includes systems which reimpose controls on the price at which residential rental units may be offered for rent or lease upon rerental of the unit.

(2) "Vacancy decontrol" includes circumstances where the tenant vacates the unit of his or her own volition, or where the local jurisdiction permits the rent to be raised to market rate after an eviction for cause, as specified in the ordinance, charter provision, rule, or regulation.

(j) This section shall not be construed to affect in any way the ability of a local agency to set its own fair return standards or to limit other actions under its local rent control program other than those expressly set forth in this section.

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 the act takes effect pursuant to the California Constitution.

CHAPTER 844

An act to amend Section 336 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 336 of the Vehicle Code is amended to read:

336. "General public paratransit vehicle" means any motor vehicle designed for carrying no more than 24 persons and the driver, that provides local transportation to the general public, including transportation of pupils at or below the 12th-grade level to or from a public or private school or school activity, under the exclusive jurisdiction of a publicly owned and operated transit system through one of the following modes: dial-a-ride, subscription service, or route-deviated bus service. Vehicles used in the exclusive transportation of disabled persons as defined in Section 99206.5 of the Public Utilities Code, or of persons 55 years of age or older, including any persons necessary to provide assistance to these passengers, are not general public paratransit vehicles.

However, transportation of attendants, companions, or both traveling together with those individuals with disabilities who are determined to be eligible for complementary paratransit services in accordance with Title II of the Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted pursuant thereto, shall not be sufficient to qualify a vehicle as a general public paratransit vehicle.

A vehicle that provides local transportation for the general public through one of the following modes: dial-a-ride, subscription service, or route-deviated bus service, but does not provide transportation of pupils at or below the 12th-grade level to or from a public or private school or school activity, is a transit bus, as defined by Section 642, and is not a general public paratransit vehicle.

CHAPTER 845

An act to add Section 13364 to the Vehicle Code, relating to vehicles.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 13364 is added to the Vehicle Code, to read:

13364. (a) Notwithstanding any other provision of this code, a person's privilege to operate a motor vehicle shall be suspended upon notification by a bank or financial institution that a check has been dishonored when that check was presented to the department for either of the following reasons:

(1) In payment of a fine that resulted from an outstanding violation pursuant to Section 40508 or a suspension pursuant to Section 13365.

(2) In payment of a fee or penalty owed by the person, if the fee or penalty is required by this code for the issuance, reissuance, or return of the person's driver's license after suspension, revocation, or restriction of the driving privilege.

(b) The suspension shall remain in effect until payment of all fines, fees, and penalties is made to the department or to the court, as appropriate, and the person's driving record does not contain any notification of a court order issued pursuant to subdivision (a) of Section 42003 or of a violation of subdivision (a) or (b) of Section 40508.

(c) No suspension imposed pursuant to this section shall become effective until 30 days after the mailing of a written notice of the intent to suspend.

(d) The written notice of a suspension imposed pursuant to this section shall be delivered by certified mail.

(e) Notwithstanding any other provision of law, any license that has been suspended pursuant to this section shall immediately be reinstated, and the fees and penalties waived, upon the submission of proof acceptable to the department that the check has been erroneously dishonored by the bank or financial institution.

CHAPTER 846

An act to amend Section 93011 of, and to add Section 93005 to, the Government Code, relating to transportation.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 93005 is added to the Government Code, to read:

93005. The authority is a local agency for purposes of the Natural Disaster Assistance Act (Chapter 7.5 (commencing with Section 8680) of Division 1 of Title 2).

SEC. 2. Section 93011 of the Government Code is amended to read:

93011. The authority shall be governed by a board of directors, composed as follows:

(a) Two persons appointed by each of the boards of supervisors of the Counties of Humboldt and Mendocino. If the County of Marin or the County of Sonoma elects to join the authority, the board of supervisors of the county so joining shall appoint two persons to the board of directors.

(b) A city representative, selected by the cities served by the rail line.

(c) The District Director of Transportation for State Transportation District 1, who shall serve as a nonvoting, ex officio director of the authority.

(d) A board member of the Golden Gate Bridge, Highway and Transportation District, who shall serve as a nonvoting, ex officio director of the authority.

All directors, except the ex officio directors, shall serve for terms of two years and until their successors have qualified.

CHAPTER 847

An act relating to state property.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. The Legislature finds and declares that due to changes in economic conditions that were unforeseen at the time of the conveyances, the conditions imposed on the use of property acquired by the Yosemite Community College District from the state in 1970 and 1977 have created a detriment, rather than a benefit, to the overall purposes of the state. It is therefore the intent of the Legislature to recognize that changed conditions in the Yosemite Community College District create changing public needs.

SEC. 2. The Legislature declares that certain real property transferred to the Yosemite Community College District and the County of Stanislaus, in accordance with Chapter 291 of the Statutes of 1970 and Chapter 1031 of the Statutes of 1977, continues to be used for a public purpose. That purpose includes, but is not limited to, support for activities that generate revenues for the education programs offered to residents of the district and that have a connection to the educational programs offered by the district.

The Yosemite Community College District may continue to use the property so long as the revenues derived from the use of the land confer a benefit on the students and residents of the area. Any proposed new use of the land shall be subject to review by the Board of Governors of the California Community Colleges and to assurances by the district that the revenues derived from the proposed use continue to benefit the students and residents of the area.

The Yosemite Community College District shall include in any land use agreement that results from this act a statement that holds the State of California harmless for any actions connected with the use of the land in question.

SEC. 3. The proposed use of the property conveyed to the Yosemite Community College District in accordance with Chapter 291 of the Statutes of 1970 and Chapter 1031 of the Statutes of 1977 shall be subject to local zoning requirements and not subject to sale.

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 848

An act to add Sections 12648.5, 12648.6, 14649, and 14650 to the Food and Agricultural Code, relating to economic poisons.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 12648.5 is added to the Food and Agricultural Code, to read:

12648.5. (a) It is unlawful for the owner of a plant, crop, or commodity to knowingly treat or apply to that plant, crop, or commodity, or cause that plant, crop, or commodity to be treated or applied, with an economic poison that was stolen or otherwise acquired by illegal means.

(b) The owner of a crop, who is found by a court to have violated this section, in addition to any other penalties imposed by a court, shall be subject to a fine of ten thousand dollars ($10,000) plus an amount equal to one-half the value of the crop on which the illegally obtained economic poison was applied.

(c) For purposes of this section, "one-half the value of the crop" means one-half the market value of the crop that was actually treated with the illegally obtained economic poison as determined by the actual sale of the crop or, if the crop is not actually sold, as determined by the director based on an average of the typical market value for such a crop sold in the normal channels of trade in the year in which the crop was produced and in the preceding two years.

(d) Moneys received as a result of fines and penalties imposed pursuant to this section shall be divided and distributed as follows:

(1) Fifty percent to the county in which the case was brought to court or in which a court approved settlement of the matter was negotiated.

(2) Twenty-five percent to the office of the county agricultural commissioner.

(3) Twenty-five percent to the department.

SEC. 2. Section 12648.6 is added to the Food and Agricultural Code, to read:

12648.6. Any person who is licensed pursuant to this code and who is found by a court to have knowingly sold, applied, or provided economic poisons that were stolen or otherwise obtained illegally, in addition to any other penalty that may be imposed, shall have his or her license or licenses suspended for a minimum of 18 months.

SEC. 3. Section 14649 is added to Article 10 (commencing with Section 14651) of Chapter 5 of Division 7 of the Food and Agricultural Code, to read:

14649. (a) It is unlawful for the owner of a plant, crop, or

commodity to knowingly treat or apply to that plant, crop, or commodity, or cause that plant, crop, or commodity to be treated or applied, with a fertilizer that was stolen or otherwise acquired by illegal means.

(b) The owner of a crop, who is found by a court to have violated this section, in addition to any other penalties imposed by a court, shall be subject to a fine of ten thousand dollars ($10,000) plus an amount equal to one-half the value of the crop on which the illegally obtained fertilizer was applied.

(c) For purposes of this section, "one-half the value of the crop" means one-half the market value of the crop that was actually treated with the illegally obtained fertilizer as determined by the actual sale of the crop or, if the crop is not actually sold, as determined by the director based on an average of the typical market value for such a crop sold in the normal channels of trade in the year in which the crop was produced and in the preceding two years.

(d) Moneys received as a result of fines and penalties imposed pursuant to this section shall be divided and distributed as follows:

(1) Fifty percent to the county in which the case was brought to court or in which a court approved settlement of the matter was negotiated.

(2) Twenty-five percent to the office of the county agricultural commissioner.

(3) Twenty-five percent to the department.

SEC. 4. Section 14650 is added to Article 10 (commencing with Section 14651) of Chapter 5 of Division 7 of the Food and Agricultural Code, to read:

14650. (a) Any person who is licensed pursuant to this code and who is found by a court to have knowingly sold, applied, or provided fertilizers that were stolen or otherwise obtained illegally, in addition to any other penalty that may be imposed, shall have his or her license or licenses suspended for a minimum of 18 months.

(b) This section does not apply to a licensee whose employee or agent is found by a court to have knowingly sold, applied, or provided fertilizers that were stolen or otherwise obtained illegally, unless the licensee had actual knowledge of that conduct.

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 849

An act to amend Sections 1010, 1064, 4006, 5001, 5003.1, and 5004 of, and to add Section 5003.3 to, the Public Utilities Code, relating to carriers, and making an appropriation therefor.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. The Legislature finds and declares that:

(a) The Public Utilities Commission has, at the direction of the Legislature, acquired substantial additional duties in connection with the processing of operating authorities issued to motor carriers during the previous several years.

(b) The Legislature has prescribed fees associated with the processing of applications for motor carrier operating authority in statute, and those fees have not been revised for more than 20 years.

(c) The current level of fees set by statute is inadequate to cover the cost of processing motor carrier applications and requires subsidy of these functions through fees paid by licensed carriers.

(d) The Public Utilities Commission has substantially reduced its rate oversight activities during the previous several years.

(e) User fees paid into the Transportation Rate Fund based on the gross revenue of motor carriers of property should be equitably apportioned among those carriers on the basis of the regulatory programs those fees support.

SEC. 2. Section 1010 of the Public Utilities Code is amended to read:

1010. (a) No express corporation or freight forwarder shall after August 1, 1933, commence operating between points in this state or extend its operations to or from any point or points in this state not theretofore served by it, unless and until it first secures from the commission, upon formal application therefor, a certificate that public convenience and necessity require such operation. The commission may, with or without hearing, issue such certificate, or refuse to issue it, or issue it for the partial exercise only of the privilege sought, and may attach to its order granting the certificate the terms and conditions as, in its judgment, the public convenience and necessity require. The commission may at any time, for good cause shown and upon notice to the holder of the certificate, revoke, alter, or amend the certificate.

(b) Each application for a certificate of public convenience and necessity made under the provisions of this section shall be accompanied by a fee of one thousand dollars ($1,000).

(c) A fee of one hundred fifty dollars ($150) shall be paid to the commission for filing each application to sell, mortgage, lease, assign, transfer, or otherwise encumber any certificate subject to the

provisions of this section.

SEC. 3. Section 1064 of the Public Utilities Code is amended to read:

1064. Each application for a certificate of public convenience and necessity made under the provisions of this article shall be accompanied by a fee of one thousand dollars ($1,000).

The commission may, with or without hearing, issue the certificate as prayed for, or refuse to issue it, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate such terms and conditions as, in its judgment, the public convenience and necessity require.

SEC. 4. Section 4006 of the Public Utilities Code is amended to read:

4006. (a) A fee of thirty dollars ($30) shall be paid to the commission for the filing of the initial registration, of private carriers of property, and an annual renewal fee of twenty-five dollars ($25) shall also be paid by private carriers of property. A fee of twenty-five dollars ($25) shall be paid to the commission for the filing of the initial registration of private carriers of passengers, and an annual renewal fee of twenty dollars ($20) shall also be paid by private carriers of passengers. The fees required to be paid by carriers of property pursuant to this section shall be deposited in the Transportation Rate Fund. However, five dollars ($5) from the registration fees or renewal fees from each registration or renewal paid by private carriers of property pursuant to this section, shall be allocated on a quarterly basis to the Commercial Motor Carrier Safety Enforcement Fund. The fees required to be paid by carriers of passengers pursuant to this section shall be deposited in the Public Utilities Commission Transportation Reimbursement Account in the General Fund.

(b) Notwithstanding subdivision (a), the commission may increase the amount of the initial registration fee to not more than forty dollars ($40) in the case of private carriers of property, and thirty-five dollars ($35) in the case of private carriers of passengers, and the amount of the annual renewal fee to not more than thirty-five dollars ($35) in the case of private carriers of property, and thirty dollars ($30) in the case of private carriers of passengers if the commission finds and determines that to do so is necessary to defray the costs of implementing Section 4022. If the commission increases either fee pursuant to this subdivision, it shall prepare and transmit to the Joint Legislative Budget Committee, the Assembly Committee on Utilities and Commerce, and the Senate Committee on Energy and Public Utilities a report of the amount of the increase instituted together with an audited statement of the receipts and disbursements related to the administration of private carrier registrations.

(c) Five dollars ($5) from the registration fee or renewal fees from each registration or renewal paid by private carriers of property pursuant to this section shall be allocated on a quarterly

basis to the Commercial Motor Carrier Safety Enforcement Fund.

SEC. 5. Section 5001 of the Public Utilities Code is amended to read:

5001. This chapter is enacted for the following purposes:

(a) Creating a special fund to administer and enforce the commission's jurisdiction to regulate the rates of transportation agencies carrying property for compensation.

(b) Creating a fund to be administered by the Department of the California Highway Patrol for use by the department and other enforcement agencies to administer and enforce the acts which regulate the safe and lawful operating practices of highway carriers throughout the state.

SEC. 6. Section 5003.1 of the Public Utilities Code is amended to read:

5003.1. Every railroad corporation, express corporation and freight forwarder, as these terms are defined in Part 1 (commencing with Section 201) of Division 1, and every motor transportation broker, as defined in Section 4803, and every person or corporation owning or operating motor vehicles in the transportation of property for hire upon the public highways under the jurisdiction of the commission shall, between the first and 15th days of January, April, July, and October of each year, file with the commission a statement showing the gross operating revenue derived by that person or corporation from the transportation of property for the preceding three calendar months, and shall, at the time of filing the report, pay to the commission a fee of fifteen ($15) for each quarter. Five dollars ($5) from each fifteen dollars ($15) quarterly base fee shall be allocated on a quarterly basis to the Commercial Motor Carrier Safety Enforcement Fund. Every express corporation, freight forwarder, motor transportation broker, and every person or corporation owning or operating motor vehicles in the transportation of property for hire upon the public highways under the jurisdiction of the commission shall, at the time of filing the report, pay to the commission a fee equal to one-third of 1 percent of the amount of the gross operating revenue, except as follows:

(a) For any particular fiscal year, the commission, with the approval of the Department of Finance, may fix the fee at less than one-third of 1 percent of that amount.

(b) The commission may increase the fee pursuant to subdivision (b) of Section 5003.2.

SEC. 7. Section 5003.3 is added to the Public Utilities Code, to read:

5003.3. Five hundred dollars ($500) from the filing fees for each new permit or certificate applied for pursuant to Section 1010, 1064, or subdivision (a) of Section 5004 shall be allocated annually from the Transportation Rate Fund to the Commercial Motor Carrier Safety Enforcement Fund, and, upon appropriation by the Legislature, shall be used by the Department of the California Highway Patrol in conjunction with local jurisdictions to provide for safety and security

of highway carriers and their cargoes. Up to 1 percent of the funds allocated to the Commercial Motor Carrier Safety Enforcement Fund shall be set aside for use by the Department of the California Highway Patrol for administration of the fund.

SEC. 8. Section 5004 of the Public Utilities Code is amended to read:

5004. The following fees shall be paid to the commission with any application filed pursuant to the Highway Carriers' Act (Chapter 1 (commencing with Section 3501)):

(a) One thousand dollars ($1,000) for filing each application for a permit, except applications for a seasonal permit, as provided in subdivision (d).

(b) One hundred fifty dollars ($150) for filing each application to sell, mortgage, lease, assign, transfer, or otherwise encumber any permit, except that, for the transfer of each permit subsequent to the death of a permittee, and after court approval of the distribution of the estate or when it is not necessary to probate the will or distribute the estate through court, the fee is twenty-five dollars ($25).

(c) One hundred fifty dollars ($150) for filing each application to acquire or control a highway permit carrier pursuant to Section 3551.

(d) Twenty-five dollars ($25) for filing each application for issuance or renewal of a permit to operate as an agricultural carrier or livestock carrier on a seasonal basis, as authorized by Section 3584.2 or for issuance or renewal of a temporary dump truck carrier permit, as authorized by Section 3616.

CHAPTER 850

An act to amend Sections 1001.15, 1001.16, and 1211 of, and to repeal Section 1001.17 of, the Penal Code, relating to diversion fees.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 1001.15 of the Penal Code, as amended by Chapter 221 of the Statutes of 1993, is amended to read:

1001.15. (a) In addition to the fees authorized or required by other provisions of law, a judge may require the payment of an administrative fee, as part of an enrollment fee in a diversion program, by a defendant accused of a felony to cover the actual cost of any criminalistics laboratory analysis, the actual cost of processing a request or application for diversion, and the actual cost of supervising the divertee pursuant to Chapter 2.5 (commencing with Section 1000), not to exceed five hundred dollars ($500). The fee shall be payable at the time of enrollment in the diversion program. The court shall take into consideration the defendant's ability to pay,

and no defendant shall be denied diversion because of his or her inability to pay. One-third of the fee collected shall be deposited in the criminalistics laboratories fund in the county treasury, and two-thirds of the fee collected shall be used to cover the administrative cost of processing the request or application and the actual cost of supervising the divertee. The portion deposited in the criminalistics laboratories fund shall be expended as provided in Section 11372.5 of the Health and Safety Code.

(b) As used in this section, "criminalistics laboratory" means a laboratory operated by, or under contract with a city, county, or other public agency, including a criminalistics laboratory of the Department of Justice, which has not less than one regularly employed forensic scientist engaged in the analysis of solid dose material and body fluids for controlled substances, and which is registered as an analytical laboratory with the Drug Enforcement Administration of the United States Department of Justice for the processing of all scheduled controlled substances.

(c) In addition to the fees authorized or required by other provisions of law, a judge may require the payment of an administrative fee, as part of an enrollment fee in a diversion program, by a defendant accused of an act charged as, or reduced to, a misdemeanor to cover the actual cost of processing a request or application for diversion pursuant to Chapter 2.6 (commencing with Section 1000.6), the actual costs of reporting to the court on a defendant's eligibility and suitability for diversion, the actual cost of supervising the divertee, and for the actual costs of performing any duties required pursuant to Section 1000.9, not to exceed three hundred dollars ($300). The fee shall be payable at the time of enrollment in the diversion program. The fee shall be determined on a sliding scale according to the defendant's ability to pay, and no defendant shall be denied diversion because of his or her inability to pay.

SEC. 2. Section 1001.16 of the Penal Code is amended to read:

1001.16. (a) In addition to the fees authorized or required by other provisions of law, a judge may require the payment of an administrative fee, as part of an enrollment fee in a diversion program, by a defendant accused of a misdemeanor to cover the actual cost of any criminalistics laboratory analysis in a case involving a violation of the California Uniform Controlled Substances Act under Division 10 (commencing with Section 11000) of the Health and Safety Code, the actual cost of processing a request or application for diversion, and the actual cost of supervising the divertee, not to exceed three hundred dollars ($300). The fee shall be payable at the time of enrollment in the diversion program. The court shall take into consideration the defendant's ability to pay, and no defendant shall be denied diversion because of his or her inability to pay.

One-third of the fee collected shall be deposited in the criminalistics laboratories fund in the county treasury, and two-thirds

of the fee collected shall be used to cover the administrative cost of processing the request or application and supervising the divertee. The portion deposited in the criminalistics laboratories fund shall be expended as provided in Section 11372.5 of the Health and Safety Code.

(b) As used in this section, "criminalistics laboratory" means a laboratory operated by, or under contract with, a city, county, or other public agency, including a criminalistics laboratory of the Department of Justice, which has not less than one regularly employed forensic scientist engaged in the analysis of solid dose material and body fluids for controlled substances and which is registered as an analytical laboratory with the Drug Enforcement Administration of the United States Department of Justice for the processing of all scheduled controlled substances.

(c) This section shall apply to all misdemeanor pretrial diversion programs established pursuant to this title.

SEC. 3. Section 1001.17 of the Penal Code is repealed.

SEC. 4. Section 1211 of the Penal Code is amended to read:

1211. (a) In order to ensure the quality of drug diversion programs provided pursuant to this chapter and Chapter 2.5 (commencing with Section 1000) of Title 6, and to expand the availability of these programs, the county drug program administrator in each county, in consultation with representatives of the court and the county probation department, shall establish minimum requirements, criteria, and fees for the successful completion of drug diversion programs which shall be approved by the county board of supervisors no later than January 1, 1995. These minimum requirements shall include, but not be limited to, all of the following:

(1) An initial assessment of each divertee, which may include all of the following:

(A) Social, economic, and family background.

(B) Education.

(C) Vocational achievements.

(D) Criminal history.

(E) Medical history.

(F) Drug history and previous treatment.

(2) A minimum of 20 hours of either effective education or counseling or any combination of both for each divertee.

(3) An exit conference which shall reflect the divertee's progress during his or her participation in the program.

(4) Fee exemptions for persons who cannot afford to pay.

(b) The county drug program administrator shall implement a certification procedure for drug diversion programs.

(c) The county drug program administrator shall recommend for approval by the county board of supervisors programs pursuant to this chapter. No program, regardless of how it is funded, may be approved unless it meets the standards established by the administrator, which shall include, but not be limited to, all of the

following:

(1) Guidelines and criteria for education and treatment services, including standards of services which may include lectures, classes, group discussions, and individual counseling. However, any class or group discussion other than lectures, shall not exceed 15 persons at any one meeting.

(2) Established and approved supervision, either on a regular or irregular basis, of the person for the purpose of evaluating the person's progress.

(3) A schedule of fees to be charged for services rendered to each person under a county drug program plan in accordance with the following provisions:

(A) Fees shall be used only for the purposes set forth in this chapter.

(B) Fees for the treatment or rehabilitation of each participant receiving services under a certified drug diversion program shall not exceed the actual cost thereof, as determined by the county drug program administrator according to standard accounting practices.

(C) Actual costs shall include both of the following:

(i) All costs incurred by the providers of diversion programs.

(ii) All expenses incurred by the county for administration, certification, or management of the drug diversion program in compliance with this chapter.

(d) The county shall require, as a condition of certification, that the drug diversion program pay to the county drug program administrator all expenses incurred by the county for administration, certification, or management of the drug diversion program in compliance with this chapter. No fee shall be required by any county other than that county where the program is located.

CHAPTER 851

An act to amend Section 7260 of, and to add Section 7262.5 to, the Government Code, relating to housing.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 7260 of the Government Code is amended to read:

7260. As used in this chapter:

(a) "Public entity" includes the state, the Regents of the University of California, a county, city, city and county, district, public authority, public agency, and any other political subdivision or public corporation in the state or any entity acting on behalf of these agencies when acquiring real property, or any interest therein,

in any city or county for public use and any person who has the authority to acquire property by eminent domain under state law.

(b) "Person" means any individual, partnership, corporation, or association.

(c) (1) "Displaced person" means both of the following:

(A) Any person who moves from real property, or who moves his or her personal property from real property, either:

(i) As a direct result of a written notice of intent to acquire or the acquisition of the real property, in whole or in part, for a program or project undertaken by a public entity or by any person having an agreement with or acting on behalf of a public entity.

(ii) As a direct result of the rehabilitation, demolition, or other displacing activity as the public entity may prescribe under a program or project undertaken by a public entity, of real property on which the person is a residential tenant or conducts a business or farm operation, in any case in which the public entity determines that the displacement is permanent. For purposes of this subparagraph, "residential tenant" includes any occupant of a residential hotel unit, as defined in subdivision (b) of Section 50669 of the Health and Safety Code, and any occupant of employee housing, as defined in Section 17008 of the Health and Safety Code, but shall not include any person who has been determined to be in unlawful occupancy of the displacement dwelling.

(B) Solely for the purposes of Sections 7261 and 7262, any person who moves from real property, or moves his or her personal property from real property, either:

(i) As a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which the person conducts a business or farm operation, for a program or project undertaken by a public entity.

(ii) As a direct result of the rehabilitation, demolition, or other displacing activity as the public entity may prescribe under a program or project undertaken by a public entity, of other real property on which the person conducts a business or farm operation, in any case in which the public entity determines that the displacement is permanent.

(2) The definition contained in this subdivision shall be construed so that persons displaced as a result of public action receive relocation benefits in cases where they are displaced as a result of an owner participation agreement or an acquisition carried out by a private person for or in connection with a public use where the public entity is otherwise empowered to acquire the property to carry out the public use. Except persons or families of low and moderate income, as defined in Section 50093 of the Health and Safety Code, who are occupants of housing which was made available to them on a permanent basis by a public agency and who are required to move from the housing, a "displaced person" shall not include any of the following:

(A) Any person who has been determined to be in unlawful

occupancy of the displacement dwellings.

(B) Any person whose right of possession at the time of moving arose after the date of the public entity's acquisition of the real property.

(C) Any person who has occupied the real property for the purpose of obtaining assistance under this chapter.

(D) In any case in which the public entity acquires property for a program or project (other than a person who was an occupant of the property at the time it was acquired), any person who occupies the property for a period subject to termination when the property is needed for the program or project.

(3) (A) Notwithstanding Section 7265.3 or any other provision of law, a person who is temporarily displaced for not more than 180 days, and who is offered occupancy of a comparable replacement unit located within the same apartment complex that contains the unit from which he or she has been displaced, shall not be deemed a "displaced person" for the purposes of this chapter. This paragraph shall be applicable only if all of the following conditions are complied with:

(i) All other financial benefits and services otherwise required under this chapter are provided to the tenants temporarily displaced from their units.

(ii) The resident is offered the right to return to his or her original unit, with rent for the first 12 months subsequent to that return being the lower of the following: up to 5 percent higher than the rent at the time of displacement; or up to 25 percent of household income.

(iii) The temporary unit is not unreasonably impacted by the effects of the construction, taking into consideration the ages and physical conditions of the members of the displaced household, and the estimated period of displacement is reasonable.

(iv) The property is a qualified affordable housing preservation project.

(B) For the purposes of this paragraph:

(i) "Apartment complex" means four or more residential rental units subject to common ownership and financing that are also located on the same or contiguous parcels.

(ii) "Qualified affordable housing preservation project" is any complex of four or more units whose owners enter into a recorded regulatory agreement, having a term for the useful life of the project, with any entity for the provision of project rehabilitation financing. For this purpose, the regulatory agreement shall require of the owner and all successors and assigns of the owner, as long as the regulatory agreement is in effect, that at least 49 percent of the tenants in the project shall have, at the time of the recordation of the regulatory agreement required by this section, incomes not in excess of 60 percent of the area median income, adjusted by household size, as determined by the appropriate agency of the State of California. In addition, a project shall be defined as a qualified affordable housing preservation project only if the beneficiary of the regulatory

agreement elects this designation by so indicating on the regulatory agreement.

(d) "Business" means any lawful activity, except a farm operation, conducted for any of the following:

(1) Primarily for the purchase, sale, lease, or rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property.

(2) Primarily for the sale of services to the public.

(3) Primarily by a nonprofit organization.

(4) Solely for the purpose of Section 7262 for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display, whether or not the display is located on the premises on which any of the above activities are conducted.

(e) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing these products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(f) "Affected property" means any real property which actually declines in fair market value because of acquisition by a public entity for public use of other real property and a change in the use of the real property acquired by the public entity.

(g) "Public use" means a use for which real property may be acquired by eminent domain.

(h) "Mortgage" means classes of liens that are commonly given to secure advances on, or the unpaid purchase price of, real property, together with the credit instruments, if any, secured thereby.

(i) "Comparable replacement dwelling" means any dwelling that is all of the following:

(1) Decent, safe, and sanitary.

(2) Adequate in size to accommodate the occupants.

(3) In the case of a displaced person who is a renter, within the financial means of the displaced person. A comparable replacement dwelling is within the financial means of a displaced person if the monthly rental cost of the dwelling minus any replacement housing payment available to the person does not exceed 25 percent of the person's average monthly income.

(4) Comparable with respect to the number of rooms, habitable space, and type and quality of construction. Comparability under this paragraph shall not require strict adherence to a detailed, feature-by-feature comparison. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features shall be present.

(5) In an area not subject to unreasonable adverse environmental conditions.

(6) In a location generally not less desirable than the location of the displaced persons dwelling with respect to public utilities,

facilities, services, and the displaced person's place of employment.

(j) "Displacing agency" means any public entity or person carrying out a program or project which causes a person to be a displaced person for a public project.

(k) "Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(*l*) "Small business" means a business as defined in Part 24 of Title 49 of the Code of Federal Regulations.

(m) "Lead agency" means the Department of Housing and Community Development.

SEC. 2. Section 7262.5 is added to the Government Code, to read:

7262.5. (a) Notwithstanding Section 7265.3 or any other provision of law, tenants residing in any multifamily rental project of four or more units who are displaced from the project for a period of 180 days or less as part of a rehabilitation of that project, that is funded in whole or in part by a public entity, shall not be deemed permanently displaced if all of the following criteria are satisfied:

(1) All other financial benefits and services otherwise required under this chapter are provided to the tenants temporarily displaced from their units, including relocation to a comparable replacement unit.

(2) The resident is offered the right to return to his or her original unit, with rent for the first 12 months subsequent to that return being the lower of the following: up to 5 percent higher than the rent at the time of displacement; or up to 25 percent of household income.

(3) The estimated time of displacement is reasonable, and the project is a qualified affordable housing preservation project.

(b) For the purposes of this section, "qualified affordable housing preservation project" shall have the meaning set forth in subparagraph (B) of paragraph (3) of subdivision (c) of Section 7260.

SEC. 3. Notwithstanding any other provision of law, no provision of this act shall be introduced as evidence, either directly, by referring to the name or contents of the amendments to Section 7260 of the Government Code made by this act, or indirectly, through testimony of any expert or lay witness, or otherwise referred to, in any action pending as of the effective date of this act.

CHAPTER 852

An act to amend Sections 1819, 4451, 4751, 5900, 5901, and 9255 of the Vehicle Code, relating to vehicles, and making an appropriation therefor.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 1819 of the Vehicle Code is amended to read:

1819. All records of the department containing information as to the actual mileage of motor vehicles submitted as required by Sections 5900 and 5901 shall be open to inspection by the public during the office hours of the department.

SEC. 2. Section 4451 of the Vehicle Code is amended to read:

4451. The certificate of ownership shall contain all of the following:

(a) Not less than the information required upon the face of the registration card.

(b) Provision for notice to the department of a transfer of the title or interest of the owner or legal owner.

(c) Provision for application for transfer of registration by the transferee.

(d) Provision for an odometer disclosure statement pursuant to Section 408 of the federal Motor Vehicle Information and Cost Savings Act (15 U.S.C. Sec. 1901 et seq.).

SEC. 3. Section 4751 of the Vehicle Code is amended to read:

4751. The department may refuse registration or the renewal or transfer of registration of a vehicle in any of the following events:

(a) If the department is not satisfied that the applicant is entitled thereto under this code.

(b) If the applicant has failed to furnish the department with information required in the application or reasonable additional information required by the department.

(c) If the department determines that the applicant has made or permitted unlawful use of any registration certificate, certificate of ownership, or license plates.

(d) If the vehicle is mechanically unfit or unsafe to be operated or moved on the highways.

(e) If the department determines that a manufacturer or dealer has failed during the current or previous year to comply with the provisions of this code relating to the giving of notice to the department of the transfer of a vehicle during the current or previous year.

(f) If the department determines that a lien exists, pursuant to Section 9800, against one or more other vehicles in which the

applicant has an ownership interest.

(g) If the applicant has failed to furnish the department with an odometer disclosure statement pursuant to Section 408 of the federal Motor Vehicle Information and Cost Savings Act (15 U.S.C. Sec. 1901 et seq.).

SEC. 4. Section 5900 of the Vehicle Code, as added by Section 3 of Chapter 745 of the Statutes of 1992, is amended to read:

5900. (a) Whenever the owner of a vehicle registered under this code sells or transfers his or her title or interest in, and delivers the possession of, the vehicle to another, the owner shall, within five calendar days, notify the department of the sale or transfer giving the date thereof, the name and address of the owner and of the transferee, and the description of the vehicle which is required in the appropriate form provided for that purpose by the department.

(b) Except as otherwise provided in subdivision (c), pursuant to Section 408 of the federal Motor Vehicle Information and Cost Savings Act (15 U.S.C. Sec. 1901 et seq.), the owner shall also notify the department of the actual mileage of the vehicle as indicated by the vehicle's odometer at the time of sale or transfer. However, if the vehicle owner has knowledge that the mileage displayed on the odometer is incorrect, the owner shall indicate on the appropriate form the true mileage, if known, of the vehicle at the time of sale or transfer.

Providing false or inaccurate mileage is not a violation of this subdivision unless it is done with the intent to defraud.

(c) If the registered owner is not in possession of the vehicle that is sold or transferred, the person in physical possession of that vehicle shall give the notice required by subdivisions (a) and (b). If the registered owner sells or transfers the vehicle through a dealer conducting a wholesale motor vehicle auction, the owner shall furnish the information required by subdivisions (a) and (b) to that dealer.

(d) The department shall prescribe and issue a secure power of attorney form to be used for purposes of the odometer mileage disclosure requirements of this section and Section 1988 (d) (*l*) (C) of Title 15 of the United States Code.

SEC. 5. Section 5901 of the Vehicle Code, as added by Section 5 of Chapter 745 of the Statutes of 1992, is amended to read:

5901. (a) Every dealer or lessor-retailer, upon transferring by sale, lease, or otherwise any vehicle, whether new or used, of a type subject to registration under this code, shall, not later than the end of the fifth calendar day thereafter not counting the day of sale, give written notice of the transfer to the department at its headquarters upon an appropriate form provided by it.

(b) Except as otherwise provided in this subdivision or in subdivision (c), the dealer or lessor-retailer shall enter on the form and pursuant to the federal Motor Vehicle Information and Cost Savings Act (15 U.S.C. Sec. 1901 et seq.), on the ownership certificate, the actual mileage of the vehicle as indicated by the vehicle's

odometer at the time of the transfer. However, if the vehicle dealer or lessor-retailer has knowledge that the mileage displayed on the odometer is incorrect, the licensee shall indicate on the form the true mileage, if known, of the vehicle at the time of the transfer. A vehicle dealer or lessor-retailer need not give the notice when selling or transferring a new unregistered vehicle to a dealer or lessor-retailer.

(c) When the dealer or lessor-retailer is not in possession of the vehicle that is sold or transferred, the person in physical possession of the vehicle shall give the information required by subdivision (b).

(d) A sale is deemed completed and consummated when the purchaser of the vehicle has paid the purchase price, or, in lieu thereof, has signed a purchase contract or security agreement, and has taken physical possession or delivery of the vehicle.

(e) (1) A transfer which takes place through a dealer conducting a wholesale motor vehicle auction shall be reported to the department by that dealer on a single form approved by the department. The completed form shall contain, at a minimum, all of the following:

(A) The name and address of the seller.

(B) The seller's dealer number, if applicable.

(C) The date of delivery to the dealer conducting the auction.

(D) The actual mileage of the vehicle as indicated by the vehicle's odometer at the time of delivery to the dealer conducting the auction.

(E) The name, address, and occupational license number of the dealer conducting the wholesale motor vehicle auction.

(F) The name, address, and occupational license number of the buyer.

(G) The signature of the dealer conducting the wholesale auto auction.

(2) Submission of the completed form specified in paragraph (1) to the department fully satisfies the requirements of subdivision (a) with respect to the seller at auction.

(3) The single document transfer form required by this subdivision does not relieve a dealer of any obligation or responsibility that is required by any other provision of law.

SEC. 6. Section 9255 of the Vehicle Code is amended to read:

9255. Upon application for the transfer of the title or any interest of an owner or legal owner in or to a vehicle registered under this code, or for which a certificate of ownership has been issued without registration under Section 4452, other than upon a transfer to a chattel mortgagee and other than upon a transfer to a transferee not required under this code to obtain the issuance to the owner of a new certificate of ownership and registration card, there shall be paid the following fees:

(a)	For a transfer by the owner of an automobile or motorcycle	$10
(b)	For a transfer by the owner of a trailer, trailer coach, or commercial vehicle	$ 9
(c)	For a transfer by the legal owner	$ 9
(d)	When an application is presented showing a transfer by both the owner and legal owner of an automobile or motorcycle	$10
(e)	When an application is presented showing a transfer by both the owner and legal owner of a trailer, trailer coach, or commercial vehicle	$ 9

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

SEC. 8. The sum of one million three hundred ninety-two thousand four hundred thirty-seven dollars ($1,392,437) is hereby appropriated from the Motor Vehicle Account in the State Transportation Fund to the Department of Motor Vehicles for purposes of implementing Sections 2 to 5 inclusive, of this act.

CHAPTER 853

An act to amend Sections 2192.1 and 4703 of, and to add Section 2192.2 to, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 2192.1 of the Revenue and Taxation Code is amended to read:

2192.1. Every tax declared in this chapter to be a lien on real property, and every public improvement assessment declared by law to be a lien on real property, have priority over all other liens on the property, regardless of the time of their creation. Any tax or assessment described in the preceding sentence shall be given priority over matters including, but not limited to, any recognizance,

deed, judgment, debt, obligation, or responsibility with respect to which the subject real property may become charged or liable.

SEC. 2. Section 2192.2 is added to the Revenue and Taxation Code, to read:

2192.2. Upon the sale, other than a tax sale under this division or a sale pursuant to Article 1 (commencing with Section 2920) of Chapter 2 of Title 14 of Part 4 of Division 3 of the Civil Code, conducted under judicial process or otherwise by any sheriff, constable, trustee, receiver, or other ministerial officer, of any real property upon which ad valorem property taxes or assessments are due and unpaid at the time of sale, the proceeds from that sale shall, after the payment of necessary and incidental sale expenses, be first applied to the amount of those ad valorem property taxes and assessments and be transmitted by the conducting officer to the officer responsible for the collection of those taxes and assessments.

SEC. 3. Section 4703 of the Revenue and Taxation Code is amended to read:

4703. In each county that elects to adopt the procedure authorized by this chapter there is hereby created a tax losses reserve fund.

(a) The tax losses reserve fund shall be used exclusively, as hereinafter provided, to cover losses that may occur in the amount of tax liens as a result of special sales of tax-defaulted property. Whenever in any year the amount of the tax losses reserve fund has reached an amount equivalent to 3 percent of the total of all taxes and assessments levied on the secured roll for that year, the amounts hereinafter authorized to be credited to that fund shall, for the remainder of that year, be credited to the county general fund.

(b) The auditor and treasurer shall keep apportioned tax resources accounts in such a manner that the balance of amounts apportioned to funds on an accrual basis shall be known by both officers. In addition, the auditor shall keep secured taxes receivable accounts in such a manner as to establish accountability for the amounts receivable on the secured tax rolls. Secured tax rolls, as used in this chapter, include delinquent rolls prescribed by Section 2627.

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

In order to preserve the ability of California counties during a period of severe fiscal strain to collect the full amount of property taxes that are due and payable, it is necessary that this act take effect immediately.

CHAPTER 854

An act to amend Sections 803, 821, 829, and 1029 of the Unemployment Insurance Code, relating to unemployment compensation.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 803 of the Unemployment Insurance Code, as amended by Chapter 31 of the Statutes of 1993, is amended to read:

803. (a) As used in this section "entity" means any employing unit that is authorized by any provision of Article 4 (commencing with Section 701) or by Section 801 or 802 to elect a method of financing coverage permitted by this section.

(b) In lieu of the contributions required of employers, an entity may elect any one of the following:

(1) To pay into the Unemployment Fund the cost of benefits, including extended duration benefits and federal-state extended benefits, paid based on base period wages with respect to employment for the entity and charged to its account in the manner provided by Section 1026, pursuant to authorized regulations that shall prescribe the rate or amount, time, manner, and method of payment or advance payment or providing a good and sufficient bond to guarantee payment of contributions.

(2) Two or more entities may, pursuant to authorized regulations, file an application with the director for the establishment of a joint account for the purpose of determining the rate of contributions they shall pay into the Unemployment Fund to reimburse the fund for benefits paid with respect to employment for those entities. The members of the joint account may share the cost of benefits, including extended duration benefits and federal-state extended benefits, paid based on the base period wages with respect to employment for those members and charged to the joint account in the manner provided by Section 1026. The director shall prescribe authorized regulations for the establishment, maintenance, and dissolution of joint accounts, and for the rate or amount, time, manner, and method of payment or advance payment or providing a good and sufficient bond to guarantee payment of contributions by the members of joint accounts, on the cost of benefits charged in the manner provided by Section 1026.

(c) Sections 1030, 1031, 1032, and 1032.5, and any provision of this division for the noncharging of benefits to the account of an employer, shall not apply to an election under subdivision (b). The cost of benefits charged to an entity under this section shall include, but not be limited to, benefits or payments improperly paid in excess of a weekly benefit amount, or in excess of a maximum benefit

amount, or otherwise in excess of the amount that should have been paid, due to any computational or other error of any type by the Employment Development Department or the Department of Benefit Payments, whether or not the error could be anticipated.

(d) In making the payments prescribed by subdivision (b), there shall be paid or credited to the Unemployment Fund, either in advance or by way of reimbursement, as may be determined by the director, any sums he or she estimates the Unemployment Fund will be entitled to receive from each entity for each calendar quarter, reduced or increased by any sum by which he or she finds that his or her estimates for any prior calendar quarter were greater or less than the amounts which should have been paid to the fund. The estimates may be made upon the basis of statistical sampling, or any other method as may be determined by the director.

Upon making that determination, the director shall give notice of the determination, pursuant to Section 1206, to the entity. The director may cancel any contributions or portion thereof that he or she finds has been erroneously determined.

The director shall charge to any special fund, that is responsible for the salary of any employee of an entity, the amount determined by the director for which the fund is liable pursuant to this section. The contributions due from the entity shall be paid from the liable special fund, the General Fund, or other liable fund to the Unemployment Fund by the Controller or other officer or person responsible for disbursements on behalf of the entity within 30 days of the date of mailing of the director's notice of determination to the entity. The director for good cause may extend for not to exceed 60 days the time for paying without penalty the amount determined and required to be paid. Contributions are due upon the date of mailing of the notice of determination and are delinquent if not paid on or before the 30th day following the date of mailing of the notice.

(e) Any entity that fails to pay the contributions required within the time required shall be liable for interest on the contributions at the adjusted annual rate and by the method established pursuant to Section 19521 of the Revenue and Taxation Code from and after the date of delinquency until paid, and any entity that without good cause fails to pay any contributions required within the time required shall pay a penalty of 10 percent of the amount of the contributions. If the entity fails to pay the contributions required on or before the delinquency date, the director may assess the entity for the amount required by the notice of determination. This subdivision shall not apply to employers electing financing under Section 821, for amounts due after December 31, 1992.

(f) Article 8 (commencing with Section 1126) of Chapter 4 of Part 1 with respect to the assessment of contributions, and Chapter 7 (commencing with Section 1701) of Part 1 with respect to the collection of contributions, shall apply to the assessments provided by this section. Sections 1177 to 1184, inclusive, relating to refunds and overpayments, shall apply to amounts paid to the

Unemployment Fund pursuant to this section. Sections 1222, 1223, 1224, 1241, and 1242 shall apply to matters arising under this section.

(g) The director may terminate the election of any entity for financing under this section if the entity is delinquent in the payment of advances or reimbursements required by the director under this section. After any termination the entity may again make an election pursuant to this section but only if it is not delinquent in the payment of contributions and not delinquent in the payment of advances or reimbursements required by the director under this section.

(h) Notwithstanding any other provision of this section, no entity shall be liable for that portion of any extended duration benefits or federal-state extended benefits that is reimbursed or reimbursable by the federal government to the State of California.

(i) After the termination of any election under this section, the entity shall remain liable for its proportionate share of the cost of benefits paid and charged to its account in the manner provided by Section 1026, which are based on wages paid for services during the period of the election. That liability may be charged against any remaining balance of a prior reserve account used by the entity pursuant to Section 712 or 713. Any portion of the remaining balance shall be included in the reserve account of the entity following any termination of an election under this section which occurs prior to the expiration of a period of three consecutive years commencing with the effective date of the election. For purposes of Section 982, the period of an election under Section 803 shall, to the extent permitted by federal law, be included as a period during which a reserve account has been subject to benefit charges.

SEC. 2. Section 821 of the Unemployment Insurance Code is amended to read:

821. (a) Each school employer may, in lieu of the contributions required of employers, elect to pay into the Unemployment Fund the cost of benefits, including extended duration benefits and federal-state extended benefits, paid based on base period wages with respect to employment for an employing unit and charged to its account in the manner provided by Section 1026, pursuant to authorized regulations that shall prescribe the rate or amount, time, manner, and method of payment or advance payment or providing a good and sufficient bond to guarantee payment of contributions. The provisions of this article shall apply to school employers who have elected financing under this section.

(b) Sections 1030, 1031, 1032, and 1032.5, and any provision of this division for the noncharging of benefits to the account of an employer, shall not apply to an employing unit under subdivision (a). The cost of benefits charged to a school employer under this section shall include, but not be limited to, benefits or payments improperly paid in excess of a weekly benefit amount, or in excess of a maximum benefit amount, or otherwise in excess of the amount that should have been paid, due to any computational or other error

of any type by the Employment Development Department or the Department of Benefit Payments, whether or not the error could be anticipated.

(c) In making the payments prescribed by subdivision (a), there shall be paid or credited to the Unemployment Fund, either in advance or by way of reimbursement, as may be determined by the director, any sums he or she estimates the Unemployment Fund will be entitled to receive from each employing unit for each calendar quarter, reduced or increased by any sum by which he or she finds that his or her estimates for any prior calendar quarter were greater or less than the amounts that should have been paid to the fund. These estimates may be made upon the basis of a statistical sampling, or other method as may be determined by the director.

Upon making the determination, the director shall mail notice of the determination, pursuant to Section 1206, to the employing unit.

The director may cancel any contributions or portion thereof that he or she finds have been erroneously determined. The contributions due from the employing units shall be paid, transferred, or credited from the School Employees Fund established in the State Treasury by Section 822 to the Unemployment Fund by the State Treasurer, State Controller, or other officer or person responsible for disbursements on behalf of the employing unit within 30 days of the date of mailing of the director's notice of determination to the employing unit.

Each employing unit shall send a copy of any and all notices, billings, or correspondence not normally routed to the administrator and the Superintendent of Public Instruction, regarding unemployment insurance for the school employees, to the administrator, the Superintendent of Public Instruction, and the county superintendent of schools, or agent thereof, with timely documentation of charges or determination. Article 8 (commencing with Section 1126) of Chapter 4 with respect to the assessment of contributions, and Chapter 7 (commencing with Section 1701) with respect to the collection of contributions, shall apply to the assessments provided by this article. Sections 1177 to 1184, inclusive, relating to refunds and overpayments, shall apply to amounts paid to the Unemployment Fund pursuant to this section. Sections 1222, 1223, 1224, 1241, and 1242 shall apply to matters arising under this section.

(d) Notwithstanding any other provision of this section, no employing unit shall be liable for that portion of any extended duration benefits or federal-state extended benefits that is reimbursed or reimbursable by the federal government to the state.

(e) To the extent permitted by federal law, including Section 121(e) of Public Law 94-566, any school employer that elects a method of financing under this article shall not be liable to reimburse the cost of benefits paid to any individual whose base period wages include wages for services performed prior to January 1, 1978, if the benefits are reimbursable by the federal government under Section

121 of Public Law 94-566 and to the extent that the individual would not have been eligible for the benefits had this state not provided for benefits payable based on services performed prior to January 1, 1978.

(f) The administrator and the Superintendent of Public Instruction shall adopt rules and regulations for the administration of their respective functions under this article in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Regulations of the administrator shall be subject to Article 1 (commencing with Section 301) of Chapter 2 of Part 1 of Division 1. Rules and regulations of the Superintendent of Public Instruction shall not be subject to the provisions of Article 1 (commencing with Section 301) of Chapter 2 of Part 1 of Division 1.

(g) Any election for financing coverage under this section shall take effect with respect to services performed from and after the first day of the calendar quarter in which the election is filed with the director, and shall continue in effect for not less than two full calendar years. Thereafter, the election under this section may be terminated as of January 1 of any calendar year only if the school employer, on or before the 31st day of January of that year, has filed with the director a written application for termination. The director may for good cause waive the requirement that a written application for termination shall be filed on or before the 31st day of January. School employers shall be prohibited from making a subsequent reelection under this section for 10 years from the date of termination of an election under this section. An election for financing coverage under this section is deemed to have been filed by every school employer effective as of January 1, 1976, is deemed to have been in effect for two calendar years prior to January 1, 1978, and may be terminated as of January 1, 1978, or as of January 1, 1980, or any later January 1 pursuant to this section. Upon the termination of any election under this section, the school employer shall be and remain liable for all benefits paid based upon wages paid by the school employer during the period of an election under this section.

SEC. 3. Section 829 of the Unemployment Insurance Code is amended to read:

829. The total amount of the local experience charge computed for each school employer pursuant to Section 828 shall be the amount that the school employer, county superintendent of schools, or empowered entity shall, on behalf of the employers under that jurisdiction, reimburse the School Employees Fund in the State Treasury. However, this amount shall not exceed 1.7 percent of the actual annual wages paid by a school employer in the immediately preceding calendar year as indicated in the four quarterly reports to the department.

SEC. 4. Section 1029 of the Unemployment Insurance Code is amended to read:

1029. (a) Whenever an employer ceases to pay wages in

employment, the reserve account of the employer, unless it has been transferred under Article 5 (commencing with Section 1051), shall be canceled on the records of the department after a period of three consecutive years has elapsed following the latest calendar quarter in which the employer paid wages in employment.

(b) Whenever a period of three consecutive years has elapsed, commencing with the effective date of an election by any entity to finance benefits pursuant to Section 803, any portion of the reserve account of the entity that has not been subject to use pursuant to Section 712 or 713, unless that portion has been reacquired by the entity by termination of the election under Section 803 prior to the expiration of the three-year period, shall be canceled on the records of the department. Section 982 shall apply to that entity.

(c) Upon the termination of an election by a school employer to finance benefits pursuant to Article 6 (commencing with Section 821) of Chapter 3, any favorable balance in the account of the school employer under the election shall be canceled on the records of the department.

CHAPTER 855

An act to amend Section 75.21 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 75.21 of the Revenue and Taxation Code is amended to read:

75.21. (a) Exemptions shall be applied to the amount of the supplemental assessment, provided that the property is not receiving any other exemption on either the current roll or the roll being prepared except as provided for in subdivision (b), that the assessee is eligible for the exemption, and that in those instances in which the provisions of this division require the filing of claims for exemption, the assessee makes a claim for the exemption.

(b) If the property received an exemption on the current roll or the roll being prepared and the assessee on the supplemental roll is eligible for an exemption and in those instances in which the provisions of this division require the filing of claims for exemption, the assessee makes a claim for an exemption of a greater amount, then the difference in the amount between the two exemptions shall be applied to the supplemental assessment.

(c) In those instances in which the provisions of this division require the filing of claims for exemption, except as provided in subdivision (d), any person claiming to be eligible for an exemption

to be applied against the amount of the supplemental assessment shall file a claim or an amendment to a current claim, in that form as prescribed by the board, on or before the 30th day following the date of notice of the supplemental assessment, in order to receive 100 percent exemption.

(1) With respect to property as to which the college, cemetery, church, religious, exhibition, veterans' organization, free public libraries, free museums, public schools, community colleges, state colleges, state universities, or welfare exemption was available but for which a timely application for exemption was not filed, the following amounts shall be canceled or refunded:

(A) Ninety percent of any tax or penalty or interest thereon, or any amount of tax or penalty or interest thereon exceeding two hundred fifty dollars ($250) in total amount, whichever is greater, for each supplemental assessment, provided that an appropriate application for exemption is filed on or before the date on which the first installment of taxes on the supplemental tax bill becomes delinquent, as provided by Section 75.52.

(B) Eighty-five percent of any tax or penalty or interest thereon, or any amount of tax or penalty or interest thereon exceeding two hundred fifty dollars ($250) in total amount, whichever is greater, for each supplemental assessment, if an appropriate application for exemption is thereafter filed.

(2) With respect to property as to which the welfare exemption or veterans' organization exemption was available, all provisions of Section 254.5, other than the specified dates for the filing of affidavits and other acts, are applicable to this section.

(3) With respect to property as to which the veterans', homeowners', or disabled veterans' exemption was available but for which a timely application for exemption was not filed, that portion of tax attributable to 80 percent of the amount of exemption available shall be canceled or refunded, provided that an appropriate application for exemption is filed on or before the date on which the first installment of taxes on the supplemental tax bill becomes delinquent, as provided by Section 75.52.

(4) With respect to property as to which any other exemption was available, but for which a timely application for exemption was not filed, the following amounts shall be canceled or refunded:

(A) Ninety percent of any tax or penalty or interest thereon, provided that an appropriate application for exemption is filed on or before the date on which the first installment of taxes on the supplemental tax bill becomes delinquent, as provided by Section 75.52.

(B) Eighty-five percent of any tax or penalty or interest thereon, or any amount of tax or penalty or interest thereon exceeding two hundred fifty dollars ($250) in total amount, whichever is greater, for each supplemental assessment, if an appropriate application for exemption is thereafter filed.

Other provisions of this division pertaining to the late filing of

claims for exemption do not apply to assessments made pursuant to this chapter.

(d) For purposes of this section, any claim for the homeowners' exemption previously filed by the owner of a dwelling, granted and in effect, constitutes the claim or claims for the homeowners' exemption required in this section. In the event that no claim for the homeowners' exemption is in effect, a claim for the homeowners' exemption for a single supplemental assessment for a change in ownership or new construction occurring on or after June 1, up to and including February 29, shall apply to that assessment; a claim for the homeowners' exemption for the two supplemental assessments for a change in ownership or new construction occurring on or after March 1, up to and including May 31, one for the current fiscal year and one for the following fiscal year, shall apply to those assessments. In either case, if granted, the claim shall remain in effect until title to the property changes, the owner does not occupy the home as his or her principal place of residence on the lien date, or the property is otherwise ineligible pursuant to Section 218.

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 856

An act to amend Section 18951 of the Welfare and Institutions Code, relating to minors.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 18951 of the Welfare and Institutions Code is amended to read:

18951. As used in this chapter:

(a) "Child" means an individual under the age of 18.

(b) "Child services" means services for or on behalf of children which shall include, but not be limited to, the following:

(1) Protective services.

(2) Caretaker services.
(3) Day care services which include dropoff care.
(4) Homemaker services or family aides.
(5) Counseling services.

(c) "Adult services" means services for or on behalf of a parent of a child which shall include, but not be limited to, the following:
(1) Access to voluntary placement, long or short term.
(2) Counseling services before and after a crisis.
(3) Homemaker services or family aides.

(d) "Multidisciplinary personnel" means any team of three or more persons who are trained in the prevention, identification and treatment of child abuse and neglect cases and who are qualified to provide a broad range of services related to child abuse. The team may include but not be limited to:
(1) Psychiatrists, psychologists or other trained counseling personnel.
(2) Police officers or other law enforcement agents.
(3) Medical personnel with sufficient training to provide health services.
(4) Social workers with experience or training in child abuse prevention.
(5) Any public or private school teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee.

(e) "Child abuse" as used in this chapter means a situation in which a child suffers from any one or more of the following:
(1) Serious physical injury inflicted upon the child by other than accidental means.
(2) Harm by reason of intentional neglect or malnutrition or sexual abuse.
(3) Going without necessary and basic physical care.
(4) Willful mental injury, negligent treatment, or maltreatment of a child under the age of 18 by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby, as determined in accordance with regulations prescribed by the Director of Social Services.
(5) Any condition which results in the violation of the rights or physical, mental, or moral welfare of a child or jeopardizes the child's present or future health, opportunity for normal development or capacity for independence.

(f) "Parent" means any person who exercises care, custody and control of the child as established by law.

CHAPTER 857

An act to amend Section 16429.1 of the Government Code, relating to bond proceeds of local agencies.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 16429.1 of the Government Code is amended to read:

16429.1. There is in the State Treasury the Local Agency Investment Fund, which fund is hereby created. Notwithstanding Section 13340, all money in the fund is hereby appropriated without regard to fiscal years to carry out the purpose of this section. The Controller shall maintain a separate account for each governmental unit having deposits in this fund.

Notwithstanding any other provisions of law, a local government official, with consent of the governing body of that agency, having money in its treasury not required for immediate needs, may remit the money to the Treasurer for deposit in the Local Agency Investment Fund for the purpose of investment.

Notwithstanding any other provisions of law, an officer of any nonprofit corporation whose membership is confined to public agencies or public officials, or an officer of a qualified quasi-governmental agency, with the consent of the governing body of that agency, having money in its treasury not required for immediate needs, may remit the money to the Treasurer for deposit in the Local Agency Investment Fund for the purpose of investment.

Notwithstanding any other provision of law or of this section, a local agency may, with approval of its governing body, deposit in the Local Agency Investment Fund proceeds of the issuance of bonds, notes, certificates of participation, or other evidences of indebtedness of the local agency pending expenditure of the proceeds for the authorized purpose of their issuance. In connection with these deposits of proceeds, the Local Agency Investment Fund is authorized to receive and disburse moneys, and to provide information, directly with or to an authorized officer of a trustee or fiscal agent engaged by the local agency, the Local Agency Investment Fund is authorized to hold investments in the name and for the account of that trustee or fiscal agent, and the Controller shall maintain a separate account for each deposit of proceeds.

The local governmental unit, the nonprofit corporation, or the quasi-governmental agency has the exclusive determination of the length of time its money will be on deposit with the Treasurer.

The trustee or fiscal agent of the local governmental unit has the exclusive determination of the length of time proceeds from the issuance of bonds will be on deposit with the Treasurer.

The Local Investment Advisory Board shall determine those quasi-governmental agencies which qualify to participate in the Local Agency Investment Fund.

The Treasurer may refuse to accept deposits into the fund if, in the judgment of the Treasurer, the deposit would adversely affect the state's portfolio.

The Treasurer may invest the money of the fund in securities prescribed in Section 16430. The Treasurer may elect to have the money of the fund invested through the Surplus Money Investment Fund as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2.

Money in the fund shall be invested to achieve the objective of the fund which is to realize the maximum return consistent with safe and prudent treasury management.

All instruments of title of all investments of the fund shall remain in the Treasurer's vault or be held in safekeeping under control of the Treasurer in any federal reserve bank, or any branch thereof, or the Federal Home Loan Bank of San Francisco, with any trust company, or the trust department of any state or national bank.

Immediately at the conclusion of each calendar quarter, all interest earned and other increment derived from investments shall be distributed by the Controller to the contributing governmental units or trustees or fiscal agents, nonprofit corporations, and quasi-governmental agencies in amounts directly proportionate to the respective amounts deposited in the Local Agency Investment Fund and the length of time the amounts remained therein. An amount equal to the reasonable costs incurred in carrying out the provisions of this section, not to exceed a maximum of one-half of 1 percent of the earnings of this fund, shall be deducted from the earnings prior to distribution. The amount of this deduction shall be credited as reimbursements to the state agencies having incurred costs in carrying out the provisions of this section.

The Treasurer shall prepare for distribution a monthly report of investments made during the preceding month.

CHAPTER 858

An act to amend Section 798.6 of the Civil Code, and to add Section 65852.11 to the Government Code, relating to land use.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 798.6 of the Civil Code is amended to read:

798.6. "Park" is a manufactured housing community as defined in Section 18801 of the Health and Safety Code, or a mobilehome park.

SEC. 2. Section 65852.11 is added to the Government Code, to read:

65852.11. (a) No city or county, including a charter city, county, or city and county, which has adopted or enacted a local rent control ordinance for mobilehome park spaces, shall adopt or enforce any ordinance, rule, or regulation that prohibits or limits the duration of rental agreements or leases for any space contained within any manufactured housing community, as defined in Section 18801 of the Health and Safety Code, or within any mobilehome park, as defined in Section 18214 of the Health and Safety Code, that is new construction, if the enactment operates to circumvent the provisions of Section 798.7 of the Civil Code.

(b) As used in this section, "new construction" means:

(1) For mobilehome parks, any newly constructed space, pursuant to Section 798.7 of the Civil Code.

(2) For manufactured housing communities, any space initially held out for rent after January 1, 1993.

(c) A mobilehome park that is considered "new construction" pursuant to this section, and that complies with Section 18801 of the Health and Safety Code, may be converted to a manufactured housing community without losing its "new construction" designation.

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 859

An act to amend Sections 44203, 44250, and 44253 of, and to add Sections 44265.7, 44265.8, and 44265.9 to, the Education Code, relating to teacher credentialing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 44203 of the Education Code is amended to read:

44203. In this chapter the following terms shall be defined as specified in this section:

(a) "Professional teacher certification requirements" means a policy of requiring each beginning teacher to complete a program of planned support and systematic assessment, as determined by the commission, as a condition for earning a professional teaching credential.

(b) "Beginning teacher support" means a combination of assistance, guidance, encouragement, and diagnostic assessment that helps the holders of preliminary teaching credentials to fulfill their professional responsibilities effectively during the first year or two years of classroom teaching, and that satisfies standards of support adopted by the commission.

(c) "Beginning teacher assessment" means a process that has been adopted or approved by the commission for measuring the performances of the holders of preliminary teaching credentials in order to help them improve, and to determine whether their performances satisfy the commission's standards of performance for earning the professional teaching credential.

(d) "Authorization" means the designation that appears on a credential, certificate, or permit that identifies the subjects and circumstances in which the holder of the credential, certificate, or permit may teach, or the services which the holder may render in the public schools of this state.

(e) "Basic teaching credential" means either of the following:

(1) A credential that authorizes the holder to teach the subjects named on the credential, and for which possession of a baccalaureate degree from a regionally accredited institution and completion of a professional preparation program that includes student teaching are minimum requirements.

(2) A clear designated subjects teaching credential that authorizes the holder to teach the subjects named on the credential on a full-time basis if the holder also possesses a baccalaureate degree from a regionally accredited institution and has passed the state basic skills proficiency test.

A basic teaching credential meets the prerequisite teaching credential requirement for any other teaching, specialist, or service credential the commission is authorized to issue.

SEC. 2. Section 44250 of the Education Code is amended to read:

44250. The commission shall issue only the following two types of credentials, with authorizations as hereinafter defined:

(a) A teaching credential.

(b) A services credential.

The commission may issue an internship teaching or services credential.

SEC. 3. Section 44253 of the Education Code is amended to read:

44253. The commission may issue a preliminary multiple or single subject teaching credential, for a period not to exceed two years, to any applicant qualifying under Section 44227 pending completion of the requirements in subdivision (a), (b), or (c), or to any applicant for a designated subjects teaching credential pending completion of the requirement in subdivision (c).

(a) A commission-approved subject matter preparation program or examination to verify subject matter competence.

(b) A course or examination on the teaching of reading.

(c) A course or examination on the provisions and principles of the United States Constitution.

SEC. 4. The Legislature finds and declares that:

(a) Deafness is a unique condition that affects the most basic of human needs, the ability to communicate with other human beings. Many deaf and hearing-impaired children use the unique communication mode of sign language as they are unable to effectively use and receive oral speech.

(b) Deaf and hearing-impaired individuals who have experienced the early onset of deafness are part of the potential pool of adults capable of understanding the needs of and effectively teaching deaf and hearing-impaired pupils.

(c) The Commission on Teacher Credentialing has reported on the shortage of special education teachers in California in general and, in particular, on the shortage of teachers qualified to teach deaf and hearing-impaired pupils. The commission also has reported on the decreasing number of individuals enrolled in preparation programs and recommended for specialist and services credentials to teach deaf and hearing-impaired pupils.

(d) In consideration of these findings and declarations, it is the intent of the Legislature that deaf and hearing-impaired individuals be encouraged to enter commission-approved teacher preparation programs. Additionally, qualified fully trained and experienced teachers and counselors of the deaf and hearing impaired who are themselves deaf or hearing impaired should not be prevented from seeking, accepting, or qualifying for teaching and school counseling positions in California due to the nature of their physical impairment.

SEC. 5. Section 44265.7 is added to the Education Code, to read:

44265.7. (a) The Commission on Teacher Credentialing shall issue a two-year nonrenewable preliminary specialist instruction credential, solely for the purpose of instructing deaf or hearing-impaired pupils, to any prelingually deaf candidate upon medical or other appropriate professional verifications.

(b) The minimum requirements for the preliminary specialist instruction credential solely for the purpose of instructing deaf or hearing-impaired pupils are all of the following:

(1) A baccalaureate or higher degree, except a degree in professional education, from a regionally accredited institution of higher education.

(2) Completion of an approved program of professional preparation.

(3) Demonstration of a knowledge of various methods of teaching reading.

(4) Study of alternative methods of developing English language skills, including reading, and the study of integrated methods of teaching language arts.

(5) Completion of a subject matter program that has been approved by the commission on the basis of standards of program quality and effectiveness pursuant to Article 6 (commencing with Section 44310) or passage of a subject matter examination pursuant to Article 5 (commencing with Section 44280).

(6) Demonstration of a knowledge of the principles and provisions of the Constitution of the United States pursuant to Section 44335.

(c) The applicant is exempted from the requirements in Section 44252 and subdivision (b) of Section 44830.

(d) "Prelingually deaf" is defined, for purposes of this section, as having suffered a hearing loss prior to three years of age that prevents the processing of linguistic information through hearing, with or without amplification.

(e) The preliminary specialist instruction credential issued under this section authorizes the holder to teach deaf and hearing-impaired pupils who are enrolled in state special schools or in special classes for pupils with hearing impairments.

SEC. 6. Section 44265.8 is added to the Education Code, to read:

44265.8. (a) The Commission on Teacher Credentialing shall issue a two-year services credential with a specialization in pupil personnel services, solely for the purpose of counseling deaf and hearing-impaired pupils, to any prelingually deaf candidate upon medical or other appropriate professional verifications, provided the candidate has met the minimum requirements specified in Section 44266.

(b) The applicant is exempted from the requirements in Section 44252 and subdivision (b) of Section 44830.

(c) "Prelingually deaf" is defined, for purposes of this section, as having suffered a hearing loss prior to three years of age that prevents the processing of linguistic information through hearing, with or without amplification.

(d) The services credential issued under this section authorizes the holder to serve at all grade levels as a school counselor of deaf and hearing-impaired pupils who are enrolled in state special schools or in special classes for pupils with hearing impairments.

SEC. 7. Section 44265.9 is added to the Education Code, to read:

44265.9. (a) By January 1, 1994, the Commission on Teacher Credentialing shall develop criteria to verify the proficiency of holders of credentials issued pursuant to Sections 44265.7 and 44265.8 in performing the essential functions of their positions.

(b) The school district, county office of education, or state special

school that employs a holder of a credential issued pursuant to Section 44265.7 or 44265.8 shall appoint a three-person panel that shall verify the proficiency of holders of credentials issued pursuant to Sections 44265.7 and 44265.8 using the criteria the Commission on Teacher Credentialing develops for this purpose. The panel shall report its findings to the employing school district, county office of education, or state special school which may adopt those findings.

(c) The panel appointed pursuant to subdivision (b) shall consist of the following:

(1) A school administrator selected by school administrators of the employing school district, county office of education, or state special school.

(2) A parent of a deaf or hearing-impaired child selected by a school-related parent group.

(3) A teacher who holds a credential authorizing service to deaf or hearing-impaired pupils selected by teachers at the employing school.

(d) Employing school districts, county offices of education, and state special schools shall ensure that the panel completes the verification of proficiency within two years of the issuance of the credentials issued pursuant to Sections 44265.7 and 44265.8.

(e) Upon verification of proficiency as documented by the employing school district, county office of education, or state special school, the Commission on Teacher Credentialing shall issue a specialist credential, solely for the purpose of instructing deaf and hearing-impaired pupils enrolled in state special schools, or in special classes, or a services credential with a specialization in pupil personnel services, solely for the purpose of counseling deaf and hearing-impaired pupils enrolled in state special schools or in special classes.

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:

Due to the acute shortage of special education teachers in California and of teachers qualified to teach deaf or hearing-impaired pupils and the decreasing number of individuals enrolled in preparation programs and recommended for specialist and services credentials to teach deaf and hearing-impaired pupils, it is necessary that this act take effect immediately.

CHAPTER 860

An act to amend Section 22129 of, and to add and repeal Section 23013 of, the Education Code, relating to the State Teachers' Retirement System, and making an appropriation therefor.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

I am deleting the $300,000 appropriation from the Teacher's Retirement Fund contained in Senate Bill No. 698.

While it is appropriate to give school districts and community colleges the opportunity to preserve the retirement benefits of their teachers in these difficult fiscal times, the $300,000 appropriation is not justifiable.

The bill provides for participating school districts and community colleges to pay the administrative costs of the program and at the same time appropriates $300,000 from the Teachers' Retirement Fund for this same purpose.

With this deletion, I approve Senate Bill No. 698.

PETE WILSON, Governor

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

SECTION 1. Section 22129 of the Education Code is amended to read:

22129. "Final compensation" with respect to a member whose salary has been reduced because of a reduction in school funds means the highest average annual compensation earnable by the member during any three years during his or her membership in the system if the member elects to be subject to this section. For the purposes of this section, a year shall be considered to be a period of 12 consecutive months.

SEC. 2. Section 23013 is added to the Education Code, to read:

23013. (a) In order for an employer to manage its budget during a time of fiscal emergency and, during that time, to preserve benefits for employees who are employed in positions subject to membership in this system and whose salaries, as defined in Section 22114, have been reduced because of the fiscal emergency, the employer may report to the system the earnable and earned salaries that would have been reported to the board had the fiscal emergency not occurred, provided that the employer complies with the specific reporting requirements in this section or as otherwise required by the board.

(b) This section shall not apply to any school district, community college district, or county office of education until the appropriate governing body adopts a resolution, in a form provided by the board, to elect to be covered by this section. The resolution shall be filed with, and approved by, the board prior to the submission of the reports required by this section. The resolution shall specify the percentage reduction in earnable salaries, identify the bargaining unit, or the group or class of unrepresented employees, or both, to be covered by this section, as defined, and specify the period of time during which the resolution is to be in effect.

(c) An employer may resolve to be covered by this section for all employees of a bargaining unit who are employed in positions subject to membership in this system and have had their salaries uniformly reduced because of a fiscal emergency. If the employer adopts a resolution to be covered by this section for all employees in a bargaining unit, the employer may also adopt a resolution to be covered by this section for any group or class of nonrepresented employees who are employed in positions subject to membership in this system and have had their salaries uniformly reduced because of a fiscal emergency. A separate resolution shall be adopted for each bargaining unit and group or class of nonrepresented employees whose earnable and earned salaries will be reported under this section.

(d) The employer shall transmit to the retirement fund the administrative costs incurred by the system in implementing this section, as determined by the Teachers' Retirement Board.

(e) If the board determines that any conditions or requirements of a submitted resolution have not been fulfilled, the resolution shall immediately become inoperative. In that case, a new resolution may be adopted and submitted pursuant to this section.

(f) The earnable salaries prior to the salary reduction and the earned salaries based on the earnable salaries prior to the salary reduction shall be uniformly reported for all employees covered by a resolution.

(g) Member and employer contributions shall be reported and remitted to the system based on salaries reported as earned under this section and not on actual earned salaries after reduction.

(h) Employer reports shall be submitted in a manner prescribed by the system to reflect identification of each individual whose earned salaries are reported under this section.

(i) An employer that elects to be covered by this section shall maintain and provide to the system, as requested, copies of payroll records, contracts, and other related documentation regarding both the reduced and reported earnable and earned salaries on all individuals who are reported under this section. The system may perform periodic audits of each employer that elects to be covered by this section.

(j) The reported earnable and earned salaries of an employee who has taken a demotion in lieu of layoff, or has transferred to a part-time position, or has been subject to any other personnel action for which a reduction in salary occurs for reasons other than the fiscal emergency shall be based on the salary of the new position, not on the higher salary of the previous position.

(k) As used in this section, "group or class of nonrepresented employees" means a number of employees considered together because they share job similarities, work location, or other logical work-elated grouping. Under no circumstances shall one employee be considered a group or class.

(*l*) It is the intent of the Legislature that this section shall not be

used for the purpose of inflating the compensation of any employee who is employed in a position subject to membership in this system, nor to artificially provide a salary increase that is not actually paid, nor to engage in any other form of pension abuse.

(m) This section is repealed as of July 1, 1996, unless a later enacted statute, which becomes effective on or before July 1, 1996, deletes or extends that date.

SEC. 3. There is hereby appropriated from the Teachers' Retirement Fund to the Teachers' Retirement Board for expenditure to carry out the purposes of this act, the sum of three hundred thousand dollars ($300,000).

CHAPTER 861

An act to add Section 22145.5 to, and to amend Sections 22228, 22400, and 24600 of, the Education Code, relating to public retirement systems, and making an appropriation therefor.

[Approved by Governor October 5, 1993. Filed with Secretary of State October 6, 1993.]

I am deleting the $100,000 appropriation from the Teachers' Retirement Fund contained in Assembly Bill No. 447.

This bill would create a new service program for inactive members of the State Teachers' Retirement Fund (STRS) and would relieve STRS from issuing annual statements of account to both active and inactive members for which STRS does not have an address.

I understand that STRS has sufficient administrative flexibility to fund the costs related to this bill from within its existing resources.

With this deletion, I approve Assembly Bill No. 447.

PETE WILSON, Governor

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

SECTION 1. Section 22145.5 is added to the Education Code, to read:

22145.5. "Reinstatement" means returning to membership from service or disability retirement, whether or not service is subsequently performed.

SEC. 2. Section 22228 of the Education Code is amended to read:

22228. (a) The board shall issue to each member, after the close of the school year, a statement of his or her individual account, provided the employer or member has informed the system of the member's current mailing address.

(b) The board shall periodically make a good faith effort to locate inactive members to provide these members with information concerning any benefit for which they may be eligible.

For purposes of this section, "inactive member" means a member who, by the report period ending June 30 of a school year, has performed no service during that school year.

SEC. 3. Section 22400 of the Education Code is amended to read:

22400. (a) Each member and beneficiary shall furnish to the board such information affecting his or her status as a member or beneficiary of the system, as the board requires.

(b) A member who has not had any service reported during the prior school year shall provide the system with his or her current mailing address and beneficiary information.

SEC. 4. Section 24600 of the Education Code is amended to read:

24600. (a) The service retirement allowance or disability allowance begins to accrue on the effective date of the retirement or disability.

(b) On the death of a retirant or a person receiving a disability allowance, or when a disability allowance is terminated, or when a retirant is reinstated to membership, the allowance ceases on the day on which the death, allowance termination, or reinstatement occurs.

(c) Family benefits begin to accrue on the day following the day the death of the member occurs and cease on the day of the event which terminates eligibility.

(d) Survivor benefit allowances payable pursuant to Chapter 19.5 (commencing with Section 23850) on account of surviving spouses begin to accrue on the anniversary of the member's 60th birthday or on the day following the day of the member's death, if elected by the surviving spouse, and cease on the day of the surviving spouse's death.

(e) Option benefits begin to accrue on the day following the day the retirant died and cease on the day the death of the beneficiary occurs.

(f) Family allowances payable on account of a full-time student begin to accrue on the day following the day the death of the member occurs. Disability allowances payable on account of a full-time student begin to accrue on the effective date of the disability allowance. The allowances payable on account of a full-time student shall terminate on the first day of the month following the end of the school quarter or semester which was in progress in the month of attainment of age 22. However, any adjustments to a family or disability allowance on account of a full-time student's periods of nonattendance shall be made as follows: the allowance shall cease on the first day of the month in which the nonattendance was initiated and again accrues on the beginning of a subsequent month in which reattendance occurs.

(g) Disability retirement allowances payable pursuant to Chapter 22.5 (commencing with Section 24150) on account of dependent children begin to accrue on the effective date of the retirement allowance and shall terminate on the earlier of termination of the child's eligibility or termination of the disability retirant's eligibility for reasons other than death.

(h) The survivor benefits payable pursuant to Chapter 19.5 (commencing with Section 23850) on account of dependent children begin to accrue on the day following the member's date of death and shall terminate upon termination of the child's eligibility.

(i) Supplemental payments issued pursuant to Sections 24701, 24702, and 24703 to retirants, disabilitants, and beneficiaries shall begin to accrue pursuant to Sections 24701, 24702, and 24703 and shall cease to accrue as of the termination dates specified in subdivisions (a) to (h), inclusive, of this section.

(j) Notwithstanding any other provision of this part or other law, distributions from the system shall be made in accordance with Section 401 (a) (9) of the Internal Revenue Code of 1986, as amended, including the incidental death benefit requirements of Section 401 (a) (9) (G) and the regulations thereunder; and, the required beginning date of benefit payments that represent the entire interest of the member in the system shall be as follows:

(1) In the case of a refund of contributions, as described in Chapter 12 (commencing with Section 23100) of this part, not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains the age of 70½ years or (B) the calendar year in which the member terminates employment within the meaning of subdivision (k).

(2) In the case of a retirement allowance , as defined in Section 22150, beginning not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains the age of 70½ years or (B) the calendar year in which the member terminates employment within the meaning of subdivision (k), to continue over the life of the member or the lives of the member and the member's option beneficiary, or over the life expectancy of the member or the life expectancy of the member and the member's option beneficiary.

(k) For purposes of subdivision (j), the phrase "terminates employment" means the later of the termination of employment in a position requiring or permitting membership in this system or the termination of employment in a position requiring or permitting membership in another public retirement system in this state the compensation from which may be included in final compensation under Section 22127.

SEC. 5. There is hereby appropriated the sum of one hundred thousand dollars ($100,000) from the Teachers' Retirement Fund to the Teachers' Retirement Board for the 1993–94 fiscal year for expenditure for the purposes of costs associated with this act.

CHAPTER 862

An act to amend Sections 6140 and 6140.4 of the Business and Professions Code, relating to the State Bar of California.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 6140 of the Business and Professions Code is amended to read:

6140. (a) The board shall fix the annual membership fee for 1994 and 1995 as follows:

(1) For active members who have been admitted to the practice of law in this state for three years or longer preceding the first day of February of the year for which the fee is payable, at the sum of two hundred ninety-one dollars ($291).

(2) For active members who have been admitted to the practice of law in this state for less than three years but more than one year preceding the first day of February of the year for which the fee is payable, at the sum of two hundred twenty-three dollars ($223).

(3) For active members who have been admitted to the practice of law in this state during, or for less than one year preceding the first day of February of, the year for which the fee is payable, at a sum not exceeding one hundred ninety-two dollars ($192).

(b) The annual membership fee for active members is payable on or before the first day of February of each year. If the board finds it appropriate and feasible, it may provide by rule for payment of fees on an installment basis with interest, by credit card, or other means, and may charge members choosing any alternative method of payment an additional fee to defray costs incurred by that election.

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 chaptered before January 1, 1996, deletes or extends that date.

SEC. 2. Section 6140.4 of the Business and Professions Code is amended to read:

6140.4. (a) For 1994 and 1995, the board shall increase the annual membership fee fixed by it pursuant to Section 6140 by an additional fee of one hundred ten dollars ($110) to be used exclusively for discipline augmentation.

(b) This augmentation shall be in addition to existing levels of expenditure for discipline as established during 1987 for 1988.

(c) This section shall remain in effect until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1996, deletes or extends that date.

CHAPTER 863

An act to add Section 6034 to the Business and Professions Code, and to add Section 383 to the Code of Civil Procedure, relating to class actions.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 6034 is added to the Business and Professions Code, to read:

6034. (a) The State Bar shall establish the California Legal Corps, which shall provide funding and support for preventive law projects, alternative dispute resolution efforts, legal support for victims of disasters, and other activities designed to help improve access to justice for all Californians. The California Legal Corps shall include law school students, active and retired attorneys, and recent law school graduates, participating as volunteers or for a stipend. Members of the California Legal Corps shall conduct preventive law and pro per clinics, community legal education activities, school legal education programs, promote the use of alternative dispute resolution, and otherwise promote access to the legal system.

(b) No funds received by the California Legal Corps pursuant to Section 383 of the Code of Civil Procedure shall be allocated for any of the following:

(1) To pay for any personal service or communication specifically intended or designed to influence (A) the passage or defeat of any state or local ballot initiative, (B) the election or defeat of any candidate for elective political office, (C) any decision of an elected federal, state, or local official, or (D) the passage or defeat of any particular federal, state, or local legislation, except when legal assistance is provided by a California Legal Corps member, fellow, or volunteer on behalf of a recipient of California Legal Corps services on a particular application, claim, or case relating to his or her legal rights or responsibilities.

(2) To institute or promote a class action.

(c) The California Legal Corps shall be administered by the California Legal Corps Commission. The commission shall be composed of 11 members, of whom seven members shall be named by the Board of Governors, two members shall be named by the Governor, one member named by the Senate Rules Committee, and one member named by the Speaker of the Assembly.

(d) The California Legal Corps Commission shall oversee the allocation of funds received pursuant to Section 383 of the Code of Civil Procedure, subject to oversight by the Board of Governors. When utilizing these funds pursuant to this section, appropriate dispute resolution methods that do not involve litigation shall be

attempted prior to the initiation of litigation. The commission shall, pursuant to this section and dependent upon the amount of funds received, establish appropriate priorities for the allocation of funds and projects to be funded; provided, however, that programs providing legal assistance and representation for children shall be a high priority of the California Legal Corps.

(e) The Board of Governors shall adopt the regulations and procedures necessary to implement this section and to ensure that the funds allocated to the State Bar pursuant to Section 383 of the Code of Civil Procedure are utilized for the purposes specified in this section. However, no regulations adopted by the Board of Governors that pertain to the California Legal Corps shall be effective until approved by the California Supreme Court.

(f) No member of the California Legal Corps shall engage in the unauthorized practice of law.

(g) The State Bar of California shall report annually prior to April 1 to the Governor and to the judiciary committees of the Legislature on the amount of funds received and expended pursuant to Section 383 of the Code of Civil Procedure, the programs supported by those funds, the amount of funding allocated to each program, and other pertinent information.

(h) Expenditure of any funds granted to the California Legal Corps pursuant to Section 383 of the Code of Civil Procedure shall be periodically audited by the Judicial Council.

SEC. 2. Section 383 is added to the Code of Civil Procedure, to read:

383. (a) It is the intent of the Legislature in enacting this section to ensure that the unpaid residuals in class action litigation are distributed, to the extent possible, either in a manner designed to further the purposes of the underlying causes of action, or designed to promote justice for all Californians. The Legislature finds that the use of funds collected by the State Bar pursuant to this section for these purposes is in the public interest, is a proper use of the funds, and is consistent with essential public and governmental purposes.

(b) Prior to the entry of any judgment in a class action established pursuant to Section 382, the court shall determine the total amount that will be payable to all class members, if all class members are paid the amount to which they are entitled pursuant to the judgment. The court shall also set a date when the parties shall report to the court the total amount that was actually paid to the class members. After the report is received, the court shall amend the judgment to direct the defendant to pay the sum of the unpaid residue, plus interest on that sum at the legal rate of interest from the date of entry of the initial judgment, in any manner the court determines is consistent with the objectives and purposes of the underlying cause of action, including to child advocacy programs and to the California Legal Corps, as established pursuant to Section 6034 of the Business and Professions Code. The court shall ensure that notice is given to the State Bar of California of any such order.

(c) Nothing in this section shall create an obligation or pledge of the credit of the State Bar of California. The State Bar, its officers and employees are not liable for damage or injury arising out of any act or omission in the implementation or administration of this section.

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 864

An act to, and to add Section 15363.10 to, the Government Code, relating to trade and commerce.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 6, 1993.]

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

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

(1) California and its citizens are experiencing the worst economic crises since the Great Depression of the 1930s and face an uncertain economic future that threatens the well-being and prosperity of our great state. More than 800,000 California jobs have been lost since May 1990. Businesses that once viewed California as their only place of business now expand or relocate outside our state in order to control business costs and reduce government interference, and California must more systematically plan for and address our economic development.

(2) Any California recovery has to operate in the context of a rapidly-changing world in which change has become the only constant.

(3) In order to become competitive and prosperous once again, California must effectively address the challenges to realize the promise of a multicultural democracy in a global economy in an age of technology.

(4) California has a multiplicity of economic development programs spread across a variety of cabinet level agencies, departments, offices, and commissions. Business leaders interviewed

by the Assembly Democratic Economic Prosperity Team (ADEPT) in over 80 meetings report that these programs often act in an uncoordinated manner and these leaders repeatedly lamented the lack of any plan or strategy which could serve to guide our state's economic development efforts. ADEPT is actively committed to improving this situation.

(5) The Council on California Competitiveness also found that California has no long-term economic plan or expressed state vision regarding economic development. The council, appointed by Governor Wilson, also focused on the impediments to competitiveness in the California business climate. ADEPT and the Council on California Competitiveness both wish to fundamentally improve this situation.

(6) These same business leaders testified that other states are far more organized in retaining and attracting businesses, bringing forth both economic assistance and promotional efforts in a highly organized attack on California's economy.

(7) The Legislature applauds the newly established Trade and Commerce Agency as a crucial first step in California's path to economic recovery.

(8) In addition, based on the lack of coordination among state agencies with regard to the delivery of economic development and business service, the rapidly changing nature of California's industries, and the clearly perceived need of California's business community to collaborate with the state government in economic development, business leaders and all Californians deserve to have a coordinated state economic development strategy plan to apply the state's limited economic development resources to create jobs, retain existing businesses, and for the benefit of all Californians.

(9) In developing this coordinated strategy, state government should include a variety of Californians representing business, labor, and the state's diverse demographic groups.

(10) In developing this economic development strategic plan, ADEPT and the Council on California Competitiveness both recognize the need for a new model of economic governance—collaboration. ADEPT indicated that neither the laissez-faire model nor the command and control model work given California's economic complexities and realities. Only collaboration, the way of trust and partnership, offers California any hope for our future. All Californians must together commit ourselves to becoming collaborative partners for our future economic development.

(b) This act shall be known as the California Economic Development and Strategic Planning Act of 1993.

SEC. 2. Section 15363.10 is added to the Government Code, to read:

15363.10. (a) The secretary shall lead the preparation of a California Economic Development Strategic Plan on or before June 30, 1995. In fulfilling this duty, the secretary shall do the following:

(1) Review the recommendations made by the California

Economic Strategy Panel in their biennial economic development strategic plan document. This document shall make recommendations regarding a California economic development strategic plan for the state, covering a two-year time period and containing a statement of economic goals for the state, a prioritized list identifying significant issues learned from economic development strategic plan panel meetings, proposals for legislation, regulations, and administrative reforms necessary to improve the business climate and economy of the state, and evaluation of the effectiveness of the state's economic development programs, a list of key industries in which the state shall focus its economic development efforts, and strategies to foster job growth and economic development covering all state agencies, offices, boards, and commissions that have economic development responsibilities.

(2) Convene a biennial economic strategy panel to provide recommendations regarding a California economic development strategic plan. This panel shall conduct meetings in Sacramento, all cities of the state with populations over 500,000, and in major cities of other regions of California as designated by the secretary. The secretary shall invite businesses, labor unions, organizations representing the interests of diverse ethnic and gender groups, local government leaders, academic economists and business professors, chambers of commerce and other business organizations, government agencies, and key industries to contribute to the preparation of the recommended economic strategy. These meetings shall address at least the following matters of concern:

(A) Strengths and weaknesses of the California economy and our prospects for our future economic prosperity.

(B) Emerging and declining industries in California and elsewhere.

(C) Effectiveness of California's economic development programs in creating and retaining jobs and attracting industries.

(D) Adequacy of state and local physical and economic infrastructure.

(E) Government impediments to economic development.

(b) The panel shall be composed of the following 15 members:

(1) The Secretary of the Trade and Commerce Agency, who shall serve as chair of the panel.

(2) Eight persons appointed by the Governor.

(3) The Speaker of the Assembly or his or her designee.

(4) The President pro Tempore of the Senate or his or her designee.

(5) The Minority Leader of the Assembly or his or her designee.

(6) The Minority Leader of the Senate or his or her designee.

(7) One person appointed by the Speaker of the Assembly.

(8) One person appointed by the Senate Committee on Rules.

(c) The panel shall be representative of state government, business, labor, finance, and academic institutions, and shall be broadly reflective of the state's population as to gender, ethnicity,

and geographic residence within California.

At least one-half of all the persons on the panel shall be from the private sector and at least two appointments shall be from private businesses with less than 50 employees. At least two appointments shall be from rural areas of the state. Appointments to the panel shall expire at the end of the two-year planning horizon of the economic development strategy.

(d) The secretary shall deliver copies of the economic strategy panel's recommended California economic development strategic plan to every constitutional officer, legislator, member of the Governor's cabinet, members of the economic development strategic plan panel, and every state agency, office, board, and commission having economic development responsibilities.

(e) In each succeeding two-year cycle, the secretary shall undertake this process anew, so as to update the economic strategy on or before June 30 of each succeeding second year.

(f) The secretary shall submit, notwithstanding Section 7550.5, an interim report to the Governor and the Legislature and the California public on or before September 1, 1994, that shall include a statement of what will be addressed in the final recommendation of the panel.

CHAPTER 865

An act to add Section 171 to the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 171 is added to the Revenue and Taxation Code, to read:

171. (a) Notwithstanding any other provision of law, no interest or penalties shall be imposed or collected with respect to any delinquent installments of property taxes levied for the 1992–93 fiscal year on qualified residential real property.

(b) The county treasurer or tax collector shall not take any collection action, and shall cease any collection action that has commenced, with respect to any delinquent property taxes for the 1992–93 fiscal year that were levied on qualified real property, until on or after January 1, 1994. The treasurer or tax collector may impose any applicable interest and penalties on any delinquent property taxes levied on qualified real property for the 1992–93 fiscal year beginning on or after January 1, 1994, if those taxes or any portion thereof remain delinquent on or after that date.

(c) For purposes of this section:

(1) "Qualified residential real property" means any residential real property that meets all of the following conditions:

(A) No amount of property taxes levied on that property was delinquent at the close of the 1991–92 fiscal year.

(B) The owner of the property suffered economic hardship as a result of the civil unrest that occurred in Los Angeles in April and May, 1992.

(C) The property is eligible for a homeowner's exemption.

(2) An owner shall be deemed to have suffered "economic hardship" if if both of the following occur:

(A) The owner signs a declaration under penalty of perjury under the laws of this state that he or she suffered economic hardship as a result of the civil unrest that occurred in Los Angeles in April and May, 1992.

(B) A business owned by the taxpayer, the taxpayer's primary place of work, or the taxpayer's residence that qualifies for the homeowner's exemption is located in the area designated as the Los Angeles Revitalization Zone pursuant to Government Code Section 7102.

(d) A claim for relief under this section shall be filed by an owner on a form and in the manner as the treasurer or tax collector shall prescribe.

(e) The treasurer or tax collector shall permit any individual entitled to relief under this section who has paid any interest or penalties in connection with delinquent taxes levied for the 1992–93 fiscal year on qualified residential real property prior to filing a claim for relief to also file a claim for refund of the interest and penalties paid on a form and in the manner as the treasurer or tax collector shall prescribe.

SEC. 2. The Legislature finds and declares that this act fulfills a statewide public purpose because this act is consistent with and supplements disaster relief by providing necessary property tax relief to affected taxpayers to allow them to recover from economic damage or repair damage to and restore their homes.

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 essential and timely property tax relief to those who suffered substantial economic losses as a result of the civil unrest that occurred in Los Angeles in April and May, 1992, it is necessary that this act take effect immediately.

CHAPTER 866

An act to add Section 14076 to the Corporations Code, and to amend Section 7102 of the Revenue and Taxation Code, relating to economic development, and making an appropriation therefor.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 14076 is added to the Corporations Code, to read:

14076. (a) It is the intent of the Legislature that the corporations make maximal use of their statutory authority to guarantee loans and surety bonds, including the authority to secure loans with a minimum loan loss reserve of only 25 percent, so that the financing needs of small business may be met as fully as possible within the limits of corporations' loan loss reserves. The agency shall report annually to the Legislature on the financial status of the corporations and their portfolio of loans and surety bonds guaranteed.

(b) Any corporation that serves an area declared by the Governor or the President to be a disaster area on or after January 1, 1992, or the area affected by the state of emergency declared in Los Angeles on April 29, 1992, shall increase the portfolio of loan guarantees where the dollar amount of the loan is less than one hundred thousand dollars ($100,000), so that at least 15 percent of the dollar value of loans guaranteed by the corporation is for those loans. The corporation shall comply with this requirement within one year of the date the disaster is declared, or January 1, 1995, whichever is later. Upon application of a corporation, the board may waive or modify the rule for the corporation if the corporation demonstrates that it made a good faith effort to comply and failed to locate lending institutions in the region that the corporation serves that are willing to make guaranteed loans in that amount.

SEC. 2. Section 7102 of the Revenue and Taxation Code is amended to read:

7102. The money in the fund shall, upon order of the Controller, be drawn therefrom for refunds under this part, and pursuant to Section 1793.25 of the Civil Code, or be transferred in the following manner:

(a) (1) All revenues, less refunds, derived under this part at the 4¾-percent rate, including the imposition of sales and use taxes with respect to the sale, storage, use, or other consumption of motor vehicle fuel which would not have been received if the sales and use tax rate had been 5 percent and if motor vehicle fuel, as defined for purposes of the Motor Vehicle Fuel License Tax Law (Part 2 (commencing with Section 7301)), had been exempt from sales and use taxes, shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and shall be transferred quarterly to the Transportation Planning and Development Account, a trust fund in the State Transportation Fund.

(2) All revenues, less refunds, derived under this part at the 4¾-percent rate, resulting from increasing after December 31, 1989, the rate of tax imposed pursuant to the Motor Vehicle Fuel License Tax Law on motor vehicle fuel, as defined for purposes of that law, shall be transferred quarterly to the Transportation Planning and Development Account, a trust fund in the State Transportation Fund.

(3) All revenues, less refunds, derived under this part at the 4¾-percent rate from the imposition of sales and use taxes on fuel, as defined for purposes of the Use Fuel Tax Law (Part 3 (commencing with Section 8601)), shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and shall be transferred quarterly to the Transportation Planning and Development Account, a trust fund in the State Transportation Fund.

(4) All revenues, less refunds, derived under this part from a rate of more than 4¾ percent pursuant to Sections 6051.1 and 6201.1 for the period December 1, 1989, to June 5, 1990, inclusive, shall be transferred to the Disaster Relief Fund created by Section 16419 of the Government Code.

(5) All revenues, less refunds, derived under this part from a rate of more than 4¾ percent pursuant to Sections 6051.1 and 6201.1 for the period June 6, 1990, to December 31, 1990, inclusive, which is attributable to the imposition of sales and use taxes with respect to the sale, storage, use, or other consumption of tangible personal property other than fuel, as defined for purposes of the Use Fuel Tax Law (Part 3 (commencing with Section 8601)), shall be transferred to the Disaster Relief Fund created by Section 16419 of the Government Code.

(6) All revenues, less refunds, derived under this part from a rate of more than 4¾ percent pursuant to Sections 6051.1 and 6201.1 for the period June 6, 1990, to December 31, 1990, inclusive, which is attributable to the imposition of sales and use taxes with respect to the sale, storage, use, or other consumption of fuel, as defined for purposes of the Use Fuel Tax Law (Part 3 (commencing with Section 8601)), shall be transferred to the Disaster Relief Fund created by Section 16419 of the Government Code.

(7) All revenues, less refunds, derived under this part from the taxes imposed pursuant to Sections 6051.2 and 6201.2 shall be transferred to the Sales Tax Account of the Local Revenue Fund for allocation to cities and counties as prescribed by statute.

(8) All revenues, less refunds, derived under this part from the taxes imposed pursuant to Sections 6051.6 and 6201.6 shall be transferred to the Interim Public Safety Account in the Local Public Safety Fund created in Section 30051 of the Government Code for allocation to counties as prescribed by statute.

(9) All revenues, less refunds, derived from the taxes imposed pursuant to Section 35 of Article XIII of the California Constitution shall be transferred to the Public Safety Account in the Local Public Safety Fund created in Section 30051 of the Government Code for allocation to counties as prescribed by statute.

(10) An amount equal to all revenues, less refunds, derived under this part at a 4¾-percent rate for the period between January 1, 1994, and July 1, 1994, from the increase in sales and use tax revenue attributable to the increase in the rate of the federal motor vehicle fuel tax between January 1, 1993, and the rate in effect on January 1, 1994, shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and an amount equal to that amount, but not exceeding seven million five hundred thousand dollars ($7,500,000) shall be transferred from the Retail Sales Tax Fund to the Small Business Expansion Fund created by Article 5 (commencing with Section 14030) of Chapter 1 of Part 5 of Division 3 of Title 1 of the Corporations Code.

(b) The balance shall be transferred to the General Fund.

(c) The estimates required by subdivision (a) shall be based on taxable transactions occurring during a calendar year, and the transfers required by subdivision (a) shall be made during the fiscal year that commences during that same calendar year. Transfers required by paragraphs (1), (2), and (3) of subdivision (a) shall be made quarterly.

(d) The Legislature may amend this section, 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, and furthers the purposes of this section.

CHAPTER 867

An act to amend Section 15396.1 of the Government Code, relating to economic development.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 15396.1 of the Government Code is amended to read:

15396.1. Loan guarantees and insured export transactions made by the California Export Finance Office shall be secured by no less than a 25 percent reserve in the Export Finance Fund. The board may elect to require a higher reserve. The board shall adopt regulations on the terms and limits for loan guarantees, but in no case shall a loan guarantee exceed any of the following:

(a) Seventy percent of the required financing. However, the board may elect to guarantee up to 90 percent of the required financing provided there is evidence of lender credit exposure and adequate analysis of foreign commercial and political risk.

(b) Seven hundred fifty thousand dollars ($750,000).

(c) The lesser of five years or the useful life of the product.

CHAPTER 868

An act to amend Sections 7093.5 and 19442 of, and to add and repeal Section 5108 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. The Legislature finds and declares the following:

(a) Tax incentive proposals, when specifically targeted and carefully drawn up, may be a significant force in spurring economic development in California. The Legislature has found in its meetings with California businesses from across the state that tax incentives may assist in retaining business expansion and job growth in California.

(b) Any effective economic development proposal must be meaningful to the target company; that is, it must be targeted and of sufficient magnitude to make a difference in the decisionmaking process of a company to locate or relocate its operations.

(c) The personal property tax, particularly for high-tech manufacturing facilities, is one of the largest fixed costs that must be

faced by companies. Moreover, it is highest exactly at the point where factories are their least profitable—at the outset when most factories are operating at a loss. Several states address this problem by "phasing in" personal property taxes on new manufacturing facilities. The Legislature believes such a system would be beneficial to California's economic development.

SEC. 2. Section 5108 is added to the Revenue and Taxation Code, to read:

5108. (a) For the 1994–95 fiscal year and each fiscal year thereafter, the governing body of a local agency shall have the authority, by a majority vote of that governing body, to rebate some or all of the property tax revenue that the local agency would receive from economic revitalization manufacturing property for a period of five fiscal years from the date the property was placed in service.

(b) For purposes of this section:

(1) "Economic revitalization manufacturing property" means tangible personal property that meets all of the following requirements:

(A) The property is directly involved in the manufacturing process in this state, and not in a preliminary or subsequent activity, or one incidental to manufacturing.

(B) Use of the property will lead to the creation of at least 10 new full-time manufacturing jobs or positions at salary levels of at least ten dollars ($10) per hour (twenty thousand dollars ($20,000) per year), and those jobs or positions will continue in existence for a continuous five-year period.

(C) A majority of the governing body of the local agency makes a finding, in its sole discretion, that the property is used in conjunction with the establishment or expansion of a manufacturing project or facility within the local agency's jurisdiction, and that the property meets the requirements of subparagraphs (A) and (B). In this connection, a majority of the governing body is hereby authorized, but not required, to make the finding specified herein, and thereby authorize the rebate provided pursuant to this section.

(2) "Manufacturing process" means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail.

(3) "Ten or more new employees" means an increase by 10 or more of the total number of employees, as defined in Section 621 of the Unemployment Insurance Code, employed by the taxpayer in this state. The increase in the total number of employees employed in this state shall be determined by subtracting the total number of employees the taxpayer employed in the previous fiscal year from the total number of employees the taxpayer employed in the current fiscal year. The total number of employees employed in this state shall equal the sum of both of the following:

(A) The total number of hours worked by employees in this state for the taxpayer who are paid an hourly wage divided by the

applicable hours per work year.

(B) The total number of months worked by salaried employees in this state for the taxpayer divided by the applicable months per work year.

(4) "Applicable work year" means with respect to a worker paid an hourly wage, 2,000 paid hours and, with respect to a salaried employee, a total of 12 paid months. The applicable work year, in the case of a manufacturing project or facility that becomes operational during the year, shall be the amounts in the foregoing sentence multiplied by a fraction, the numerator of which is the number of months of the year that the project or facility was operational and the denominator of which is 12.

An employee shall be deemed to be employed at a manufacturing project or facility if he or she utilizes the project or facility as his or her principal place of business.

(5) "Local agency" means a city, county, city and county, or special district, excluding any school district.

(c) If at any time within five years after granting a rebate pursuant to this section, the governing body finds that the recipient taxpayer has not complied with the conditions of paragraph (1) of subdivision (b), the governing body may recapture from that taxpayer all or any portion of the amount rebated.

(d) This section shall apply only to property that is placed in service on or after January 1, 1994.

(e) This section shall remain in effect only until January 1, 2000, and on that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 3. Section 7093.5 of the Revenue and Taxation Code, as amended by Chapter 155 of the Statutes of 1993, is amended to read:

7093.5. (a) (1) In addition to the authority provided by Section 7093 and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter disputes.

(2) No recommendation of settlement shall be submitted to the board unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise in writing the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) The members of the board shall not participate in the settlement of these tax matters, except as provided in subdivision (c).

(b) Whenever a reduction of tax in excess of five hundred dollars

($500) is approved pursuant to this section, there shall be placed on file in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount involved.

(3) The amount payable or refundable pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) The Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(c) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(d) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(e) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (b), any settlement entered into pursuant to this section shall constitute confidential tax information for purposes of Section 7056.

(f) This section shall apply only to civil tax matter disputes existing on January 1, 1994, with respect to which recommendations for settlement, pursuant to paragraph (2) of subdivision (a), are first submitted to the Attorney General no later than June 30, 1994, and are first submitted to the board no later than September 15, 1994.

With respect to civil tax matter disputes that did not exist on September 1, 1993, but that existed on January 1, 1994, this section

shall apply only to determinations issued during that interval and to payments made pursuant to those determinations.

(g) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 4. Section 19442 of the Revenue and Taxation Code, as amended by Chapter 75 of the Statutes of 1993, is amended to read:

19442. (a) (1) Subject to paragraph (2), the executive officer or chief counsel, if authorized by the executive officer, of the Franchise Tax Board may recommend to the Franchise Tax Board, itself, a settlement of any civil tax matter disputes.

(2) No recommendation of settlement shall be submitted to the Franchise Tax Board unless and until that recommendation has been submitted by the executive officer or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise in writing the executive officer or chief counsel of the Franchise Tax Board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive officer or chief counsel shall, with each recommendation of settlement submitted to the Franchise Tax Board, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) The members of the Franchise Tax Board shall not participate in the settlement of these tax matters, except as provided in subdivision (c).

(b) Whenever a reduction of tax in excess of five hundred dollars ($500) is approved pursuant to this section, there shall be placed on file in the office of the executive officer of the Franchise Tax Board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount involved.

(3) The amount payable or refundable pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) The Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or the national defense.

(c) (1) Any recommendation for settlement shall be approved or

disapproved by the Franchise Tax Board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive officer or chief counsel in accordance with the decision of the Franchise Tax Board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the Franchise Tax Board. Where the Franchise Tax Board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the Franchise Tax Board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive officer or chief counsel.

(d) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(e) Any proceedings undertaken by the Franchise Tax Board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (b), any settlement entered into pursuant to this section shall constitute confidential tax information for purposes of Article 2 (commencing with Section 19542) of Chapter 7.

(f) This section shall apply only to civil tax matter disputes existing on January 1, 1994, with respect to which recommendations for settlement, pursuant to paragraph (2) of subdivision (a), are first submitted to the Attorney General no later than June 30, 1994, and are first submitted to the Franchise Tax Board no later than September 15, 1994.

With respect to civil tax matter disputes that did not exist on September 1, 1993, but that existed on January 1, 1994, this section shall apply only to determinations issued during that interval and to payments made pursuant to those determinations.

(g) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the Franchise Tax Board in implementing and administering the settlement program authorized by this section.

CHAPTER 869

An act to amend Sections 15330, 15373.1, 15373.2, 15373.7, and 15373.8 of, and to add Section 15373.71 to, the Government Code, relating to rural economic development.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 15330 of the Government Code is amended to read:

15330. The Trade and Commerce Agency shall be the principal state agency responsible for:

(a) Coordinating federal-state-local relationships in economic development, the continual evaluation of the impact of policies and programs affecting economic development, and encouraging the full utilization of programs available for assisting the residents of the state and local public entities in satisfying the economic development needs of the state.

(b) Applying for and allocating federal funds available under the Public Works and Economic Development Act of 1965, as amended, and such other federal funds as may be available which will promote and assist economic development in the state.

(c) Assisting state agencies, offices, and departments to implement the state economic policy pursuant to Part 12 (commencing with Section 15900) of Division 3 of Title 2 and serving as an advisory agency to the Governor in the preparation of the Economic Report of the Governor as required by Section 15901.

(d) Responding to inquiries and providing statistics and other information on the economy, visitor attractions, international trade, products and processes, and services provided by the department.

(e) The agency in carrying out its responsibilities shall make maximum use of base data and studies currently being prepared and distributed by other state agencies. It shall avoid duplication of these efforts where possible.

(f) Assisting employees of a business or place of work in the formation of an employee-owned corporation, as defined by Section 91502.1, at that business or place of work, at the request of the employees and when that business or place of work is closing or is in danger of closing, by providing technical assistance, information, or access to sources of financing. The responsibilities created by this subdivision shall be permissive in the absence of nonstate funds unless state funds are specifically authorized by the Legislature for the purposes of this subdivision.

(g) Marketing California as a cost-effective and advantageous place for businesses to locate or expand. This subdivision shall not be construed to require any local government to participate, except in

a voluntary manner, in this program.

(h) In order to defray costs to the General Fund of providing publications, as defined in Section 14902, when warranted in the opinion of the secretary, the agency may charge fees to cover estimated printing and mailing costs for publications, except for publications distributed pursuant to Sections 14900, 14901, 14903, 14904, 14905.1, and 14907.

(i) The agency may enter into agreements pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1.

The agency may adopt and enforce rules and regulations in order to implement the above responsibilities.

SEC. 2. Section 15373.1 of the Government Code is amended to read:

15373.1. Unless the context otherwise requires, the definitions in this section govern the construction of this chapter.

(a) "County" means either of the following:

(1) A county with both 200,000 or less in population according to the most recent federal decennial census and an average annual unemployment rate equal to or greater than the state's annual average unemployment rate as determined by the Employment Development Department.

(2) A county with both 600,000 or less in population according to the most recent federal decennial census and an average annual unemployment rate of 130 percent or greater than the state's annual average unemployment rate as determined by the Employment Development Department.

(b) "Agency" means the Trade and Commerce Agency.

(c) "Fund" means the Rural Economic Development Fund.

(d) "Local agency" means any of the following:

(1) A county as defined in subdivision (a).

(2) Any city within a county as defined in subdivision (a).

(3) A county that is not defined in subdivision (a) or a city which is outside of an urbanized area as designated in the most recent federal decennial census and which is within that county.

(e) "Panel" means the Rural Economic Development Infrastructure Panel.

(f) "City" means either of the following:

(1) Any city within a county defined in subdivision (a).

(2) Any city with a population less than 100,000, located in a county in which the ratio of resource-based wage- and salary-employment exceeds 125 percent of the statewide average.

(g) "Retained job" means a job associated with a firm which, but for the infrastructure funded through provisions of this chapter, would reduce or cease operation in its current location.

SEC. 3. Section 15373.2 of the Government Code is amended to read:

15373.2. (a) In order to carry out this chapter, there is hereby created in the State Treasury the Rural Economic Development Fund.

(b) The fund shall receive state funds appropriated to it, repayment of loans and interest on those loans pursuant to this chapter, interest which accrues to the moneys in the fund pursuant to subdivision (c), fees or charges pursuant to subdivision (d), and penalties prescribed by the panel.

(c) (1) 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. The moneys resulting from this investment shall be used to support the three rural small business assistance and development centers previously established through the department and the Employment Development Department. The department shall grant these interest moneys to the centers upon request to provide for the continued operation of the centers.

(2) If sufficient interest moneys are not available at a time when the centers require additional funds, the department shall lend the centers necessary funds from the Rural Economic Development Fund, if the expected interest earnings from the fund will repay the loans. Funds received under this subdivision shall not be considered when the department reviews and approves applications pursuant to Article 4 (commencing with Section 15397.3). Each center shall receive a maximum of one hundred thousand dollars ($100,000) each fiscal year.

(3) Interest earnings in excess of three hundred thousand dollars ($300,000) per fiscal year shall be available for expenditure by the department pursuant to this chapter. The expenditures of these interest earnings in excess of three hundred thousand dollars ($300,000) shall include the costs associated with the provision of ongoing legal counsel to the Infrastructure Review Panel, created pursuant to Article 5 (commencing with Section 15373.6) and reimbursement of expenses incurred by designated panel members while in the conduct of official panel business. The interest earnings in excess of three hundred thousand dollars ($300,000) may also be used by the department for administrative support and local assistance costs of activities consistent with the purposes of this chapter.

(4) In addition to centers specified in paragraph (1), centers which are located in a county subject to this chapter may also be funded from interest earnings in an amount not to exceed two hundred thousand dollars ($200,000) annually for all additional centers, if there are sufficient funds available after support is provided for the three existing rural centers, and after the funding of other priorities established by this chapter.

(5) If sufficient interest earnings are available after support is provided to centers specified in paragraphs (1) and (4), and to other priorities established by this chapter, an amount not to exceed seventy-five thousand dollars ($75,000) annually may be used for support of the California Main Street Program (Chapter 8 (commencing with Section 15399)). Services rendered as a result of this increased support shall be targeted for Main Street

Demonstration and Self-Initiated Cities in counties subject to this chapter.

(d) In order to defray costs to the agency for administration of Article 5 (commencing with Section 15373.6), the agency may impose reasonable charges on all applications, and approved loans. The agency may use these fees or other charges for those costs necessary to protect the state's position as a lender-creditor. These costs include, but are not limited to, foreclosure expenses, auction fees, title searches, appraisals, real estate brokerage fees, removal and storage for repossessed equipment and inventory, and additional expenditures to purchase a senior lien in foreclosure or bankruptcy proceedings.

(e) Notwithstanding Section 13340, all moneys in the fund are continuously appropriated to, and shall remain available for expenditure by, the agency for the purposes of this chapter only until July 1, 1994, and on that date any remaining funds shall revert to the Special Account for Capital Outlay.

(f) Unless deemed appropriate by the local agency, no money in the fund shall be used in lieu of any existing state infrastructure financing program, including, but not limited to, the State Transportation Improvement Program or the Clean Water Bond Program.

SEC. 4. Section 15373.7 of the Government Code is amended to read:

15373.7. (a) The program shall be guided by the Rural Economic Development Infrastructure Panel, which is hereby created. The panel shall consist of the Secretary of the Trade and Commerce Agency, who shall serve as chairperson, the Secretary of the Business, Transportation and Housing Agency, and the Director of the Office of Local Government Affairs in the Governor's Office of Planning and Research. In addition, the panel shall consist of two public members with expertise in the economic development of rural areas. One public member shall be appointed by the Senate Rules Committee and the other shall be appointed by the Speaker of the Assembly.

(b) The panel shall do all of the following:

(1) Establish guidelines and rules to carry out the purposes of this article. This shall include establishing criteria for projects in addition to those specified in this article.

(2) Request assistance and information from any department, division, board, commission, or other agency of the state as the panel may need to carry out the purposes of this article.

(3) Prepare and promulgate regulations to carry out the purposes of this article.

(4) Adopt bylaws for the regulation of its affairs and conduct of its business.

SEC. 5. Section 15373.71 is added to the Government Code to read:

15373.71. (a) The agency may issue its bonds through the panel,

from time to time, in the principal amount that the agency determines is necessary to provide sufficient funds for the purposes specified in this article and for establishment of reserves to secure the bonds and other expenditures of the agency incident to, and necessary or convenient to, issuance of the bonds.

(b) The aggregate principal amount of bonds that may be outstanding at any time pursuant to this section shall not exceed the aggregate principal amount of obligations outstanding pursuant to this article exclusive of bonds issued to refund previously issued bonds of the agency.

(c) Every issue of bonds shall be revenue obligations of the agency payable only out of moneys in the fund, or held pursuant to a trust agreement, subject only to any agreements with the holders of particular bonds pledging any particular assets, revenues, or moneys.

(d) Any bonds issued under this article may be secured by a trust agreement, indenture, or resolution by and between the agency and a trustee, which shall be a bank or trust company chartered under the laws of this state or of the United States.

(e) The bonds shall be authorized by resolution or resolutions of the panel, shall be in the form, shall bear date or dates, and shall mature at the time or times as the resolution or resolutions may provide, except that no bond shall mature more than 50 years from the date of its issue. The bonds shall bear interest at the rate or rates, be in the denominations, be in the form, be executed in the manner, be payable in the medium of payment at the place or places within or without the state, be subject to the terms of redemption and contain the terms and conditions as the resolution or resolutions may provide. The bonds of the agency shall be sold at public or private sale by the Treasurer at, above, or below the par value, on the terms and conditions and for the consideration as the agency shall determine by resolution prior to the sale.

(f) Whenever the agency deems that it will increase the salability or the price of the bonds to obtain, prior to or after sale, a legal opinion, other than that of the Attorney General, as to the validity of the bonds, or as to the exclusion of interest on the bonds from gross income for federal income tax purposes, the agency may obtain a legal opinion, including authorizing the Treasurer to obtain a legal opinion. Payment for the legal services may be made out of the proceeds of the sale of the bonds.

(g) The agency may employ financial consultants, advisers, and accountants as may be necessary in its judgment in connection with the issuance and sale of any bonds of the agency. Payment for these services may be made out of the proceeds of the sale of the bonds.

(h) Notwithstanding Section 13340, if the bond is payable from a fund, amounts necessary to pay debt service for any bonds or notes issued pursuant to this part are hereby appropriated without regard to fiscal years from the fund.

(i) Section 10295 and Sections 10335 to 10382, inclusive, of the Public Contract Code shall not apply to agreements entered into by

the agency or the Treasurer in connection with the sale of bonds or notes authorized under this part.

(j) The bonds issued under this article shall be special obligations of the agency secured solely by the revenues received from the loans made pursuant to this article. No bond issued or sold 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 bond issued pursuant to this article shall contain a recital on the face thereof stating that neither the payment of the principal nor any part thereof, nor any interest thereon, constitutes a debt, liability, or general obligation of the State of California other than as provided in this article. The agency 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, other than as provided in this article.

(k) Bonds issued pursuant to this article are a legal investment for any state special or trust fund notwithstanding any provision of law limiting the investments that may be made by the special or trust fund. The bonds of the agency shall be legal investments in which all public officers and public bodies of the state, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, savings and loan associations, savings banks and savings associations, investment companies, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons authorized to invest in bonds or in other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. The bonds may be used as security for public deposits. The bonds are also securities that may properly 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 or other obligations of the state is authorized by law, including deposits to secured public funds.

(*l*) Notwithstanding any other provisions of law, this article provides a complete, separate, additional, and alternative method for the doing of the things authorized by this article, and is supplemental and additional to powers conferred by other laws.

SEC. 6. Section 15373.8 of the Government Code is amended to read:

15373.8. (a) The panel shall meet regularly to conduct its business and to review and approve projects pursuant to this article for funding from the Rural Economic Development Fund. The panel shall make a decision on any application within 90 days after a local agency submits the application to the agency. This financing shall be in the form of loans.

Loans shall be limited to a maximum of two million dollars ($2,000,000) per project. The terms of any approved loan shall be

specified in a loan agreement between the local agency and the panel. Repayment of loans shall begin within nine months of the date of the loan and shall be made semiannually. The local agency shall pay interest at a rate specified in the loan agreement. Any loan approved for a local agency shall not be considered debt within the meaning of Section 18 of Article XVI of the California Constitution.

(b) Loans may be made to a local agency for projects which meet the criteria specified in Section 15373.9, for the purpose of assisting in financing public improvements, including, but not limited to, sewer and water facilities, streets, storm drains, bridges, and related costs, including, but not limited to, engineering design and financing costs, including, but not limited to, underwriter, bond counsel, issuance costs, funded reserve, interest, and credit enhancements. Funds may be used for the development of new facilities, or the rehabilitation, alteration, expansion, or improvement of existing facilities.

(c) Preliminary design work, including a cost estimate for the project, shall be completed before a loan is awarded. Costs for preliminary design work, project cost estimates, planning, preliminary engineering, and other costs necessary for preparation of the application may be reimbursed from a loan, subject to approval by the panel.

(d) First priority projects financed under this article shall meet all of the following requirements:

(1) Be associated with either an expansion, retention, relocation, or new location of an identified private sector firm. This firm shall be a manufacturing, service, research and development, production, assembly, warehousing, or industrial distribution facility. Commercial business activity, as well as tourist and recreation facilities, which are found by the panel to significantly increase permanent private sector employment and substantially improve the economic prosperity of an area may also qualify the project.

(2) Directly lead to the creation or retention of permanent private sector jobs within the applicant's jurisdictional boundaries. Projects shall also create or retain at least one full-time job for every fifty thousand dollars ($50,000) in loan funds received except in the case of research and development facilities in which the economic job creation standard shall be set by the panel.

(e) First priority loans may also be made, pursuant to this article and under criteria established by the agency, to local agencies in high unemployment areas to develop infrastructure for industrial parks or other sites for businesses where there is no specific business already committed to the project, when the agency determines that there is little likelihood of business expansion into the community prior to the development of the parks or sites, and that the loan has a high probability of leading to the creation or retention of permanent private sector jobs within the applicant's jurisdictional boundaries. The loan cannot exceed five hundred thousand dollars ($500,000).

(f) Loans may not finance projects which would either affect the

relocation of any substantial operations of the company from one area of the state to another, or result in the abandonment of any substantial operations of the company within other areas of the state, unless completion of the project or operation of the facility is reasonably necessary to prevent the relocation of any substantial operations of the company from an area within the state to an area outside the state.

(g) The agency may pool and sell the loans and evidences of indebtedness related thereto.

(h) In the event that insufficient first priority loans are available to complete a bond in a timely manner, the agency shall be authorized to finance projects which do not comply with subdivisions (d) and (e). In the event the loans are financed, priority shall be given to projects likely to result in job creation within two years of completing the project.

CHAPTER 870

An act to amend Sections 11340 and 11342 of, and to add Section 11343.2 to, the Government Code, relating to administrative regulations.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 11340 of the Government Code is amended to read:

11340. The Legislature finds and declares as follows:

(a) There has been an unprecedented growth in the number of administrative regulations in recent years.

(b) The language of many regulations is frequently unclear and unnecessarily complex, even when the complicated and technical nature of the subject matter is taken into account. The language is often confusing to the persons who must comply with the regulations.

(c) Substantial time and public funds have been spent in adopting regulations, the necessity for which has not been established.

(d) The imposition of prescriptive standards upon private persons and entities through regulations where the establishment of performance standards could reasonably be expected to produce the same result has placed an unnecessary burden on California citizens and discouraged innovation, research, and development of improved means of achieving desirable social goals.

(e) There exists no central office in state government with the power and duty to review regulations to ensure that they are written in a comprehensible manner, are authorized by statute, and are

consistent with other law.

(f) Correcting the problems that have been caused by the unprecedented growth of regulations in California requires the direct involvement of the Legislature as well as that of the executive branch of state government.

(g) The complexity and lack of clarity in many regulations put small businesses, which do not have the resources to hire experts to assist them, at a distinct disadvantage.

SEC. 2. Section 11342 of the Government Code is amended to read:

11342. In this chapter, unless otherwise specifically indicated, the following definitions apply:

(a) "State agency" and "agency" does not include an agency in the judicial or legislative departments of the state government.

(b) "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one that relates only to the internal management of the state agency. "Regulation" does not mean or include legal rulings of counsel issued by the Franchise Tax Board or State Board of Equalization, or any form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not a limitation upon any requirement that a regulation be adopted pursuant to this part when one is needed to implement the law under which the form is issued.

(c) "Order of repeal" means any resolution, order or other official act of a state agency that expressly repeals a regulation in whole or in part.

(d) "Office" means the Office of Administrative Law.

(e) "Small business" means:

(1) A business activity, unless excluded in paragraph (2), that is all of the following:

(A) Independently owned and operated.

(B) Not dominant in its field of operation.

(C) Not exceeding the following annual gross receipts in the categories of:

(i) Agriculture, one million dollars ($1,000,000).

(ii) General construction, nine million five hundred thousand dollars ($9,500,000).

(iii) Special trade construction, five million dollars ($5,000,000).

(iv) Retail trade, two million dollars ($2,000,000).

(v) Wholesale trade, nine million five hundred thousand dollars ($9,500,000).

(vi) Services, two million dollars ($2,000,000).

(vii) Transportation and warehousing, one million five hundred thousand dollars ($1,500,000).

(D) A manufacturing enterprise not exceeding 250 employees.

(E) A health care facility not exceeding 150 beds or one million

five hundred thousand dollars ($1,500,000) in annual gross receipts.

(F) Generating and transmitting electric power not exceeding 4.5 million kilowatt hours annually.

(2) The following professional and business activities shall not be considered a small business for purposes of this act:

(A) Financial institutions including banks, trusts, savings and loan associations, thrift institutions, consumer and industrial finance companies, credit unions, mortgage and investment bankers, and stock and bond brokers.

(B) Insurance companies, both stock and mutual.

(C) Mineral, oil, and gas brokers; subdividers and developers.

(D) Landscape architects, architects, and building designers.

(E) Entities organized as nonprofit institutions.

(F) Entertainment activities and productions including motion pictures, stage performances, television and radio stations, and production companies.

(G) All utilities, water companies, and power transmission companies, except electrical power generating transmission companies providing less than 4.5 million kilowatt hours annually.

(H) All petroleum and natural gas producers, refiners and pipelines.

(f) "Plain English" means language that can be interpreted by a person who has no more than an eighth grade level of proficiency in English.

SEC. 3. Section 11343.2 is added to the Government Code, to read:

11343.2. Beginning January 1, 1994, when proposing to adopt or amend a regulation that affects small business, a state agency shall do all of the following:

(a) Adopt a plain English policy statement overview regarding each proposed regulation that would explain all of the following:

(1) The broad objectives of the proposed regulation.

(2) The specific objectives of the proposed regulation, if appropriate.

(b) Draft the regulations in plain English, and if it is not feasible to do so due to the technical nature of the regulation, make available to the public a noncontrolling plain English summary of the regulation.

CHAPTER 871

An act to amend Sections 14010, 14021, 14022, 14024, 14025, 14026, 14028, 14030, 14037, 14037.5, 14040, 14041, 14045, 14047, 14048, 14050, 14052, 14056, 14062, 14064, 14070, 14071, 14074, 14075, 14097, 14098, and 14099 of, and to repeal Sections 14042, 14092, 14093, 14100, and 14101 of, the Corporations Code, relating to economic development.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 14010 of the Corporations Code is amended to read:

14010. Unless the context otherwise requires, the definitions in this section govern the construction of this part.

(a) "Corporation" or "the corporation" means any nonprofit California small business development corporation created pursuant to this part.

(b) "Financial institution" means banking organizations including national banks and trust companies authorized to conduct business in California and state-chartered commercial banks, trust companies, and savings and loan associations.

(c) "Financial company" means banking organizations including national banks and trust companies, savings and loan associations, state insurance companies, mutual insurance companies, and other banking, lending, retirement, and insurance organizations.

(d) "Expansion Fund" means the Small Business Expansion Fund.

(e) "Corporate fund" means the Small Business Development Corporation Loan Guarantee Fund.

(f) "Loan Account" means the Small Business Development Loan Guarantee Account.

(g) Unless otherwise defined by the board by regulation, "small business loan" means a loan to a business defined as an eligible small business as set forth in Section 121.3-10 of Part 121 of Chapter 1 of Title 13 of the Code of Federal Regulations, including those businesses organized for agricultural purposes that create or retain employment as a result of the loan. From time to time, the executive director, in consultation with the board, shall provide guidelines as to the preferred ratio of jobs created or retained to total funds borrowed for guidance to the corporations.

(h) "Employment incentive loan" means a loan to a qualified business, as defined in subdivision (h) of Section 7082 of the Government Code, or to a business located within an enterprise zone, as defined in subdivision (b) of Section 7072 of the Government Code.

(i) "Loan committee" means a committee appointed by the board of directors of a corporation to determine the course of action on a

loan application pursuant to Section 14060.

(j) "Board of directors" means the board of directors of the corporation.

(k) "OSB" and "office" means the Office of Small Business.

(*l*) "Board" means the Small Business Development Board.

(m) "Agency" means the Trade and Commerce Agency.

(n) "Executive director" means the Executive Director of the Office of Small Business.

(o) "Secretary" means the Secretary of Trade and Commerce.

SEC. 2. Section 14021 of the Corporations Code is amended to read:

14021. The board consists of the following membership:

(a) The Superintendent of Banks or his or her designee.

(b) The Secretary of Trade and Commerce or his or her designee.

(c) The Director of Food and Agriculture or his or her designee.

(d) The Director of the Employment Development Department or his or her designee.

(e) The President of the State Assistance Fund for Energy, California Business and Industrial Development Corporation (SAFE BIDCO) shall serve as an ex officio nonvoting member.

(f) The Director of the California Export Finance Office, California State World Trade Commission shall serve as an ex officio nonvoting member.

(g) The Chief of the Office of Small and Minority Business, Department of General Services shall serve as an ex officio nonvoting member.

(h) The California Small Business Advocate shall serve as an ex officio nonvoting member.

(i) The Chairperson of the Coalition of California Small Business Development Centers shall serve as an ex officio nonvoting member.

(j) Thirteen members appointed by the Governor, including:

(1) Two persons residing in economically disadvantaged areas who are actively engaged in providing leadership and assistance for persons residing in these areas; one each from an urban and rural area.

(2) Two persons to be recommended by the financial institutions participating in the program as of January 1 of each year.

(3) Two persons actively engaged in a commercial, agricultural, or industrial business and who are members of a small, agricultural, minority, or women's business association.

(4) One person who is an officer of an urban labor organization.

(5) One person experienced in financial matters or actively engaged in the banking, savings and loan, or insurance business.

(k) Two Members of the Legislature or their designees, one of whom shall be appointed by the Speaker of the Assembly, and one by the Senate Rules Committee, shall advise with the board insofar as it does not conflict with the duties of the legislators. For purposes of this part, the two Members of the Legislature shall constitute a joint interim legislative committee on the subject of this part and

shall have all the powers and duties imposed upon these committees by the Joint Rules of the Senate and the Assembly.

(*l*) Four persons actively involved in the business or agricultural community, two of whom shall be appointed by the Speaker of the Assembly, and two by the Senate Rules Committee, each of whom may be removed at the pleasure of the appointing authority.

(m) One person from each small business development corporation, who shall be selected by the board of directors or members of each corporation in accordance with its bylaws, each of whom shall serve as a nonvoting member of the board.

(n) The Chairperson of the Development Board shall be designated by the Governor from the members he or she appoints.

SEC. 3. 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 and bylaws of the corporation 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 individuals who will manage the corporation 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 agency.

(g) Hold public hearings in order to carry out the objectives of the agency 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. 4. Section 14024 of the Corporations Code is amended to read:

14024. The agency shall adopt regulations concerning the implementation of direct lending as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except for regulations concerning the implementation of Section 14070, which the board shall adopt as emergency regulations. The adoption of these regulations is an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare within the meaning of subdivision (b) of Section 11346.1 of the Government Code. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the regulations shall not remain in effect for more than 180 days unless the agency complies with all provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, as required by subdivision (e) of Section 11346.1 of the Government Code. This section applies to any direct loan program administered by the office.

SEC. 5. Section 14025 of the Corporations Code is amended to read:

14025. The executive director, as provided for in Section 15335.07 of the Government Code, shall do all of the following:

(a) Administer this part.

(b) In accordance with program resources, stimulate the formation of corporations and the use of branch offices for the purposes of making this program accessible to all areas of the state.

(c) Expeditiously approve or disapprove the articles of incorporation and any subsequent amendments to the articles of incorporation of a corporation.

(d) Require each corporation to submit an annual written plan of operation in the form and containing the information as the board may require by regulation or otherwise.

(e) Review reports from the State Banking Department and inform corporations as to what corrective action is required.

(f) Examine, or cause to be examined, at any reasonable time, all books, records, and documents of every kind, and the physical properties of a corporation. The inspection shall include the right to make copies, extracts, and search records.

SEC. 6. Section 14026 of the Corporations Code is amended to read:

14026. The executive director, following notification to the secretary, may do all of the following:

(a) Upon approval by the board, contract for services entered into pursuant to this chapter.

(b) Hold public hearings.

(c) Act as liaison between corporations formed under this part, other state and federal agencies, lenders, and the Legislature.

(d) Process and tabulate on a monthly basis all corporate reports.

(e) Attend monthly board meetings.

(f) Attend and participate at corporation meetings. The executive director, or his or her designee, shall be an ex officio, nonvoting representative on the board of directors and loan committees of each corporation.

(g) Assist corporations in applying for federal grant applications, and in obtaining program support from the business community.

SEC. 7. Section 14028 of the Corporations Code is amended 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.

(4) Milestones and scope of work as contained in the annual contract between the corporation and the agency.

(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.

(g) The funds in the corporate fund of a corporation under temporary withdrawal shall be transferred to the expansion fund. Upon termination of the temporary withdrawal, unless the termination is caused by suspension, the funds of the corporation that were transferred to the expansion fund from the corporate fund shall be returned to the corporation's corporate fund, notwithstanding Section 14037. While the funds of a corporation's corporate fund reside in the expansion fund, use of the principal on the funds shall be governed by the implementing regulations specifying use of funds in the expansion fund. Interest on the funds moved from a corporation's corporate fund upon temporary withdrawal shall be limited to payment of the corporation's administrative expenses, as contained in the contract between the corporation and the agency.

SEC. 8. Section 14030 of the Corporations Code is amended to read:

14030. There is hereby created in the State Treasury the Small Business Expansion Fund. All or a portion of the funds in the expansion fund may be paid out, with the approval of the Department of Finance, to lending institutions or financial companies. This fund shall be used to pay for defaulted loan guarantees issued pursuant to Section 14045, and administrative costs of corporations. The amount of guarantee liability outstanding at any one time shall not exceed four times the amount of funds on deposit in the expansion fund, including each of the loan accounts and

corporate funds within the expansion fund.

SEC. 9. Section 14037 of the Corporations Code is amended to read:

14037. (a) All money deposited in the loan account is hereby appropriated, without regard to fiscal years for the purposes of this chapter. The state shall not be liable or obligated in any way beyond the state money which is allocated and deposited in the loan account from state money which is appropriated for these purposes.

(b) Funds appropriated to the expansion fund after January 1, 1993, shall remain in the expansion fund and shall not be transferred to any loan accounts or corporate funds. The board shall establish regulations determining the ratio of expansion fund to corporate fund moneys in any guarantee. The percentage of funds guaranteed by the expansion fund shall increase as leveraging increases, and for those corporations maintaining an acceptable default rate.

SEC. 10. Section 14037.5 of the Corporations Code is amended to read:

14037.5. The Director of Finance, with the approval of the Governor, may transfer moneys in the Special Fund for Economic Uncertainties to the Small Business Expansion Fund for use by the Office of Small Business in the agency, in an amount necessary to make loan guarantees pursuant to Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code.

SEC. 11. Section 14040 of the Corporations Code is amended to read:

14040. Each corporate fund is a legally separate fund, and the assets of one fund shall not be used to satisfy loan guarantees or other obligations of another corporation. No corporation shall use corporate funds to secure a corporate indebtedness. Corporate funds are state funds and, with exception of guarantees established pursuant to this chapter, shall not be subject to liens or encumbrances of the corporation or its creditors.

SEC. 12. Section 14041 of the Corporations Code is amended to read:

14041. (a) Except as provided in subdivisions (c) and (d) of Section 14070, the funds within the expansion fund, including the corporate funds and loan accounts, shall be used solely to make and guarantee loans , approved by the corporation, that meet the California Small Business Development Corporation Law loan criteria. The state shall not be liable or obligated in any way as a result of the allocation of state money to a corporate fund beyond the state money which is allocated and deposited in the fund pursuant to this chapter, and which is not otherwise withdrawn by the state pursuant to this chapter.

(b) A summary of all loans to which a state guarantee is attached shall be submitted to the executive director upon completion of the loan agreement.

SEC. 13. Section 14042 of the Corporations Code is repealed.

SEC. 14. Section 14045 of the Corporations Code is amended to read:

14045. Upon approval by the board to become a corporation, the entity shall adopt or amend its articles of incorporation to comply with the following:

(a) The name of the corporation shall include the words "small business development corporation," except for those corporations formed pursuant to this part prior to 1985, which may also be called "rural or urban development corporations."

(b) The purposes for which the corporation is formed, which shall be those specified in Section 14002. This requirement shall not be deemed to preclude a statement of powers.

(c) A geographical description of the corporation's service area.

(d) The name and addresses of seven or more persons who are to act in the capacity of directors until the selection of their successors.

(e) That the corporation is organized pursuant to the California Small Business Development Corporation Law.

SEC. 15. Section 14047 of the Corporations Code is amended to read:

14047. The corporation's existence as a small business development corporation begins upon the filing of the articles with the Secretary of State and continues perpetually, unless otherwise expressly provided for by law.

SEC. 16. Section 14048 of the Corporations Code is amended to read:

14048. Any request for proposal for selection of a corporation shall require the winning bidder to adopt or amend its bylaws to include provisions governing the election and qualification of directors; the establishment and functions of loan committees of the corporation; and the method of selecting the representative of the corporation on the board.

The bylaws shall provide for removal of officers only by a two-thirds vote of the directors of the corporation.

SEC. 17. Section 14050 of the Corporations Code is amended to read:

14050. The board may authorize the establishment of a new corporation using a request for proposal process.

SEC. 18. 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, a corporation can be suspended if suspension is recommended by the executive director and approved by the board. This suspension is nonappealable and not subject to the procedures for suspension applicable to a corporation not on probation.

SEC. 19. Section 14056 of the Corporations Code is amended to read:

14056. Any request for proposal for selection of a corporation

shall require the winning bidder to adopt or amend its bylaws to state that:

(a) No person shall serve on a board of directors who is not a resident of or person conducting business in the service area described in the articles of incorporation.

(b) Each board of directors shall include representatives from all of the following:

(1) The financial community.

(2) The business community.

(3) The economically disadvantaged.

SEC. 20. Section 14062 of the Corporations Code is amended to read:

14062. Reasonable costs incurred by a corporation in the creation and maintenance of a central staff shall be paid to the corporation from state funds including a portion of the interest earned on the expansion fund and the corporation's corporate account, if the corporation has a corporate account, otherwise, on the expansion fund.

SEC. 21. Section 14064 of the Corporations Code is amended to read:

14064. The use of state funds paid out to the corporate fund and the return on those funds from investment pursuant to Section 14038 is conditional pursuant to Sections 14028 and 14039. Each corporation shall enter into a written signed agreement with the state at the beginning of each fiscal year. The agreement shall govern the activities in which the corporations engage, the investment of state funds and its return, and the budgeted administrative expenses the corporations may incur. In the event the state and corporation do not reach an agreement, or the state finds the corporation has violated the terms of an active agreement, the state may take action under Sections 14028 and 14039 or other action as appropriate. In the event the state and corporation do not reach agreement or the state finds the corporation has violated the terms of an active agreement, the corporation shall have no authority to withdraw or encumber the corporate fund or the return of those funds by the issuance of guarantees, by incurring expenses against the fund and its return in any manner whatsoever, and the state may take action under Sections 14028 and 14039 or other action as appropriate. Any such guarantee or other encumbrance made by the corporation in violation of this section shall be null and void, and neither the state nor the corporate fund will be liable therefor.

SEC. 22. Section 14070 of the Corporations Code is amended to read:

14070. (a) The corporate guarantee shall be backed by funds on deposit in the corporation's corporate fund and the expansion fund established pursuant to Section 14040.

(b) Loan guarantees shall be secured by a reserve of at least 25 percent to be determined by the executive director with the approval of the board. The guarantee percentage rate shall be set by

the executive director upon approval of the board.

(c) The expansion fund and corporate accounts shall be used exclusively to guarantee obligations and pay the administrative costs of the corporations, except that a corporation located in a rural area may utilize the funds for direct lending to farmers as long as at least 90 percent of the corporate fund farm loans, calculated by dollar amount, and all expansion fund farm loans are guaranteed by the United States Farmers Home Administration. The amount of funds available for direct farm lending shall be determined by the executive director. In its capacity as a direct lender, the corporation may sell in the secondary market the guaranteed portion of each loan so as to raise additional funds for direct lending. The agency, in consultation with the board, shall issue regulations governing these direct loans, including the maximum amount of these loans.

(d) In furtherance of the purposes of this part, up to one-half of the corporate funds may be used to guarantee loans utilized to establish a Business and Industrial Development Corporation (BIDCO) under Division 15 (commencing with Section 33000) of the Financial Code.

(e) To execute the direct loan programs established in this chapter, the Office of Small Business may loan trust funds to a corporation located in a rural area for the express purpose of lending those funds to an identified borrower. The loan by the Office of Small Business to the corporation shall be on terms similar to the loan between the corporation and the borrower. The amount of the loan may be in excess of the amount of a loan to any individual farm borrower, but actual disbursements pursuant to the Office of Small Business loan agreement shall be required to be supported by a loan agreement between the farm borrower and the corporation in an amount at least equal to the requested disbursement. The loan between the Office of Small Business and the corporation shall be evidenced by a credit agreement. In the event that any loan between the corporation and borrower is not guaranteed by a governmental agency, the portion of the credit agreement attributable to that loan shall be secured by assignment of any note, executed in favor of the corporation by the borrower, to the Office of Small Business. The terms and conditions of the credit agreement shall be similar to the loan agreement between the corporation and the borrower which shall be collateralized by the note between the corporation and the borrower. In the absence of fraud on the part of the corporation, the liability of the corporation to repay the loan to the Office of Small Business is limited to the repayment received by the corporation from the borrower except in a case where the Farmers Home Administration requires exposure by the corporation in rule or regulation. The corporation may use trust funds for loan repayment to the Office of Small Business if the corporation has exhausted a loan loss reserve created for this purpose. Interest and principal received by the Office of Small Business from the Corporation shall be deposited into the same account from which the funds were

originally borrowed.

SEC. 23. Section 14071 of the Corporations Code is amended to read:

14071. In furtherance of the purposes set forth in Section 14002, a corporation may do any one or more of the following activities, but only to the extent that the activities are authorized pursuant to the contract between the agency and corporation: guarantee, endorse, or act as surety on the bonds, notes, contracts, or other obligations of, or assist financially, any person, firm, corporation, or association, and may establish and regulate the terms and conditions with respect to any such loans or financial assistance and the charges for interest and service connected therewith, except that the corporation shall not make or guarantee any loan unless and until it determines:

(a) There is no probability that the loan or other financial assistance would be granted by a financial company under reasonable terms or conditions, and the borrower has demonstrated a reasonable prospect of repayment of the loan.

(b) The loan proceeds shall be used exclusively in this state.

(c) The loan qualifies as a small business loan or an employment incentive loan.

(d) That the borrower has a minimum equity interest in the business as determined by the board.

(e) As a result of the loan, the jobs generated or retained demonstrate reasonable conformance to the regulations specifying employment criteria.

SEC. 24. Section 14074 of the Corporations Code is amended to read:

14074. The agency shall enter into an agreement with the California Energy Extension Service of the Office of Planning and Research to assist small business owners in reducing their energy costs through low interest loans and by providing assistance and information.

SEC. 25. Section 14075 of the Corporations Code is amended to read:

14075. (a) A corporation may, in an area designated as a disaster area by the Governor, provide loan guarantees from funds allocated in Section 14037.5 to small businesses, small farms, nurseries, and agriculture-related enterprises which have suffered actual physical damage or significant economic injury as a result of the disaster.

(b) The agency may adopt regulations to implement the loan guarantee program authorized by this section. The agency may adopt these regulations as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code, and for purposes of that chapter, including Section 11349.6, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the regulations shall be repealed

within 180 days after their effective date unless the agency complies with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code, as provided in subdivision (e) of Section 11346.1 of the Government Code.

(c) Allocations pursuant to subdivision (a) shall be deemed to be for extraordinary emergency or disaster response operations costs incurred by the Office of Small Business.

SEC. 26. Section 14092 of the Corporations Code is repealed.

SEC. 27. Section 14093 of the Corporations Code is repealed.

SEC. 28. Section 14097 of the Corporations Code is amended to read:

14097. (a) The money in the Hazardous Waste Reduction Loan Account shall be expended by the agency to make loans to generators for equipment, projects, or facilities to be used for the reduction of hazardous waste generated.

(b) The agency may enter into a contract with a corporation to provide services pursuant to this article and may expend the funds in the Hazardous Waste Reduction Loan Account resulting from interest accruing from interest payments on loans made pursuant to this article or from the interest earned by the Hazardous Waste Reduction Loan Account to compensate a corporation for these services.

(c) The agency may expend an amount of not more than one hundred thirty thousand dollars ($130,000) in any fiscal year for administrative expenses in carrying out this article, from the funds in the Hazardous Waste Reduction Loan Account derived from interest accruing from interest payments by the borrower or interest earned in the account.

(d) The agency may also transfer an amount not to exceed two hundred thousand dollars ($200,000) from the Hazardous Waste Reduction Loan Account to a subaccount from which the department may pay for collection costs in connection with defaulted loans, including costs reasonably incurred to prevent a default.

SEC. 29. Section 14098 of the Corporations Code is amended to read:

14098. The State Department of Toxic Substances shall, before a loan commitment is issued, approve the project to be funded.

SEC. 30. Section 14099 of the Corporations Code is amended to read:

14099. The State Department of Toxic Substances and the Department of Commerce shall publicize and promote the availability of loan assistance pursuant to this article.

SEC. 31. Section 14100 of the Corporations Code is repealed.

SEC. 32. Section 14101 of the Corporations Code is repealed.

CHAPTER 872

An act to add Section 227 to, and to add Article 2.5 (commencing with Section 230) to Chapter 2 of Part 1 of Division 1 of, the Food and Agricultural Code, relating to agriculture.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 227 is added to the Food and Agricultural Code, to read:

227. (a) Notwithstanding any other provision of law, in order to avoid unnecessary charges and to provide for efficient program implementation, the fees and assessments required by law to be paid to the director or the Department of Food and Agriculture Fund to support the agricultural programs specified in subdivision (b) of Section 230, except those specified in Article 5 (commencing with Section 6001) of Chapter 9 of Part 1 of Division 4 and Chapter 9 (commencing with Section 44971) of Division 17, may be deposited in the Department of Food and Agriculture Fund, or with an entity that is (1) a bank or other depository approved by the Department of Finance, (2) a marketing order board or commission created pursuant to this code, or (3) another state agency, designated by the agricultural program's advisory body, if any. The director may designate that entity if an advisory body has not been created by statute for an agricultural program. All unencumbered funds in the Department of Food and Agriculture Fund and the Agriculture Trust Fund, including income therefrom, that have been collected pursuant to the agricultural program may also be deposited with the designated entity.

(b) The funds deposited with the designated entity shall be expended exclusively for the purpose of implementing and continuing the agricultural program for which they were collected.

(c) Prior to the deposit of any funds with an entity designated pursuant to subdivision (a), the entity shall enter into an agreement with the department that shall include, but not be limited to, all of the following requirements:

(1) The entity shall serve as custodian for the safekeeping of the funds.

(2) Funds deposited with the entity shall be encumbered for the exclusive purpose of implementing and continuing the agricultural program for which they were collected.

(3) Funds deposited with the entity shall be subject to an audit at least once every two years by an auditor selected by the director. A copy of the audit shall be provided to the director within 30 days of completion of the audit.

(4) The department shall be reimbursed for all expenses it incurs

that are reasonably related to implementing and continuing the agricultural program for which the funds were collected in accordance with the agreement. When practicable, as determined by the department, the designated entity shall deposit advance payments for these expenses with the department.

(5) The entity shall maintain a reserve in an amount sufficient to pay for costs arising from unanticipated occurrences associated with the administration of the program.

(d) In transferring funds from the department to any entity pursuant to subdivision (a), the director shall not be personally liable in any way for errors in judgment, mistakes, or other acts, either by commission or omission, except for his or her own individual acts of dishonesty or crime.

SEC. 2. Article 2.5 (commencing with Section 230) is added to Chapter 2 of Part 1 of Division 1 of the Food and Agricultural Code, to read:

Article 2.5. Agriculture Trust Fund

230. As used in this article:

(a) "Advisory body" means the advisory body for each individual agriculture program.

(b) "Agriculture programs" means the programs specified in Section 221, Chapter 5 (commencing with Section 5301) of Division 4, Sections 6037, 6038, and 9641.5, Chapter 1 (commencing with Section 29001) of Division 13, Division 15 (commencing with Section 32501), Article 6.5 (commencing with Section 42801) of Chapter 2 of Division 17, and Chapter 10 (commencing with Section 46000) of Division 17.

(c) "Trust fund" means the Agriculture Trust Fund created pursuant to Section 232.

231. The Legislature finds and declares that the maintenance of agriculture funded programs described in subdivision (b) of Section 230 is necessary to ensure the consuming public of a continuous and safe supply of food and fiber and is affected with a public interest. This article is enacted in the exercise of the police power of this state for the purpose of protecting the health and welfare of the people of this state.

232. The Agriculture Trust Fund is hereby created. The trust fund is not a fund of the State Treasury. Transfers to the trust fund may be deposited in the State Treasury, or in a bank or other depository approved by the Department of Finance. Funds that are so transferred are exempt from Sections 11270 and 11272 of the Government Code and shall be deposited and disbursed only to pay for attorney's fees and other costs incurred in litigation involving the trust fund, expenses generated by the auditing requirement imposed by Section 240, and for the costs set forth in Section 242.

233. (a) The trust fund consists of moneys transferred by the director from the Department of Food and Agriculture Fund,

including all income therefrom. The amount of funds, excluding interest earned thereon, contained in the trust fund shall be determined by the director, and shall be the same percentage for all agricultural programs, but shall not exceed 10 percent of the annual operating budgets of each agricultural program. Funds in excess of 10 percent of the annual operating budgets of each agricultural program that are in the trust fund, or such other lesser percentage as the director may determine, may be returned to the Department of Food and Agriculture Fund.

(b) The director shall establish separate accounts in the trust fund for the money transferred to the fund from each of the agricultural program accounts in the Department of Food and Agriculture Fund. The trust accounts shall be used by the Department of Food and Agriculture Fund for expenditure when necessary for the exclusive purpose of implementing and continuing any of the agriculture programs with money contained in the trust fund.

234. The trust fund is created for the exclusive purpose of implementing and continuing the agricultural programs for which the funds were collected.

235. Each agricultural program specified in subdivision (b) of Section 230 with contained in the Department of Food and Agriculture Fund shall participate in the trust fund unless an entity is designated pursuant to subdivision (a) of Section 227 or Section 6005 or 45021.

236. The beneficiaries of the trust are the agricultural programs with money contained in the trust fund.

237. The trust fund shall continue in existence for as long as any of the agricultural programs specified in subdivision (b) of Section 230 continues to exist. Upon termination of any of those agricultural programs, all of that program's remaining funds, exclusive of all financial obligations of that program, shall be returned on a pro rata basis to all persons from whom assessments or fees were collected for purposes of that program in the immediately preceding marketing season. However, if the director finds that the amounts returnable are so small as to make impractical the computation and remitting of a pro rata refund to those persons, any funds remaining after payment of all expenses shall be paid to any existing state or federally authorized agricultural program relating to the same industry. If no such program exists, any remaining money shall be paid to the Department of Food and Agriculture Fund. If the account of a terminating agricultural program is insufficient to meet all financial obligations, the director may borrow a pro rata share from all other accounts in the trust fund to pay those obligations. The director shall collect a supplemental assessment from all persons from whom assessments or fees were collected for the purposes of the program being terminated in the immediately preceding marketing seasons to reimburse the trust fund. Upon the termination of all the agricultural programs specified in subdivision (b) of Section 230, the trustee shall transfer the remaining funds to the Department of Food

and Agriculture Fund.

238. It is hereby declared, as a matter of legislative determination, that the advisory body for each of the identified agricultural programs is 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 appointed to any advisory body, the particular agricultural industry concerned is tantamount to, and constitutes, the public generally within the meaning of Section 87103 of the Government Code.

239. The chairperson of each advisory body shall advise the director on the administration of the trust fund, including, but not limited to, the amount of the fund to be applied to program closures, unanticipated occurrences, and replenishment.

240. All trust fund activities shall be subject to an audit at least once every two years by an auditing firm selected by the director in accordance with Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. A copy of the audit shall be delivered to the director within 30 days after completion.

241. Any money that is deposited pursuant to Section 232, which the director determines is available for investment, may be invested or reinvested 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.

242. The moneys in the trust fund shall be disbursed only to pay for costs arising from unanticipated occurrences associated with administering self-funded programs. These costs shall include, but are not limited to: attorney costs related to litigation; workers' compensation costs; unemployment costs; phaseout costs of existing programs; and temporary funding for programs that are implementing a fee increase. Any program using the moneys from the trust fund shall repay the trust fund based on a schedule approved by the director.

In addition to the costs specified above, the director may impose a charge in the amount necessary to cover the department's costs in administering this article.

243. This article shall be liberally construed. If any provision of this article or the application, thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the article that can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

CHAPTER 873

An act to amend Sections 17024.5, 17052.11, 17062, 17063, 17081, 17088, 17131, 17260, 17265, 17321, 17501, 17504, 17551, 17681, 17731, 17851, 18031, 18036, 18151, 18934, 23051.5, 23400, 23456, 23603, 23800, 24422, 24451, 24601, 24831, 24870, 24871, 24872, 24916, and 24990 of, to add Sections 17139, 17256, 17870, 18165, 24326, 24356.5, 24990.6, and 26081.5 to, to repeal and add Sections 17087.5 and 17201 of, and to repeal Sections 17682, 17683, 17740, 17940, 24832, and 24833 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 17024.5 of the Revenue and Taxation Code is amended to read:

17024.5. (a) (1) Unless otherwise specifically provided, the terms "Internal Revenue Code," "Internal Revenue Code of 1954," or "Internal Revenue Code of 1986," for purposes of this part, mean Title 26 of the United States Code, including all amendments thereto as enacted on the specified date for the applicable taxable year as follows:

Taxable Year	Specified Date of Internal Revenue Code Sections
(A) For taxable years beginning on or after January 1, 1983, and on or before December 31, 1983	January 15, 1983
(B) For taxable years beginning on or after January 1, 1984, and on or before December 31, 1984	January 1, 1984
(C) For taxable years beginning on or after January 1, 1985, and on or before December 31, 1985	January 1, 1985
(D) For taxable years beginning on or after January 1, 1986, and on or before December 31, 1986	January 1, 1986
(E) For taxable years beginning on or after January 1, 1987, and on or before December 31, 1988	January 1, 1987
(F) For taxable years beginning on or after January 1, 1989, and on or before December 31, 1989	January 1, 1989
(G) For taxable years beginning on or after January 1, 1990, and on or before December 31, 1990	January 1, 1990

(H) For taxable years beginning on or after January 1, 1991, and on or before December 31, 1991	January 1, 1991
(I) For taxable years beginning on or after January 1, 1992, and on or before December 31, 1992	January 1, 1992
(J) For taxable years beginning on or after January 1, 1993	January 1, 1993

(2) Unless otherwise specifically provided, for federal laws enacted on or after January 1, 1987, and on or before the specified date for the taxable year, uncodified provisions that relate to provisions of the Internal Revenue Code that are incorporated for purposes of this part shall be applicable to the same taxable years as the incorporated provisions.

(3) Subtitle G (Tax Technical Corrections) and Part I of Subtitle H (Repeal of Expired or Obsolete Provisions) of the Revenue Reconciliation Act of 1990 (Public Law 101-508) modified numerous provisions of the Internal Revenue Code and provisions of prior federal acts, some of which are incorporated by reference into this part. Unless otherwise provided, the provisions described in the preceding sentence, to the extent that they modify provisions that are incorporated into this part, are declaratory of existing law and shall be applied in the same manner and for the same periods as specified in the Revenue Reconciliation Act of 1990.

(b) Unless otherwise specifically provided, when applying any section of the Internal Revenue Code for purposes of this part, any provision that refers to any of the following shall not be applicable for purposes of this part:

(1) Except as provided in Chapter 4.5 (commencing with Section 23800) of Part 11 of Division 2, an electing small business corporation, as defined in Section 1361(b) of the Internal Revenue Code.

(2) Domestic international sales corporations (DISC), as defined in Section 992(a) of the Internal Revenue Code.

(3) A personal holding company, as defined in Section 542 of the Internal Revenue Code.

(4) A foreign personal holding company, as defined in Section 552 of the Internal Revenue Code.

(5) A foreign investment company, as defined in Section 1246(b) of the Internal Revenue Code.

(6) A foreign trust, as defined in Section 679 of the Internal Revenue Code.

(7) Foreign income taxes and foreign income tax credits.

(8) Section 911 of the Internal Revenue Code, relating to United States citizens living abroad.

(9) A foreign corporation, except that Section 367 of the Internal Revenue Code shall be applicable.

(10) Federal tax credits and carryovers of federal tax credits, except as provided in Section 162(*l*)(3) of the Internal Revenue

Code, relating to coordination with medical deduction, etc., and Section 213(f) of the Internal Revenue Code, relating to coordination with health insurance credit under Section 32 of the Internal Revenue Code.

(11) Nonresident aliens.

(12) Deduction for personal exemptions, as provided in Section 151 of the Internal Revenue Code.

(13) The tax on generation-skipping transfers imposed by Section 2601 of the Internal Revenue Code.

(14) The tax, relating to estates, imposed by Section 2001 or 2101 of the Internal Revenue Code.

(c) (1) The provisions contained in Sections 41 to 44, inclusive, and 172 of the Tax Reform Act of 1984 (Public Law 98-369), relating to treatment of debt instruments, shall not be applicable for taxable years beginning before January 1, 1987.

(2) The provisions contained in Public Law 99-121, relating to the treatment of debt instruments, shall not be applicable for taxable years beginning before January 1, 1987.

(3) For each taxable year beginning on or after January 1, 1987, the provisions referred to by paragraphs (1) and (2) shall be applicable for purposes of this part in the same manner and with respect to the same obligations as the federal provisions, except as otherwise provided in this part.

(d) When applying the Internal Revenue Code for purposes of this part, regulations issued by "the secretary," in effect as of the specified effective date of the Internal Revenue Code sections referred to in subdivision (a), shall be applicable to the extent that they do not conflict with this part or with regulations issued by the Franchise Tax Board.

(e) Whenever this part allows a taxpayer to make an election, the following rules shall apply:

(1) A proper election filed with the Internal Revenue Service in accordance with the Internal Revenue Code or regulations issued by "the secretary" shall be deemed to be a proper election for purposes of this part, unless otherwise provided in this part or in regulations issued by the Franchise Tax Board.

(2) A copy of that election shall be furnished to the Franchise Tax Board upon request.

(3) To obtain treatment other than that elected for federal purposes, a separate election shall be filed at the time and in the manner required by the Franchise Tax Board.

(f) Whenever this part allows or requires a taxpayer to file an application or seek consent, the rules set forth in subdivision (e) shall be applicable with respect to that application or consent.

(g) When applying the Internal Revenue Code for purposes of determining the statute of limitations under this part, any reference to a period of three years shall be modified to read four years for purposes of this part.

(h) When applying, for purposes of this part, any section of the

Internal Revenue Code or any applicable regulation thereunder, all of the following shall apply:

(1) References to "adjusted gross income" shall mean the amount computed in accordance with Section 17072, except as provided in paragraph (2).

(2) References to "adjusted gross income" for purposes of computing limitations based upon adjusted gross income, shall mean the amount required to be shown as adjusted gross income on the federal tax return for the same taxable year.

(3) Any reference to "subtitle" or "chapter" shall mean this part.

(4) The provisions of Section 7806 of the Internal Revenue Code, relating to construction of title, shall apply.

(5) Any provision of the Internal Revenue Code that becomes operative on or after the specified date for that taxable year shall become operative on the same date for purposes of this part.

(6) Any provision of the Internal Revenue Code that becomes inoperative on or after the specified date for that taxable year shall become inoperative on the same date for purposes of this part.

(7) Due account shall be made for differences in federal and state terminology, effective dates, substitution of "Franchise Tax Board" for "secretary" when appropriate, and other obvious differences.

(i) Any reference to a specific provision of the Internal Revenue Code shall include modifications of that provision, if any, in this part.

SEC. 2. Section 17052.11 of the Revenue and Taxation Code is amended to read:

17052.11. (a) For each taxable year beginning on or after January 1, 1991, and before January 1, 1995, there shall be allowed as a credit against the amount of "net tax" (as defined in Section 17039) an amount equal to 55 percent of the total costs (including installation charges but excluding interest charges), of a device designed and installed to convert a motor vehicle, that is intended to be used on public roads and highways and is registered in this state, to a low-emission motor vehicle. The credit allowed by this subdivision shall be claimed in the taxable year the device is installed and shall not exceed one thousand dollars ($1,000) per automobile, motorcycle, or two person passenger vehicle, or three thousand five hundred dollars ($3,500) for a vehicle whose weight is in excess of 5,750 pounds.

(b) (1) The credit provided by subdivision (a) shall also be allowed for an amount equal to 55 percent of the differential cost of a new motor vehicle that is equipped from the factory to operate as a low-emission motor vehicle and is certified by the state board to be a low-emission motor vehicle and which is registered in this state.

(2) For purposes of this section, "differential cost" means the difference in retail cost between a low-emission vehicle and a comparable vehicle that is not low emission. This amount shall be determined by the State Energy Resources Conservation and Development Commission (hereafter referred to as the California Energy Commission), based on information supplied by the taxpayer

and subject to the guidelines adopted under subdivision (h).

(3) The "differential cost" defined in paragraph (2) shall be reduced by an amount equal to any amount allowable, for purposes of computing federal income tax, as a credit under Section 30 of the Internal Revenue Code, relating to credit for qualified electric vehicles, for the same vehicle.

(c) For purposes of this section, "device" means any apparatus not otherwise required by federal or California law that is designed and installed to convert a new or used motor vehicle to a low-emission motor vehicle as certified by the state board.

(d) For purposes of this section, "low-emission motor vehicle" means a vehicle as defined under Section 39037.05 of the Health and Safety Code.

(e) For purposes of this section, "state board" refers to the Air Resources Board.

(f) The taxpayer or partnership shall qualify for the credit after application to and certification by the California Energy Commission that all of the following conditions are met:

(1) The device or vehicle qualifies for the credit under this section.

(2) Credit allocation is available.

(g) The taxpayer or partnership shall do all of the following:

(1) (A) Apply to the California Energy Commission for credit allocation and certification.

(B) The application for credit allocation shall include all information that is required by the California Energy Commission, including, but not limited to, all of the following:

(i) A plan to purchase a device, as defined in subdivision (c), or a vehicle.

(ii) The cost estimates of the device or vehicle.

(2) Notify the California Energy Commission in a form and manner specified by the California Energy Commission that the device or vehicle has actually been purchased.

(3) Retain a copy of the certification issued by the California Energy Commission.

(4) Make the certification available to the Franchise Tax Board upon demand.

(5) The partnership shall disclose in its tax return each year all of the following:

(A) The name of each partner who received a credit allocation.

(B) The partner's social security number or identification number.

(C) The amount of credit allocated to each partner.

(h) The California Energy Commission shall do all of the following:

(1) Establish criteria for allocation of the credit amounts in the case where more than seven hundred fifty thousand dollars ($750,000) of credits are requested annually.

(2) Provide guidelines and criteria for application for credit

allocation. These guidelines shall be exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. However, these guidelines shall be adopted by the California Energy Commission at a noticed meeting and after one or more public workshops.

(3) Accept applications and issue certificates including the credit amount to which the taxpayer or partnership is entitled.

(4) 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 Energy Commission) of the qualified taxpayers or partnerships who were issued the certification and the allowable amount of the credit allocated to each taxpayer or partnership.

(i) The taxpayers' social security numbers or identification numbers obtained through the tax credit application and certification process shall be used exclusively for state tax administrative purposes.

(j) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(k) The aggregate amount of tax credits granted pursuant to this section and Section 23603 shall not exceed seven hundred fifty thousand dollars ($750,000) per year. The California Energy Commission shall not authorize any credit if the credit would cause the total amount of credit authorized in any year under the Personal Income Tax Law and the Bank and Corporation Tax Law to exceed seven hundred fifty thousand dollars ($750,000).

(*l*) The amendments made by the act adding this subdivision shall be operative for each taxable year beginning on or after January 1, 1993.

(m) This section shall remain in effect only until December 1, 1995, and as of that date is repealed.

SEC. 2.5. Section 17052.11 of the Revenue and Taxation Code is amended to read:

17052.11. (a) For each taxable year beginning on or after January 1, 1991, and before January 1, 1996, there shall be allowed as a credit against the amount of "net tax" (as defined in Section 17039) an amount equal to 55 percent of the qualified costs paid or incurred by the taxpayer for low-emission vehicles or low-emission conversion devices. The credit allowed by this section shall be claimed in the taxable year the device is installed or, in the case of a new low-emission motor vehicle, the taxable year the low-emission vehicle is placed in service, and shall not exceed one thousand dollars ($1,000) per automobile, motorcycle, or two person passenger vehicle, or three thousand five hundred dollars ($3,500) for a vehicle whose weight is in excess of 5,750 pounds.

(b) For purposes of this section:

(1) "Device" means any apparatus not otherwise required by

federal or California law that is designed and installed to convert a new or used motor vehicle to a low-emission motor vehicle as certified by the state board.

(2) "Differential cost" means the difference in retail cost between a low-emission vehicle and a comparable vehicle that is not a low-emission vehicle. This amount shall be determined by the State Energy Resources Conservation and Development Commission (hereafter referred to as the California Energy Commission), based on information supplied by the taxpayer and subject to the guidelines adopted under subdivision (e).

(3) "Low-emission motor vehicle" means a vehicle as defined under Section 39037.05 of the Health and Safety Code.

(4) "Qualified costs" means each of the following:

(A) The total cost (including installation charges but excluding interest charges) of a device designed and installed to convert a qualified motor vehicle to a low-emission motor vehicle.

(B) The differential cost of a new qualified motor vehicle that is equipped from the factory to operate as a low-emission motor vehicle and is certified by the state board to be a low-emission motor vehicle.

(C) Fifteen percent of the purchase price of a nonrecreational motor vehicle that is a low-emission motor vehicle intended to be used on private roads, private school campuses, or commercial or industrial worksites in this state.

(5) "Qualified motor vehicle" means a motor vehicle, as defined by Section 415 of the Vehicle Code, that is either of the following:

(A) A motor vehicle that is intended to be used on public roads and highways and is registered in this state.

(B) A nonrecreational motor vehicle that is intended to be used on private roads, private school campuses, or commercial or industrial worksites in this state.

(6) "State board" refers to the Air Resources Board.

(c) The taxpayer or partnership shall qualify for the credit after application to and certification by the California Energy Commission that all of the following conditions are met:

(1) The device or vehicle qualifies for the credit under this section.

(2) Credit allocation is available.

(d) The taxpayer or partnership shall do all of the following:

(1) (A) Apply to the California Energy Commission for credit allocation and certification.

(B) The application for credit allocation shall include all information that is required by the California Energy Commission, including, but not limited to, all of the following:

(i) A plan to purchase a device, as defined in subdivision (b), or a vehicle.

(ii) The cost estimates of the device or vehicle.

(2) Notify the California Energy Commission in a form and manner specified by the California Energy Commission that the device or vehicle has actually been purchased.

(3) Retain a copy of the certification issued by the California Energy Commission.

(4) Make the certification available to the Franchise Tax Board upon demand.

(5) The partnership shall disclose in its tax return each year all of the following:

(A) The name of each partner who received a credit allocation.

(B) The partner's social security number or identification number.

(C) The amount of credit allocation distributed to each partner.

(e) The California Energy Commission shall do all of the following:

(1) Establish criteria for allocation of the credit amounts in the case where more than seven hundred fifty thousand dollars ($750,000) of credits are requested annually.

(2) Provide guidelines and criteria for application for credit allocation. These guidelines shall be exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. However, these guidelines shall be adopted by the California Energy Commission at a noticed meeting and after one or more public workshops.

(3) Accept applications and issue certificates including the credit amount to which the taxpayer or partnership is entitled.

(4) 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 Energy Commission) of the qualified taxpayers or partnerships who were issued the certification and the allowable amount of the credit allocated to each taxpayer or partnership.

(f) The taxpayers' social security numbers or identification numbers obtained through the tax credit application and certification process shall be used exclusively for state tax administrative purposes.

(g) The "qualified costs" shall be reduced by an amount equal to any amount allowable, for purposes of computing federal income tax, as a credit under Section 30 of the Internal Revenue Code, relating to credit for qualified electric vehicles, for the same vehicle.

(h) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(i) The aggregate amount of tax credits granted pursuant to this section and Section 23603 shall not exceed seven hundred fifty thousand dollars ($750,000) per year. The California Energy Commission shall not authorize any credit if the credit would cause the total amount of credit authorized in any year under the Personal Income Tax Law and the Bank and Corporation Tax Law to exceed seven hundred fifty thousand dollars ($750,000).

(j) (1) This section shall become operative on January 1, 1991.

(2) This section shall remain in effect only until December 1, 1996, and as of that date is repealed.

SEC. 3. Section 17062 of the Revenue and Taxation Code is amended to read:

17062. (a) Part VI of Subchapter A of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to alternative minimum tax, shall apply, except as otherwise provided.

(b) (1) (A) Section 55(b)(1) of the Internal Revenue Code, relating to the tentative minimum tax, is modified to provide that the tentative minimum tax for the taxable year shall be equal to the following percent of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount, before reduction for any credits against the tax:

(i) For any taxable year beginning on or after January 1, 1991, and before January 1, 1996, 8.5 percent.

(ii) For any taxable year beginning on or after January 1, 1996, 7 percent.

(B) In the case of a nonresident or part-year resident, the tentative minimum tax shall be computed as if the nonresident or part-year resident were a resident for the entire year multiplied by the ratio of California adjusted gross income (as modified for purposes of this chapter) to total adjusted gross income from all sources (as modified for purposes of this chapter). For purposes of computing the tax under subparagraph (A) and gross income from all sources, the net operating loss deduction provided in Section 56(d) of the Internal Revenue Code shall be computed as if the taxpayer were a resident for all prior years.

(C) For purposes of this section, the term "California adjusted gross income" includes each of the following:

(i) For any period during which the taxpayer was a resident of this state (as defined by Section 17014), all items of adjusted gross income (as modified for purposes of this chapter), regardless of source.

(ii) For any period during which the taxpayer was not a resident of this state, only those items of adjusted gross income (as modified for purposes of this chapter) which were derived from sources within this state, determined in accordance with Chapter 11 (commencing with Section 17951).

(2) Section 55(c) of the Internal Revenue Code, relating to regular tax, is modified to provide that the regular tax shall be the amount of tax imposed by Section 17041 or 17048, before reduction for any credits against the tax, less any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560.

(c) Section 56(b)(1)(E) of the Internal Revenue Code, relating to standard deduction and deduction for personal exemptions not allowed, is modified, for purposes of this part, to deny the standard deduction allowed by Section 17073.5.

(d) The provisions of Section 57(a)(5) of the Internal Revenue Code, relating to tax-exempt interest, shall not apply.

(e) The last two sentences of Section 57(a)(6)(B) of the Internal Revenue Code, relating to tangible personal property, shall not apply.

(f) The provisions of Section 59(a) of the Internal Revenue Code, relating to the alternative minimum tax foreign tax credit, shall not apply.

SEC. 4. Section 17063 of the Revenue and Taxation Code is amended to read:

17063. (a) Section 53 of the Internal Revenue Code, relating to credit for prior year minimum tax liability, shall apply, except as otherwise provided.

(b) For purposes of this part, the credit allowed under subdivision (a) shall be allowed as a credit against the net tax (as defined by Section 17039).

(c) For purposes of this chapter, the amount determined under Section 53(c)(1) of the Internal Revenue Code shall be the regular tax as defined by paragraph (2) of subdivision (b) of Section 17062, reduced by the sum of the credits allowable under this part, other than:

(1) The credits described in paragraph (7) of subdivision (a) of Section 17039, relating to credits that contain refundable provisions but do not contain carryover provisions.

(2) That portion of any credit that reduces the tax below the tentative minimum tax as provided in paragraph (1) of subdivision (c) of Section 17039.

(3) That portion of any credit that reduces the tax imposed under Section 17062.

SEC. 5. Section 17081 of the Revenue and Taxation Code is amended to read:

17081. Part II of Subchapter B of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to items that are specifically included in gross income, shall apply, except as otherwise provided.

SEC. 6. Section 17087.5 of the Revenue and Taxation Code is repealed.

SEC. 7. Section 17087.5 is added to the Revenue and Taxation Code to read:

17087.5. Subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to tax treatment of "S corporations" and their shareholders, shall apply, except as otherwise provided under this part or Part 11 (commencing with Section 23001).

SEC. 8. Section 17088 of the Revenue and Taxation Code is amended to read:

17088. (a) Subchapter M of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to regulated investment companies, real estate investment trusts, and real estate mortgage investment conduits, shall apply, except as otherwise provided.

(b) Section 17145, relating to exempt interest dividends, shall apply in lieu of Section 852(b)(5) of the Internal Revenue Code.

(c) Section 852(b)(3)(D) of the Internal Revenue Code, relating

to treatment by shareholders of undistributed capital gains, shall not apply.

SEC. 9. Section 17131 of the Revenue and Taxation Code is amended to read:

17131. Part III of Subchapter B of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to items that are specifically excluded from gross income, shall apply, except as otherwise provided.

SEC. 10. Section 17139 is added to the Revenue and Taxation Code, to read:

17139. Section 136 of the Internal Revenue Code, relating to energy conservation subsidies provided by public utilities, shall apply to amounts received on or after January 1, 1993, and before January 1, 1995, without regard to taxable year.

SEC. 11. Section 17201 of the Revenue and Taxation Code is repealed.

SEC. 12. Section 17201 is added to the Revenue and Taxation Code, to read:

17201. (a) Part VI of Subchapter B of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to itemized deductions for individuals and corporations, shall apply, except as otherwise provided.

(b) Part VII of Subchapter B of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to additional itemized deductions for individuals, shall apply, except as otherwise provided.

(c) Part IX of Subchapter B of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to items not deductible, shall apply, except as otherwise provided.

SEC. 13. Section 17256 is added to the Revenue and Taxation Code, to read:

17256. Section 179A of the Internal Revenue Code, relating to deduction for clean-fuel vehicles and certain refueling property, shall apply to property placed in service after June 30, 1993, without regard to taxable year, and is modified as follows:

(a) Section 179A(e)(5) of the Internal Revenue Code, relating to property used outside the United States, is modified to also refer to Sections 17252.5, 17265, or 17266.

(b) Section 179A(g) of the Internal Revenue Code, relating to termination, is modified to substitute "December 31, 1994" for "December 31, 2004."

SEC. 14. Section 17260 of the Revenue and Taxation Code is amended to read:

17260. (a) No deduction, other than depreciation, shall be allowed for expenditures for tertiary injectants as provided by Section 193 of the Internal Revenue Code.

(b) Section 263(a) of the Internal Revenue Code shall not apply to expenditures for which a deduction is allowed under Section 17252.5, 17265, or 17266.

SEC. 15. Section 17265 of the Revenue and Taxation Code is

amended to read:

17265. (a) A taxpayer may elect to treat 40 percent of the cost of any Section 17265 property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the Section 17265 property is placed in service.

(b) In the case of a husband and wife filing separate returns for a taxable year, the applicable amount under subdivision (a) shall be equal to 50 percent of the percentage specified in subdivision (a).

(c) (1) An election under this section for any taxable year shall:

(A) Specify the items of Section 17265 property to which the election applies and the percentage of the cost of each of those items which is to be taken into account under subdivision (a).

(B) Be made on the taxpayer's return of the tax imposed by this part for the taxable year.

(2) This election shall be made in the time, form, and manner which the Franchise Tax Board may prescribe.

(3) Any election made under this section, and any specification contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(d) (1) For purposes of this section, "Section 17265 property" means property acquired by the taxpayer which is used exclusively within a program area (as defined in Section 7082 of the Government Code) and consists of machinery and machinery parts used for fabricating, processing, assembling, and manufacturing and machinery and machinery parts used for the production of renewable energy resources or air or water pollution control mechanisms.

"Section 17265 property" also means property used as an integral part of a qualified business within a program area (as defined in Section 7082 of the Government Code).

(2) For purposes of paragraph (1), "purchase" means any acquisition of property, but only if:

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under Section 267 or Section 707(b) of the Internal Revenue Code (but, in applying Sections 267(b) and 267(c) for purposes of this section, Section 267(c)(4) shall be treated as providing that the family of an individual shall include only the individual's spouse, ancestors, and lineal descendants).

(B) The basis of the property in the hands of the person acquiring it is not determined in whole or in part by reference to the adjusted basis of that property in the hands of the person from whom it is acquired.

(3) For purposes of this section, the cost of property does not include so much of the basis of the property as is determined by reference to the basis of other property held at any time by the person acquiring the property.

(4) This section shall not apply to estates and trusts.

(5) This section shall not apply to any property for which the taxpayer may not make an election for the taxable year under Section 179 of the Internal Revenue Code because of the application of the provisions of Section 179(d) of the Internal Revenue Code.

(6) In the case of a partnership, the percentage limitation specified in subdivision (a) shall apply with respect to the partnership and with respect to each partner.

(e) For purposes of this section, "taxpayer" means a taxpayer who conducts a qualified business within a program area, as defined in Section 7082 of the Government Code.

(f) Any taxpayer who elects to be subject to this section shall not be entitled to claim for the same property, the deduction under Section 179 of the Internal Revenue Code, relating to an election to expense certain depreciable business assets. However, the taxpayer may claim depreciation by any method permitted by Section 168 of the Internal Revenue Code, commencing with the taxable year following the taxable year in which the Section 17265 property is placed in service.

(g) The aggregate cost which may be taken into account under subdivision (a) for any taxable year shall not exceed the following applicable amount for the taxable year of the designation of a program area and taxable years thereafter:

	The applicable amount is:
Taxable year of designation	$100,000
1st taxable year thereafter	100,000
2nd taxable year thereafter	75,000
3rd taxable year thereafter	75,000
Each taxable year thereafter	50,000

(h) Any amounts deducted under subdivision (a) with respect to property which ceases to be qualified property at any time before the close of the second taxable year after the property is placed in service shall be included in income for that year.

SEC. 16. Section 17321 of the Revenue and Taxation Code is amended to read:

17321. Subchapter C of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to corporate distributions and adjustments, shall apply, except as otherwise provided.

SEC. 17. Section 17501 of the Revenue and Taxation Code is amended to read:

17501. Subchapter D of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to deferred compensation, shall apply, except as otherwise provided.

SEC. 18. Section 17504 of the Revenue and Taxation Code is amended to read:

17504. (a) The provisions of Section 402 of the Internal Revenue Code, relating to taxability of beneficiaries of employees' trusts, shall

be modified as follows:

(1) The amendments and transitional rules made by Public Law 99-514 shall be applicable to this part for the same transactions and the same years as they are applicable for federal purposes, except as otherwise provided.

(2) The basis of any person in an employees' trust shall include the amount of any contributions made prior to January 1, 1987, which were not allowed as a deduction under former Sections 17503 and 17513 (including predecessor Section 17524 repealed by Chapter 488 of the Statutes of 1983) relating to special limitations for self-employed individuals.

(b) (1) There is hereby imposed a tax on lump-sum distributions computed in accordance with the provisions of Section 402(d) of the Internal Revenue Code using the rates and brackets prescribed in subdivision (a) of Section 17041 (without regard to Section 17045) in lieu of the rates and brackets in Section 1(c) of the Internal Revenue Code. The recipient of the lump-sum distribution shall be liable for the tax imposed by this paragraph.

(2) For purposes of this part, the provisions of Section 1122(h) of Public Law 99-514, as modified by Section 1011A(b) of Public Law 100-647, shall apply, except as modified by each of the following:

(A) The provisions of Section 1122(h) (3) (B) of Public Law 99-514 shall be modified to refer to Section 17041 rather than Section 1 of the Internal Revenue Code of 1986.

(B) The provisions of Section 1122(h) (3) (B) (ii) of Public Law 99-514 shall be modified to provide a tax rate of 5.5 percent rather than a tax rate of 20 percent.

(C) The provisions of Section 1122(h) (5) of Public Law 99-514 shall be modified to refer to Section 17041 rather than Section 1 of the Internal Revenue Code of 1954.

(3) For purposes of this section, a taxpayer shall elect the same special lump-sum distribution averaging method for purposes of this part as that elected for federal purposes under Section 402(d) (4) (B) of the Internal Revenue Code.

(4) The provisions of Section 1124(a) of Public Law 99-514, as amended by Section 1011A(d) of Public Law 100-647, shall apply.

(5) The provisions of Section 1124(c) of Public Law 99-514, as added by Section 1011A(d) of Public Law 100-647, shall apply.

SEC. 19. Section 17551 of the Revenue and Taxation Code is amended to read:

17551. (a) Subchapter E of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to accounting periods and methods of accounting, shall apply, except as otherwise provided.

(b) For taxable years beginning on or after January 1, 1987, Section 444 of the Internal Revenue Code, relating to election of taxable years other than required taxable years, shall be applicable, except that Section 444(c) (1), relating to effect of election, shall not apply.

SEC. 20. Section 17681 of the Revenue and Taxation Code is

amended to read:

17681. Subchapter I of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to natural resources, shall apply, except as otherwise provided.

SEC. 21. Section 17682 of the Revenue and Taxation Code is repealed.

SEC. 22. Section 17683 of the Revenue and Taxation Code is repealed.

SEC. 23. Section 17731 of the Revenue and Taxation Code is amended to read:

17731. Subchapter J of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to estates, trusts, beneficiaries, and decedents, shall apply, except as otherwise provided.

SEC. 24. Section 17740 of the Revenue and Taxation Code is repealed.

SEC. 25. Section 17851 of the Revenue and Taxation Code is amended to read:

17851. Subchapter K of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to partners and partnerships, shall apply, except as otherwise provided in this part and Chapter 1.5 (commencing with Section 23081) of Part 11.

SEC. 25.5. Section 17870 is added to the Revenue and Taxation Code, to read:

17870. Section 737 of the Internal Revenue Code, relating to recognition of precontribution gain in case of certain distributions to contributing partner, shall not apply.

SEC. 26. Section 17940 of the Revenue and Taxation Code is repealed.

SEC. 27. Section 18031 of the Revenue and Taxation Code is amended to read:

18031. Subchapter O of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to gain or loss on disposition of property, shall apply, except as otherwise provided.

SEC. 28. Section 18036 of the Revenue and Taxation Code is amended to read:

18036. (a) In addition to the adjustments to basis provided by Section 1016(a) of the Internal Revenue Code, a proper adjustment shall also be made for amounts allowed as deductions as deferred expenses under subdivision (b) of former Section 17689 or former Section 17689.5 (relating to certain exploration expenditures) and resulting in a reduction of the taxpayer's taxes under this part, but not less than the amounts allowable under those sections for the taxable year and prior years. A proper adjustment shall also be made for amounts deducted under Section 17252.5, 17265, or 17266.

(b) Notwithstanding the provisions of Sections 164(a) and 1016(a) of the Internal Revenue Code, no adjustment to basis shall be made for any of the following:

(1) Abandonment fees paid in respect of property on which the open-space easement is terminated under Section 51061 or 51093 of

the Government Code.

(2) Tax recoupment fees paid under Section 51142 of the Government Code.

(3) Sales or use tax which is paid or incurred by the taxpayer in connection with the acquisition of property for which a tax credit is claimed pursuant to Section 17052.13.

(c) The provisions of Section 1016(c) of the Internal Revenue Code, relating to increase in basis of property on which additional estate tax is imposed, shall be applicable.

(d) The amendments made to Section 1016 of the Internal Revenue Code by Section 1913(a) of Public Law 102-486, relating to deduction for clean-fuel vehicles and certain refueling property, shall apply to property placed in service after June 30, 1993, without respect to taxable year.

SEC. 29. Section 18151 of the Revenue and Taxation Code is amended to read:

18151. Subchapter P of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to capital gains and losses, shall apply, except as otherwise provided.

SEC. 30. Section 18165 is added to the Revenue and Taxation Code, to read:

18165. Section 1245(a)(2)(C) of the Internal Revenue Code, relating to certain deductions treated as amortization, is modified to also refer to Sections 17252.5, 17265, and 17266.

SEC. 31. Section 18934 of the Revenue and Taxation Code is amended to read:

18934. (a) Section 6109 of the Internal Revenue Code, relating to identifying numbers, shall apply, except as otherwise provided.

(b) Identifying numbers shall be required on state tax returns, statements, or other documents in the form and manner as the Franchise Tax Board may require.

(c) Section 6109(e) of the Internal Revenue Code, relating to furnishing numbers for certain dependents, shall not apply.

(d) Section 6109(h) of the Internal Revenue Code, relating to identifying information required with respect to certain seller-provided financing, shall not apply.

SEC. 32. Section 23051.5 of the Revenue and Taxation Code is amended to read:

23051.5. (a) (1) Unless otherwise specifically provided, the terms "Internal Revenue Code," "Internal Revenue Code of 1954," or "Internal Revenue Code of 1986," for purposes of this part, mean Title 26 of the United States Code, including all amendments thereto, as enacted on the specified date for the applicable taxable year as defined in paragraph (1) of subdivision (a) of Section 17024.5, except that for purposes of this part, "income year" shall be substituted for "taxable year" throughout that section.

(2) Unless otherwise specifically provided, for federal laws enacted on or after January 1, 1987, and on or before the specified date for the income year, uncodified provisions that relate to

provisions of the Internal Revenue Code that are incorporated for purposes of this part, shall be applicable to the same income years as the incorporated provisions.

(3) Subtitle G (Tax Technical Corrections) and Part I of Subtitle H (Repeal of Expired or Obsolete Provisions) of the Revenue Reconciliation Act of 1990 (Public Law 101-508) modified numerous provisions of the Internal Revenue Code and provisions of prior federal acts, some of which are incorporated by reference into this part. Unless otherwise provided, the provisions described in the preceding sentence, to the extent that they modify provisions that are incorporated into this part, are declaratory of existing law and shall be applied in the same manner and for the same periods as specified in the Revenue Reconciliation Act of 1990.

(b) Unless otherwise specifically provided, when applying any section of the Internal Revenue Code for purposes of this part, any provision which refers to any of the following shall not be applicable for purposes of this part:

(1) Domestic International Sales Corporations (DISC), as defined in Section 992(a) of the Internal Revenue Code.

(2) Foreign Sales Corporations (FSC), as defined in Section 922(a) of the Internal Revenue Code.

(3) A personal holding company, as defined in Section 542 of the Internal Revenue Code.

(4) A foreign personal holding company, as defined in Section 552 of the Internal Revenue Code.

(5) A foreign investment company, as defined in Section 1246(b) of the Internal Revenue Code.

(6) A foreign trust as defined in Section 679 of the Internal Revenue Code.

(7) Foreign income taxes and foreign income tax credits.

(8) Federal tax credits and carryovers of federal tax credits.

(c) (1) The provisions contained in Sections 41 to 44, inclusive, and 172 of the Tax Reform Act of 1984 (Public Law 98-369), relating to treatment of debt instruments, shall not be applicable for income years beginning before January 1, 1987.

(2) The provisions contained in Public Law 99-121, relating to the treatment of debt instruments, shall not be applicable for income years beginning before January 1, 1987.

(3) For income years beginning on and after January 1, 1987, the provisions referred to by paragraphs (1) and (2) shall be applicable for purposes of this part in the same manner and with respect to the same obligations as the federal provisions, except as otherwise provided in this part.

(d) When applying the Internal Revenue Code for purposes of this part, regulations issued by "the secretary," in effect as of the specified effective date of the Internal Revenue Code sections referred to in paragraph (1) of subdivision (a) of Section 17024.5, shall be applicable to the extent that they do not conflict with this part or with regulations issued by the Franchise Tax Board.

(e) Whenever this part allows a taxpayer to make an election, the following rules shall apply:

(1) A proper election filed with the Internal Revenue Service in accordance with the Internal Revenue Code or regulations issued by "the secretary" shall be deemed to be a proper election for purposes of this part, unless otherwise expressly provided in this part or in regulations issued by the Franchise Tax Board.

(2) A copy of that election shall be furnished to the Franchise Tax Board upon request.

(3) To obtain treatment other than that elected for federal purposes, a separate election shall be filed with the Franchise Tax Board at the time and in the manner which may be required by the Franchise Tax Board.

(f) Whenever this part allows or requires a taxpayer to file an application or seek consent, the rules set forth in subdivision (e) shall apply to that application or consent.

(g) When applying the Internal Revenue Code for purposes of determining the statute of limitations under this part, any reference to a period of three years shall be modified to read four years for purposes of this part.

(h) When applying, for purposes of this part, any section of the Internal Revenue Code or any applicable regulation thereunder, all of the following shall apply:

(1) For purposes of Chapter 2 (commencing with Section 23101), Chapter 2.5 (commencing with Section 23400), and Chapter 3 (commencing with Section 23501), the term "taxable income" shall mean "net income."

(2) For purposes of Article 2 (commencing with Section 23731) of Chapter 4, the term "taxable income" shall mean "unrelated business taxable income," as defined by Section 23732.

(3) Any reference to "subtitle" or "chapter" shall mean this part.

(4) The provisions of Section 7806 of the Internal Revenue Code, relating to construction of title, shall apply.

(5) Any provision of the Internal Revenue Code that becomes operative on or after the specified date for that income year shall become operative on the same date for purposes of this part.

(6) Any provision of the Internal Revenue Code that becomes inoperative on or after the specified date for that income year shall become inoperative on the same date for purposes of this part.

(7) Due account shall be made for differences in federal and state terminology, effective dates, substitution of "income year" for "taxable year" when appropriate, substitution of "Franchise Tax Board" for "secretary" when appropriate, and other obvious differences.

(8) Any provision of the Internal Revenue Code that refers to a "corporation" shall, when applicable for purposes of this part, include a "bank," as defined by Section 23039.

(i) Any reference to a specific provision of the Internal Revenue Code shall include modifications of that provision, if any, in this part.

SEC. 33. Section 23400 of the Revenue and Taxation Code is amended to read:

23400. (a) Part VI of Subchapter A of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to alternative minimum tax, shall apply, except as otherwise provided.

(b) A corporation electing under Chapter 4.5 (commencing with Section 23800) to be treated as an "S corporation" shall not be subject to the tax imposed by this chapter.

SEC. 34. Section 23456 of the Revenue and Taxation Code is amended to read:

23456. For purposes of this part, Section 56 of the Internal Revenue Code is modified as follows:

(a) (1) Section 56(a)(2) of the Internal Revenue Code, relating to mining exploration and development costs, shall apply only to expenses incurred during income years beginning on or after January 1, 1988.

(2) Section 56(a)(5) of the Internal Revenue Code, relating to pollution control facilities, shall apply only to amounts allowable as a deduction under Section 24372.3.

(b) Section 56(c)(2) of the Internal Revenue Code, relating to Merchant Marine Capital Construction Funds, shall not be applicable.

(c) For purposes of applying Section 56(d) of the Internal Revenue Code, all references to "December 31, 1986," are modified to read "December 31, 1987," and all references to "January 1, 1987," are modified to read "January 1, 1988."

(d) Section 56(g)(4)(A) of the Internal Revenue Code is modified to provide the following:

(1) In the case of any property placed in service on or after January 1, 1981, and prior to January 1, 1987, and not described in clause (i), (ii), or (iii) of Section 56(g)(4)(A) of the Internal Revenue Code, the amount allowable as depreciation or amortization with respect to that property shall be the same amount that would have been allowable for the income year had the taxpayer depreciated the property under the straight line method for each income year of the useful life for which the taxpayer has held the property.

(2) In the case of any property placed in service on or after January 1, 1987, and prior to January 1, 1990, and not described in clause (i), (ii), or (iii) of Section 56(g)(4)(A) of the Internal Revenue Code, the amount allowable as depreciation or amortization with respect to that property shall be determined by each of the following:

(A) Taking into account the adjusted basis of that property (as determined for purposes of computing alternative minimum taxable income) as of the close of the last income year beginning before January 1, 1990.

(B) Using the straightline method over the remainder of the recovery period applicable to that property under the alternative

system of Section 168(g) of the Internal Revenue Code.

(3) The amendments made to paragraph (2) by the act adding this paragraph shall apply to income years beginning on or after January 1, 1990.

(e) (1) Section 56(g)(4)(C) of the Internal Revenue Code, relating to disallowance of items not deductible in computing earnings and profits, shall be modified as follows:

(A) A deduction shall be allowed for amounts allowable as a deduction for purposes of the regular tax under Sections 24402, 24410, 24411, and 25106.

(B) Section 56(g)(4)(C)(ii) of the Internal Revenue Code, relating to special rule for 100 percent dividends, shall not be applicable.

(C) Section 56(g)(4)(C)(iii) of the Internal Revenue Code, relating to special rule for dividends from Section 936 companies, shall not be applicable.

(D) Section 56(g)(4)(C)(iv) of the Internal Revenue Code, relating to special rule for certain dividends received by certain cooperatives, shall not be applicable.

(2) Section 56(g)(4)(D)(ii) of the Internal Revenue Code is modified to specify that Sections 24364 and 24407 shall not apply to expenditures paid or incurred in income years beginning on or after January 1, 1990.

(3) With respect to corporations which are not subject to the tax imposed under Chapter 2 (commencing with Section 23101), the amount of interest income included in the adjusted current earnings shall not exceed the amount of interest income included for purposes of the regular tax.

(4) Appropriate adjustments shall be made to limit deductions from adjusted current earnings for interest expense in accordance with the provisions of Sections 24344 and 24425.

SEC. 34.5. Section 23456 of the Revenue and Taxation Code is amended to read:

23456. For purposes of this part, Section 56 of the Internal Revenue Code is modified as follows:

(a) (1) Section 56(a)(2) of the Internal Revenue Code, relating to mining exploration and development costs, shall apply only to expenses incurred during income years beginning on or after January 1, 1988.

(2) Section 56(a)(5) of the Internal Revenue Code, relating to pollution control facilities, shall apply only to amounts allowable as a deduction under Section 24372.3.

(b) Section 56(c)(2) of the Internal Revenue Code, relating to Merchant Marine Capital Construction Funds, shall not be applicable.

(c) For purposes of applying Section 56(d) of the Internal Revenue Code, all references to "December 31, 1986," are modified to read "December 31, 1987," and all references to "January 1, 1987," are modified to read "January 1, 1988."

(d) For each income year beginning on or after January 1, 1988, and before January 1, 1990, Section 56(f)(2)(E) of the Internal Revenue Code, as it read during that period, is modified to refer to both of the following:

(1) Cooperatives under Section 24404 in lieu of the deduction allowed under Section 1382(b) of the Internal Revenue Code.

(2) Credit unions under Section 24405 as though the deduction allowed under Section 1382(b) of the Internal Revenue Code applied to credit unions.

(e) Section 56(g)(4)(A) of the Internal Revenue Code is modified to provide the following:

(1) In the case of any property placed in service on or after January 1, 1981, and prior to January 1, 1987, and not described in clause (i), (ii), or (iii) of Section 56(g)(4)(A) of the Internal Revenue Code, the amount allowable as depreciation or amortization with respect to that property shall be the same amount that would have been allowable for the income year had the taxpayer depreciated the property under the straightline method for each income year of the useful life (determined without regard to Section 24354.2) for which the taxpayer has held the property.

(2) In the case of any property placed in service on or after January 1, 1987, and prior to January 1, 1990, and not described in clause (i), (ii), or (iii) of Section 56(g)(4)(A) of the Internal Revenue Code, the amount allowable as depreciation or amortization with respect to that property shall be determined by each of the following:

(A) Taking into account the adjusted basis of that property (as determined for purposes of computing alternative minimum taxable income) as of the close of the last income year beginning before January 1, 1990.

(B) Using the straightline method over the remainder of the recovery period applicable to that property under the alternative system of Section 168(g) of the Internal Revenue Code.

(3) The amendments made to paragraph (2) by the act adding this paragraph shall apply to income years beginning on or after January 1, 1990.

(f) (1) Section 56(g)(4)(C) of the Internal Revenue Code, relating to disallowance of items not deductible in computing earnings and profits, shall be modified as follows:

(A) (i) A deduction shall be allowed for amounts allowable as a deduction for purposes of the regular tax under Sections 24402, 24410, 24411, and 25106.

(ii) For each income year beginning on or after January 1, 1990, a deduction shall be allowed for amounts allowable as a deduction to a credit union for purposes of the regular tax under Section 24405.

(B) Section 56(g)(4)(C)(ii) of the Internal Revenue Code, relating to special rule for 100 percent dividends, shall not be applicable.

(C) Section 56(g)(4)(C)(iii) of the Internal Revenue Code,

relating to special rule for dividends from Section 936 companies, shall not be applicable.

(D) Section 56(g)(4)(C)(iv) of the Internal Revenue Code, relating to special rule for certain dividends received by certain cooperatives, shall not be applicable.

(2) Section 56(g)(4)(D)(ii) of the Internal Revenue Code is modified to specify that Sections 24364 and 24407 shall not apply to expenditures paid or incurred in income years beginning on or after January 1, 1990.

(3) With respect to corporations which are not subject to the tax imposed under Chapter 2 (commencing with Section 23101), the amount of interest income included in the adjusted current earnings shall not exceed the amount of interest income included for purposes of the regular tax.

(4) Appropriate adjustments shall be made to limit deductions from adjusted current earnings for interest expense in accordance with the provisions of Sections 24344 and 24425.

SEC. 35. Section 23603 of the Revenue and Taxation Code is amended to read:

23603. (a) For each income year beginning on or after January 1, 1991, and before January 1, 1995, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to 55 percent of the total cost (including installation charges but excluding interest charges), of a device designed and installed to convert a motor vehicle, that is intended to be used on public roads and highways and is registered in this state, to a low-emission motor vehicle. The credit allowed by this subdivision shall be claimed in the income year the device is installed and shall not exceed one thousand dollars ($1,000) per automobile, motorcycle, or two person passenger vehicle, or three thousand five hundred dollars ($3,500) for a vehicle whose weight is in excess of 5,750 pounds.

(b) (1) The credit provided by subdivision (a) shall also be allowed for an amount equal to 55 percent of the differential cost of a new motor vehicle that is equipped from the factory to operate as a low-emission motor vehicle and is certified by the state board to be a low-emission motor vehicle and which is registered in this state.

(2) For purposes of this section, "differential cost" means the difference in retail cost between a low-emission vehicle and a comparable vehicle that is not low emission. This amount shall be determined by the State Energy Resources Conservation and Development Commission (hereafter referred to as the California Energy Commission), based on information supplied by the taxpayer and subject to the guidelines adopted under subdivision (h).

(3) The "differential cost" defined in paragraph (2) shall be reduced by an amount equal to any amount allowable, for purposes of computing federal income tax, as a credit under Section 30 of the Internal Revenue Code, relating to credit for qualified electric vehicles, for the same vehicle.

(c) For purposes of this section, "device" means any apparatus

not otherwise required by federal or California law that is designed and installed to convert a new or used motor vehicle to a low-emission motor vehicle as certified by the state board.

(d) For purposes of this section, "low-emission motor vehicle" means a vehicle as defined under Section 39037.05 of the Health and Safety Code.

(e) For purposes of this section, "state board" refers to the Air Resources Board.

(f) The taxpayer shall qualify for the credit after application to and certification by the California Energy Commission that all of the following conditions are met:

(1) The device or vehicle qualifies for the credit under this section.

(2) Credit allocation is available.

(g) The taxpayer shall do all of the following:

(1) (A) Apply to the California Energy Commission for credit allocation and certification.

(B) The application for credit allocation shall include all information that is required by the California Energy Commission, including, but not limited to, all of the following:

(i) A plan to purchase a device, as defined in subdivision (c), or a vehicle.

(ii) The cost estimates of the device or vehicle.

(2) Notify the California Energy Commission in a form and manner specified by the California Energy Commission that the device or vehicle has actually been purchased.

(3) Retain a copy of the certification issued by the California Energy Commission.

(4) Make the certification available to the Franchise Tax Board upon demand.

(5) An S corporation shall disclose in its tax return each year all of the following:

(A) The name of each shareholder who received a credit allocation.

(B) The shareholder's social security number or identification number.

(C) The amount of credit allocated to each shareholder.

(h) The California Energy Commission shall do all of the following:

(1) Establish criteria for allocation of the credit amounts in the case where more than seven hundred fifty thousand dollars ($750,000) of credit are requested annually.

(2) Provide guidelines and criteria for application for credit allocation. These guidelines shall be exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. However, these guidelines shall be adopted by the California Energy Commission at a noticed meeting and after one or more public workshops.

(3) Accept applications and issue certificates including the credit

amount to which the taxpayer is entitled.

(4) 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 Energy Commission) of the qualified taxpayers who were issued the certification and the allowable amount of the credit allocated to each taxpayer.

(i) The taxpayers' identification numbers obtained through the tax credit application and certification process shall be used exclusively for state tax administrative purposes.

(j) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(k) The aggregate amount of tax credits granted pursuant to this section and Section 17052.11 shall not exceed seven hundred fifty thousand dollars ($750,000) per year. The California Energy Commission shall not authorize any credit if the credit would cause the total amount of credit authorized in any year under the Personal Income Tax Law and the Bank and Corporation Tax Law to exceed seven hundred fifty thousand dollars ($750,000).

(*l*) The amendments made to this section by the act adding this subdivision shall be operative for income years beginning on or after January 1, 1993.

(m) This section shall remain in effect only until December 1, 1995, and as of that date is repealed.

SEC. 35.5. Section 23603 of the Revenue and Taxation Code is amended to read:

23603. (a) For income years beginning on or after January 1, 1991, and before January 1, 1996, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to 55 percent of the qualified cost paid or incurred by the taxpayer for low-emission vehicles or low-emission conversion devices. The credit allowed by this section shall be claimed in the income year the device is installed or, in the case of a new low-emission motor vehicle, the income year the low-emission vehicle is placed in service, and shall not exceed one thousand dollars ($1,000) per automobile, motorcycle, or two person passenger vehicle, or three thousand five hundred dollars ($3,500) for a vehicle whose weight is in excess of 5,750 pounds.

(b) For purposes of this section:

(1) "Device" means any apparatus not otherwise required by federal or California law that is designed and installed to convert a new or used motor vehicle to a low-emission motor vehicle as certified by the state board.

(2) "Differential cost" means the difference in retail cost between a low-emission vehicle and a comparable vehicle that is not a low-emission vehicle. This amount shall be determined by the State Energy Resources Conservation and Development Commission

(hereafter referred to as the California Energy Commission), based on information supplied by the taxpayer and subject to the guidelines adopted under subdivision (e).

(3) "Low-emission motor vehicle" means a vehicle as defined under Section 39037.05 of the Health and Safety Code.

(4) "Qualified costs" means each of the following:

(A) The total cost (including installation charges but excluding interest charges) of a device designed and installed to convert a qualified motor vehicle to a low-emission motor vehicle.

(B) The differential cost of a new qualified motor vehicle that is equipped from the factory to operate as a low-emission motor vehicle and is certified by the state board to be a low-emission motor vehicle.

(C) Fifteen percent of the purchase price of a nonrecreational motor vehicle that is a low-emission motor vehicle intended to be used on private roads, private school campuses, or commercial or industrial worksites in this state.

(5) "Qualified motor vehicle" means a motor vehicle, as defined by Section 415 of the Vehicle Code, that is either of the following:

(A) A motor vehicle that is intended to be used on public roads and highways and is registered in this state.

(B) A nonrecreational motor vehicle that is intended to be used on private roads, private school campuses, or commercial or industrial worksites in this state.

(6) "State board" refers to the Air Resources Board.

(c) The taxpayer shall qualify for the credit after application to and certification by the California Energy Commission that all of the following conditions are met:

(1) The device or vehicle qualifies for the credit under this section.

(2) Credit allocation is available.

(d) The taxpayer shall do all of the following:

(1) (A) Apply to the California Energy Commission for credit allocation and certification.

(B) The application for credit allocation shall include all information that is required by the California Energy Commission, including, but not limited to, all of the following:

(i) A plan to purchase a device, as defined in subdivision (b), or a vehicle.

(ii) The cost estimates of the device or vehicle.

(2) Notify the California Energy Commission in a form and manner specified by the California Energy Commission that the device or vehicle has actually been purchased.

(3) Retain a copy of the certification issued by the California Energy Commission.

(4) Make the certification available to the Franchise Tax Board upon demand.

(5) The partnership or S corporation shall disclose in its tax return each year all of the following:

(A) The name of each partner or shareholder who received a

credit allocation.

(B) The partner's or shareholder's social security number or identification number.

(C) The amount of credit allocation distributed to each partner or shareholder.

(e) The California Energy Commission shall do all of the following:

(1) Establish criteria for allocation of the credit amounts in the case where more than seven hundred fifty thousand dollars ($750,000) of credit are requested annually.

(2) Provide guidelines and criteria for application for credit allocation. These guidelines shall be exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. However, these guidelines shall be adopted by the California Energy Commission at a noticed meeting and after one or more public workshops.

(3) Accept applications and issue certificates including the credit amount to which the taxpayer is entitled.

(4) 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 Energy Commission) of the qualified taxpayers who were issued the certification and the allowable amount of the credit allocated to each taxpayer.

(f) The taxpayers' identification numbers obtained through the tax credit application and certification process shall be used exclusively for state tax administrative purposes.

(g) The "qualified costs" shall be reduced by an amount equal to any amount allowable, for purposes of computing federal income tax, as a credit under Section 30 of the Internal Revenue Code, relating to credit for qualified electric vehicles, for the same vehicle.

(h) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(i) The aggregate amount of tax credits granted pursuant to this section and Section 17052.11 shall not exceed seven hundred fifty thousand dollars ($750,000) per year. The California Energy Commission shall not authorize any credit if the credit would cause the total amount of credit authorized in any year under the Personal Income Tax Law and the Bank and Corporation Tax Law to exceed seven hundred fifty thousand dollars ($750,000).

(j) (1) This section shall become operative on January 1, 1991.

(2) This section shall remain in effect only until December 1, 1996, and as of that date is repealed.

SEC. 36. Section 23800 of the Revenue and Taxation Code is amended to read:

23800. (a) For any income year beginning on or after January 1, 1987, Subchapter S of Chapter 1 of Subtitle A of the Internal Revenue

Code, relating to the tax treatment of "S corporations" and their shareholders, shall apply, except as otherwise provided.

(b) For income years beginning in 1987 and 1988, reasonable extensions of time may be granted, as appropriate for implementation of this chapter, in the form and the manner as the Franchise Tax Board may prescribe.

SEC. 37. Section 24326 is added to the Revenue and Taxation Code, to read:

24326. (a) Section 136 of the Internal Revenue Code, relating to energy conservation subsidies provided by public utilities, shall apply, except as otherwise provided.

(b) Section 136 of the Internal Revenue Code, relating to energy conservation subsidies provided by public utilities, shall apply to amounts received on or after January 1, 1993, and before January 1, 1995, without regard to income year.

SEC. 38. Section 24356.5 is added to the Revenue and Taxation Code, to read:

24356.5. (a) Section 179A of the Internal Revenue Code, relating to deduction for clean-fuel vehicles and certain refueling property, shall apply to property placed in service after June 30, 1993, without regard to income year, except as otherwise provided.

(b) Section 179A(e)(5) of the Internal Revenue Code, relating to property used outside the United States, is modified to also refer to Sections 24356.2, 24356.3, or 24356.4.

(c) Section 179A(g) of the Internal Revenue Code, relating to termination, is modified to substitute "December 31, 1994" for "December 31, 2004."

SEC. 39. Section 24422 of the Revenue and Taxation Code is amended to read:

24422. No deduction shall be allowed for both of the following:

(a) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate. This subdivision shall not apply to:

(1) Expenditures for the development of mines or deposits deductible under Section 616 of the Internal Revenue Code.

(2) Soil and water conservation expenditures deductible under Section 24369.

(3) Expenditures for farmers for fertilizer, etc., deductible under Section 24377.

(4) Research and experimental expenditures deductible under Section 24365.

(5) Expenditures for which a deduction is allowed under Section 24356.2.

(6) Expenditures for which a deduction is allowed under Section 24356.3.

(7) Expenditures for which a deduction is allowed under Section 24356.4.

(8) Expenditures for which a deduction is allowed under Section 24356.5.

(9) Expenditures for removal of architectural and transportation barriers to the handicapped and elderly that the taxpayer elects to deduct under Section 24383.

(b) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made.

SEC. 40. Section 24451 of the Revenue and Taxation Code is amended to read:

24451. Subchapter C of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to corporate distributions and adjustments, shall apply, except as otherwise provided.

SEC. 41. Section 24601 of the Revenue and Taxation Code is amended to read:

24601. Subchapter D of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to deferred compensation, etc., shall apply, except as otherwise provided.

SEC. 42. Section 24831 of the Revenue and Taxation Code is amended to read:

24831. Subchapter I of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to natural resources, shall apply, except as otherwise provided.

SEC. 43. Section 24832 of the Revenue and Taxation Code is repealed.

SEC. 44. Section 24833 of the Revenue and Taxation Code is repealed.

SEC. 45. Section 24870 of the Revenue and Taxation Code is amended to read:

24870. Subchapter M of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to regulated investment companies, real estate investment trusts, and real estate mortgage investment conduits, shall apply, except as otherwise provided in this part.

SEC. 45.5. Section 24871 of the Revenue and Taxation Code is amended to read:

24871. (a) (1) Section 852(b) (1) of the Internal Revenue Code, relating to imposition of tax on regulated investment companies, shall not apply.

(2) Every regulated investment company shall be subject to the taxes imposed under Chapter 2 (commencing with Section 23101) and Chapter 3 (commencing with Section 23501), except that its "net income," as defined in Section 24341, shall be equal to its "investment company income," as defined in subdivision (b).

(b) "Investment company income" means investment company taxable income, as defined in Section 852(b) (2) of the Internal Revenue Code, modified as follows:

(1) Section 852(b) (2) (A) of the Internal Revenue Code, relating to an exclusion for net capital gain, shall not apply.

(2) Section 852(b) (2) (B) of the Internal Revenue Code, relating to net operating losses, is modified to deny the deduction allowed under Sections 24416 and 24416.1, in lieu of denying the deduction

allowed by Section 172 of the Internal Revenue Code.

(3) In lieu of the provision of Section 852(b)(2)(C) of the Internal Revenue Code, relating to special deductions for corporations, no deduction shall be allowed under Section 24402.

(4) The deduction for dividends paid, under Section 852(b)(2)(D) of the Internal Revenue Code, is modified to allow capital gain dividends and exempt interest dividends (to the extent that interest is included in gross income under this part) to be included in the computation of the deduction.

(c) Section 852(b)(3)(A) of the Internal Revenue Code, relating to capital gains, shall not apply.

(d) Section 852(b)(5)(B) of the Internal Revenue Code, relating to treatment of exempt interest dividends by shareholders, shall not apply.

(e) The provisions of Section 854 of the Internal Revenue Code, relating to limitations applicable to dividends received from regulated investment companies, are modified to refer to Section 24402, in lieu of Section 243 of the Internal Revenue Code.

SEC. 45.6. Section 24872 of the Revenue and Taxation Code is amended to read:

24872. (a) (1) Section 857(b)(1) of the Internal Revenue Code, relating to imposition of tax on real estate investment trusts, shall not apply.

(2) Every real estate investment trust shall be subject to the taxes imposed under Chapter 2 (commencing with Section 23101) and Chapter 3 (commencing with Section 23501), except that its "net income" shall be equal to its "real estate investment trust income," as defined in subdivision (b).

(b) "Real estate investment trust income" means real estate investment company taxable income, as defined in Section 857(b)(2) of the Internal Revenue Code, modified as follows:

(1) In lieu of the provisions of Section 857(b)(2)(A) of the Internal Revenue Code, relating to special deductions for corporations, no deduction shall be allowed under Section 24402.

(2) Section 857(b)(2)(D) of the Internal Revenue Code, relating to an exclusion for an amount equal to the net income from foreclosure property, shall not apply.

(3) Section 857(b)(2)(E) of the Internal Revenue Code, relating to a deduction for an amount equal to the tax imposed in the case of failure to meet certain requirements for the taxable year, shall not apply.

(4) Section 857(b)(2)(F) of the Internal Revenue Code, relating to an exclusion for an amount equal to any net income derived from prohibited transactions, shall not apply.

(c) Section 857(b)(3) of the Internal Revenue Code, relating to an alternative tax in case of capital gains, shall not apply.

(d) Section 857(b)(4)(A) of the Internal Revenue Code, relating to the imposition of tax on income from foreclosure property, shall not apply.

(e) Section 857(b)(5) of the Internal Revenue Code, relating to the imposition of tax in case of failure to meet certain requirements, shall not apply.

(f) Section 857(b)(6)(A) of the Internal Revenue Code, relating to the imposition of tax on income from prohibited transactions, shall not apply.

SEC. 46. Section 24916 of the Revenue and Taxation Code is amended to read:

24916. Proper adjustment with regard to the property shall in all cases be made as follows:

(a) For expenditures, receipts, losses, or other items properly chargeable to capital account. However, no adjustment shall be made for any of the following:

(1) Sales or use tax paid or incurred in connection with the acquisition of property for which a tax credit is claimed pursuant to Section 23612.

(2) Taxes or other carrying charges described in Section 24426, or for expenditures described in Sections 24364 and 24369 for which deductions have been taken in determining net income for the income year or any prior income year.

(b) For exhaustion, wear and tear, obsolescence, amortization, and depletion:

(1) In the case of banks or corporations subject to the tax imposed by Chapter 2, to the extent sustained prior to January 1, 1928, and to the extent allowed (but not less than the amount allowable) under this part, except that no deduction shall be made for amounts in excess of the amount which would have been allowable had depreciation not been computed on the basis of January 1, 1928, value and amounts in excess of the adjustments required by Section 113(b)(1)(B) of the Federal Revenue Act of 1938 for depletion prior to January 1, 1932.

(2) In the case of a taxpayer subject to the tax imposed by Chapter 3, to the extent sustained prior to January 1, 1937, and for periods thereafter to the extent allowed (but not less than the amount allowable) under the provisions of this part.

(3) If a taxpayer has not claimed an amortization deduction for an emergency facility, the adjustment under paragraph (1) shall be made only to the extent ordinarily provided under Sections 24349, and 24372.

(c) In the case of stock (to the extent not provided for in the foregoing subdivisions) for the amount of distributions previously made which, under the law applicable to the year in which the distribution was made, either were tax free or were applicable in reduction of basis (not including distributions made by a corporation, which was classified as a personal service corporation under the provisions of the Federal Revenue Act of 1918 or 1921, out of its earnings or profits which were taxable in accordance with the provisions of Section 218 of the Federal Revenue Act of 1918 or 1921).

(d) (1) In the case of banks or corporations subject to the tax

imposed by Chapter 2, in the case of any bond, as defined in Section 24363, to the extent of the deductions allowable pursuant to Section 24360 with respect thereto.

(2) In the case of taxpayers subject to the tax imposed by Chapter 3, in the case of any bond, as defined in Section 24363, the interest on which is wholly exempt from the tax imposed by this part, to the extent of the amortizable bond premium disallowable as a deduction pursuant to subdivision (b) of Section 24360, and in the case of any other bond, as defined in Section 24363, to the extent of the deductions allowable pursuant to subdivision (a) of Section 24360 (or the amount applied to reduce interest payments under paragraph (2) of subdivision (a) of Section 24363.5) with respect thereto.

(3) In the case of property pledged to the Commodity Credit Corporation, to the extent of the amount received as a loan from the Commodity Credit Corporation and treated by the taxpayer as income for the year in which received pursuant to Section 24273, and to the extent of any deficiency on that loan with respect to which the taxpayer has been relieved from liability.

(e) For amounts allowed as deductions as deferred expenses under Section 616(b) of the Internal Revenue Code, relating to certain expenditures in the development of mines, and resulting in a reduction of the taxpayer's tax, but not less than the amounts allowable under that section for the income year and prior years.

(f) For amounts allowable as deductions as deferred expenses under Section 617(a) of the Internal Revenue Code, relating to certain exploration expenditures, and resulting in a reduction of the taxpayer's tax, but not less than the amounts allowable under that section for the income year and prior years.

(g) For amounts allowed as deductions as deferred expenses under subdivision (a) of Section 24366, relating to research and experimental expenditures, and resulting in a reduction of the bank or corporations' taxes under this part, but not less than the amounts allowable under that section for the income year and prior years.

(h) For amounts allowed as deductions for payments made on account of transfers of franchises, trademarks, or trade names under Section 24378.

(i) For amounts allowed as deductions under Sections 24356.2, 24356.3, and 24356.4.

(j) (1) To the extent provided in Section 179A(e)(6)(A) of the Internal Revenue Code, relating to basis reduction for clean-fuel vehicles and certain refueling property.

(2) This subdivision shall apply to property placed in service after June 30, 1993, without regard to income year.

SEC. 47. Section 24990 of the Revenue and Taxation Code is amended to read:

24990. Subchapter P of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to capital gains and losses, shall apply, except as otherwise provided.

SEC. 48. Section 24990.6 is added to the Revenue and Taxation

Code, to read:

24990.6. Section 1245(a)(2)(C) of the Internal Revenue Code, relating to certain deductions treated as amortization, is modified to also refer to Sections 24356.2, 24356.3, and 24356.4.

SEC. 49. Section 26081.5 is added to the Revenue and Taxation Code, to read:

26081.5. If any overpayment of tax is claimed as a credit against estimated tax for the succeeding income year, that amount shall be considered as payment of the tax for the succeeding income year (whether or not claimed as a credit in the return of estimated tax for that succeeding income year), and no claim for credit or refund of that overpayment shall be allowed for the income year in which the overpayment arises.

SEC. 50. Sections 2.5 and 35.5 of this bill incorporate amendments to Sections 17052.11 and 23603 of the Revenue and Taxation Code proposed by both this bill and SB 146. Sections 2.5 and 35.5 shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Sections 17052.11 and 23603 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 146, in which case Sections 17052.11 and 23603 of the Revenue and Taxation Code, as amended by SB 146, shall remain operative only until the operative date of this bill, at which time Sections 2.5 and 35.5 of this bill shall become operative, and Sections 2 and 35 of this bill shall not become operative.

SEC. 51. Section 34.5 of this bill incorporates amendments to Section 23456 of the Revenue and Taxation Code proposed by both this bill and AB 63. Section 34.5 shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 23456 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 63, in which case Section 23456 of the Revenue and Taxation Code, as amended by AB 63, shall remain operative only until the operative date of this bill, at which time Section 34.5 of this bill shall become operative, and Section 34 of this bill shall not become operative.

SEC. 52. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 874

An act to amend, repeal, and add Section 23081 of, to add Sections 17955 and 23040.1 to, and to repeal and add Section 17870 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 17870 of the Revenue and Taxation Code, as added by Assembly Bill 35 of the 1993–94 Regular Session, is repealed.

SEC. 2. Section 17870 is added to the Revenue and Taxation Code, to read:

17870. (a) Section 737 of the Internal Revenue Code, relating to recognition of precontribution gain in the case of certain distributions to the contributing partner, shall apply to distributions in taxable years commencing on or after January 1, 1993.

(b) Section 1937(b)(1) of the Comprehensive National Energy Policy Act of 1992 (Public Law 102-486), relating to technical amendments to Section 704(c)(1) of the Internal Revenue Code, shall apply to distributions in taxable years commencing on or after January 1, 1993.

(c) Section 1937(b)(2) of the Comprehensive National Energy Policy Act of 1992 (Public Law 102-486), relating to technical amendments to Section 731(c) of the Internal Revenue Code, shall apply to distributions in taxable years ending on or after January 1, 1993.

SEC. 3. Section 17955 is added to the Revenue and Taxation Code, to read:

17955. (a) Notwithstanding Sections 17951, 17952, and 17953, gross income of a nonresident (as defined in Section 17015) from sources within this state shall not include dividends, interest, or gains and losses from qualifying investment securities if any of the following apply:

(1) In the case of an individual, with respect to the qualifying investment securities, the taxpayer's only contact with this state is through a broker, dealer, or investment adviser located in this state.

(2) In the case of a partner's distributive share of income from qualifying investment securities, the partnership qualifies as an investment partnership, whether or not the partnership has a usual place of business located in this state.

(3) In the case of a beneficiary of a qualifying estate or trust, the taxpayer's only contact with this state is through an investment account managed by a corporate fiduciary located in this state.

(4) In the case of a unit holder in a regulated investment company (as defined in Section 851 of the Internal Revenue Code), to the

extent of the dividends distributed by the regulated investment company, whether or not the regulated investment company has a principal place of business in this state.

(b) This section shall not apply to income derived from investment activity that is interrelated with any trade or business activity of the nonresident or an entity in which the nonresident owns an interest in this state, whose primary activities are separate and distinct from the acts of acquiring, managing, or disposing of qualified investment securities, or if those securities were acquired with working capital of a trade or business activity conducted in this state in which the nonresident owns an interest.

(c) For purposes of this section:

(1) "Investment partnership" means a partnership that meets both of the following requirements:

(A) No less than 90 percent of the partnership's cost of its total assets consist of qualifying investment securities, deposits at banks or other financial institutions, and office space and equipment reasonably necessary to carry on its activities as an investment partnership.

(B) No less than 90 percent of its gross income consists of interest, dividends, and gains from the sale or exchange of qualifying investment securities.

(2) "Qualifying estate or trust" means an estate or trust that meets both of the following requirements:

(A) No less than 90 percent of the estate's or trust's cost of its total assets consist of qualifying investment securities, deposits at banks or other financial institutions, and office space and equipment reasonably necessary to carry on its investment activities.

(B) No less than 90 percent of its gross income consists of interest, dividends, and gains from the sale or exchange of qualifying investment securities.

(3) (A) "Qualifying investment securities" include all of the following:

(i) Common stock, including preferred or debt securities convertible into common stock, and preferred stock.

(ii) Bonds, debentures, and other debt securities.

(iii) Foreign and domestic currency deposits or equivalents and securities convertible into foreign securities.

(iv) Mortgage- or asset-backed securities secured by federal, state, or local governmental agencies.

(v) Repurchase agreements and loan participations.

(vi) Foreign currency exchange contracts and forward and futures contracts on foreign currencies.

(vii) Stock and bond index securities and futures contracts, and other similar financial securities and futures contracts on those securities.

(viii) Options for the purchase or sale of any of the securities, currencies, contracts, or financial instruments described in clauses (i) to (vii), inclusive.

(ix) Regulated futures contracts.

(B) "Qualifying investment securities" does not include an interest in a partnership unless that partnership is itself an investment partnership.

SEC. 4. Section 23040.1 is added to the Revenue and Taxation Code, to read:

23040.1. (a) Notwithstanding Sections 23040 and 25101, income derived from or attributable to sources within this state shall not include the distributive share of interest, dividends, and gains from the sale or exchange of qualifying investment securities derived by a bank or corporation that is a partner in a partnership that qualifies as an investment partnership under Section 17955, whether or not the partnership has a usual place of business in this state, if the income from the partnership is the bank's or corporation's only income derived from or attributable to sources within this state.

(b) Subdivision (a) shall not apply to a bank or corporation that participates in the management of the investment activities of the investment partnership or that is engaged in a unitary business with another bank, corporation, or partnership that participates in the management of the investment activities of the partnership or has income derived from or attributable to sources within this state other than income described in subdivision (a).

(c) For purposes of this section:

(1) "Investment partnership" means a partnership that meets both of the following requirements:

(A) No less than 90 percent of the partnership's cost of its total assets consist of qualifying investment securities, deposits at banks or other financial institutions, and office space and equipment reasonably necessary to carry on its activities as an investment partnership.

(B) No less than 90 percent of its gross income consists of interest, dividends, and gains from the sale or exchange of qualifying investment securities.

(2) (A) "Qualifying investment securities" include all of the following:

(i) Common stock, including preferred or debt securities convertible into common stock, and preferred stock.

(ii) Bonds, debentures, and other debt securities.

(iii) Foreign and domestic currency deposits or equivalents and securities convertible into foreign securities.

(iv) Mortgage- or asset-backed securities secured by federal, state, or local governmental agencies.

(v) Repurchase agreements and loan participations.

(vi) Foreign currency exchange contracts and forward and futures contracts on foreign currencies.

(vii) Stock and bond index securities and futures contracts, and other similar financial securities and futures contracts on those securities.

(viii) Options for the purchase or sale of any of the securities,

currencies, contracts, or financial instruments described in clauses (i) to (vii), inclusive.

(ix) Regulated futures contracts.

(B) "Qualifying investment securities" does not include an interest in a partnership unless that partnership is itself an investment partnership.

SEC. 5. Section 23081 of the Revenue and Taxation Code is amended to read:

23081. (a) For each taxable year beginning on or after January 1, 1988, every limited partnership doing business in this state (as defined by Section 23101) and required to file a return under Section 17932 shall pay annually to this state a tax for the privilege of doing business in this state in an amount equal to the applicable amount specified in Section 23153 for the current taxable year.

(b) In addition to any limited partnership that is doing business in this state and therefore is subject to the tax imposed by subdivision (a), for each taxable year beginning on or after January 1, 1993, every limited partnership that has executed, acknowledged, and filed a certificate of limited partnership with the Secretary of State pursuant to Section 15621 of the Corporations Code shall pay annually the tax prescribed in subdivision (a). The tax shall be paid for each taxable year, or part thereof, until a certificate of dissolution or certificate of cancellation is filed on behalf of the limited partnership with the office of the Secretary of State pursuant to Section 15623 of the Corporations Code.

(c) The tax imposed under this section shall be due and payable on the date the return is required to be filed under Section 18432.

(d) For purposes of this section, "limited partnership" means any partnership formed by two or more persons under the laws of this state or any other jurisdiction and having one or more general partners and one or more limited partners.

(e) This section shall remain in effect only until January 1, 1994, and as of that date is repealed.

SEC. 6. Section 23081 is added to the Revenue and Taxation Code, to read:

23081. (a) For each taxable year beginning on or after January 1, 1988, every limited partnership doing business in this state (as defined by Section 23101) and required to file a return under Section 18633 shall pay annually to this state a tax for the privilege of doing business in this state in an amount equal to the applicable amount specified in Section 23153 for the current taxable year.

(b) In addition to any limited partnership that is doing business in this state and therefore is subject to the tax imposed by subdivision (a), for each taxable year beginning or after January 1, 1993, every limited partnership that has executed, acknowledged, and filed a certificate of limited partnership with the Secretary of State pursuant to Section 15621 of the Corporations Code shall pay annually the tax prescribed in subdivision (a). The tax shall be paid for each taxable year, or part thereof, until a certificate of dissolution

or certificate of cancellation is filed on behalf of the limited partnership with the office of the Secretary of State pursuant to Section 15623 of the Corporations Code.

(c) The tax imposed under this section shall be due and payable on the date the return is required to be filed under Section 18633.

(d) For purposes of this section, "limited partnership" means any partnership formed by two or more persons under the laws of this state or any other jurisdiction and having one or more general partners and one or more limited partners.

(e) This section shall become operative on January 1, 1994.

SEC. 7. The repeal of Section 17870 of the Revenue and Taxation Code made by Section 1 of this act shall only become operative if Assembly Bill 35 of the 1993–94 Regular Session is enacted, becomes effective on or before January 1, 1994, and adds Section 17870 to the Revenue and Taxation Code, in which case Section 17870 of the Revenue and Taxation Code, as added by Section 2 of this act, shall not become operative.

SEC. 8. It is the intent of the Legislature that no inference be drawn in connection with any matter considered under Sections 17951 to 17954, inclusive, or Section 23040 of the Revenue and Taxation Code, for any taxable or income year beginning before January 1, 1993, with respect to the addition of Sections 17955 and 23040.1 to the Revenue and Taxation Code by this act.

SEC. 9. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 875

An act to amend Sections 8651.8, 17052.11, and 23603 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 8651.8 of the Revenue and Taxation Code is amended to read:

8651.8. (a) Notwithstanding Section 8651, the excise tax imposed upon ethanol or methanol containing not more than 15 percent gasoline or diesel fuels shall be one-half the rate prescribed by Section 8651 for each gallon of fuel used.

(b) All references in this code to Section 8651 shall be deemed, with respect to the rate imposed upon ethanol or methanol, to also refer to this section.

SEC. 2. Section 17052.11 of the Revenue and Taxation Code is amended to read:

17052.11. (a) For each taxable year beginning on or after January 1, 1991, and before January 1, 1996, there shall be allowed as a credit against the amount of "net tax" (as defined in Section 17039) an amount equal to 55 percent of the qualified costs paid or incurred by the taxpayer for low-emission vehicles or low-emission conversion devices. The credit allowed by this section shall be claimed in the taxable year the device is installed or, in the case of a new low-emission motor vehicle, the taxable year the low-emission vehicle is placed in service, and shall not exceed one thousand dollars ($1,000) per automobile, motorcycle, or two person passenger vehicle, or three thousand five hundred dollars ($3,500) for a vehicle whose weight is in excess of 5,750 pounds.

(b) In the case of a husband or wife who files a separate return, the credit may be taken by either or equally divided between them. In the case of a partnership, the tax credit may be divided between the partners pursuant to a written partnership agreement in accordance with Chapter 10 (commencing with Section 17851), which includes Section 704 of the Internal Revenue Code concerning substantial economic effect, relating to a partner's distributive share.

(c) For purposes of this section:

(1) "Device" means any apparatus not otherwise required by federal or California law that is designed and installed to convert a new or used motor vehicle to a low-emission motor vehicle as certified by the state board.

(2) "Differential cost" means the difference in retail cost between a low-emission vehicle and a comparable vehicle that is not a low-emission vehicle. This amount shall be determined by the State Energy Resources Conservation and Development Commission (hereafter referred to as the California Energy Commission), based on information supplied by the taxpayer and subject to the guidelines adopted under subdivision (f).

(3) "Low-emission motor vehicle" means a vehicle as defined under Section 39037.05 of the Health and Safety Code.

(4) "Qualified costs" means each of the following:

(A) The total cost (including installation charges but excluding interest charges) of a device designed and installed to convert a qualified motor vehicle to a low-emission motor vehicle.

(B) The differential cost of a new qualified motor vehicle that is equipped from the factory to operate as a low-emission motor vehicle and is certified by the state board to be a low-emission motor vehicle.

(C) Fifteen percent of the purchase price of a nonrecreational motor vehicle that is a low-emission motor vehicle intended to be used on private roads, private school campuses, or commercial or industrial worksites in this state.

(5) "Qualified motor vehicle" means a motor vehicle, as defined by Section 415 of the Vehicle Code, that is either of the following:

(A) A motor vehicle that is intended to be used on public roads and highways and is registered in this state.

(B) A nonrecreational motor vehicle that is intended to be used

on private roads, private school campuses, or commercial or industrial worksites in this state.

(6) "State board" refers to the Air Resources Board.

(d) The taxpayer or partnership shall qualify for the credit after application to and certification by the California Energy Commission that all of the following conditions are met:

(1) The device or vehicle qualifies for the credit under this section.

(2) Credit allocation is available.

(e) The taxpayer or partnership shall do all of the following:

(1) (A) Apply to the California Energy Commission for credit allocation and certification.

(B) The application for credit allocation shall include all information that is required by the California Energy Commission, including, but not limited to, all of the following:

(i) A plan to purchase a device, as defined in subdivision (c), or a vehicle.

(ii) The cost estimates of the device or vehicle.

(2) Notify the California Energy Commission in a form and manner specified by the California Energy Commission that the device or vehicle has actually been purchased.

(3) Retain a copy of the certification issued by the California Energy Commission.

(4) Make the certification available to the Franchise Tax Board upon demand.

(5) The partnership shall disclose in its tax return each year all of the following:

(A) The name of each partner who received a credit allocation.

(B) The partner's social security number or identification number.

(C) The amount of credit allocation distributed to each partner.

(f) The California Energy Commission shall do all of the following:

(1) Establish criteria for allocation of the credit amounts in the case where more than seven hundred fifty thousand dollars ($750,000) of credits are requested annually.

(2) Provide guidelines and criteria for application for credit allocation. These guidelines shall be exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. However, these guidelines shall be adopted by the California Energy Commission at a noticed meeting and after one or more public workshops.

(3) Accept applications and issue certificates including the credit amount to which the taxpayer or partnership is entitled.

(4) 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 Energy Commission) of the qualified taxpayers or partnerships who were issued the certification and the allowable

amount of the credit allocated to each taxpayer or partnership.

(g) The taxpayers' social security numbers or identification numbers obtained through the tax credit application and certification process shall be used exclusively for state tax administrative purposes.

(h) If a federal tax credit is enacted for costs incurred by a taxpayer for devices described in this section, then to the extent that credit is allowed or allowable, the state credit provided in subdivision (a) shall be reduced by the amount of the federal credit.

(i) That portion of the credit under this section which exceeds the "net tax" for the taxable year may not be carried over and applied to the "net tax" in succeeding taxable years.

(j) The aggregate amount of tax credits granted pursuant to this section and Section 23603 shall not exceed seven hundred fifty thousand dollars ($750,000) per year. The California Energy Commission shall not authorize any credit if the credit would cause the total amount of credit authorized in any year under the Personal Income Tax Law and the Bank and Corporation Tax Law to exceed seven hundred fifty thousand dollars ($750,000).

(k) (1) This section shall become operative on January 1, 1991.

(2) This section shall remain in effect only until December 1, 1996, and as of that date is repealed.

SEC. 2.5. Section 17052.11 of the Revenue and Taxation Code is amended to read:

17052.11. (a) For each taxable year beginning on or after January 1, 1991, and before January 1, 1996, there shall be allowed as a credit against the amount of "net tax" (as defined in Section 17039) an amount equal to 55 percent of the qualified costs paid or incurred by the taxpayer for low-emission vehicles or low-emission conversion devices. The credit allowed by this section shall be claimed in the taxable year the device is installed or, in the case of a new low-emission motor vehicle, the taxable year the low-emission vehicle is placed in service, and shall not exceed one thousand dollars ($1,000) per automobile, motorcycle, or two person passenger vehicle, or three thousand five hundred dollars ($3,500) for a vehicle whose weight is in excess of 5,750 pounds.

(b) For purposes of this section:

(1) "Device" means any apparatus not otherwise required by federal or California law that is designed and installed to convert a new or used motor vehicle to a low-emission motor vehicle as certified by the state board.

(2) "Differential cost" means the difference in retail cost between a low-emission vehicle and a comparable vehicle that is not a low-emission vehicle. This amount shall be determined by the State Energy Resources Conservation and Development Commission (hereafter referred to as the California Energy Commission), based on information supplied by the taxpayer and subject to the guidelines adopted under subdivision (e).

(3) "Low-emission motor vehicle" means a vehicle as defined

under Section 39037.05 of the Health and Safety Code.

(4) "Qualified costs" means each of the following:

(A) The total cost (including installation charges but excluding interest charges) of a device designed and installed to convert a qualified motor vehicle to a low-emission motor vehicle.

(B) The differential cost of a new qualified motor vehicle that is equipped from the factory to operate as a low-emission motor vehicle and is certified by the state board to be a low-emission motor vehicle.

(C) Fifteen percent of the purchase price of a nonrecreational motor vehicle that is a low-emission motor vehicle intended to be used on private roads, private school campuses, or commercial or industrial worksites in this state.

(5) "Qualified motor vehicle" means a motor vehicle, as defined by Section 415 of the Vehicle Code, that is either of the following:

(A) A motor vehicle that is intended to be used on public roads and highways and is registered in this state.

(B) A nonrecreational motor vehicle that is intended to be used on private roads, private school campuses, or commercial or industrial worksites in this state.

(6) "State board" refers to the Air Resources Board.

(c) The taxpayer or partnership shall qualify for the credit after application to and certification by the California Energy Commission that all of the following conditions are met:

(1) The device or vehicle qualifies for the credit under this section.

(2) Credit allocation is available.

(d) The taxpayer or partnership shall do all of the following:

(1) (A) Apply to the California Energy Commission for credit allocation and certification.

(B) The application for credit allocation shall include all information that is required by the California Energy Commission, including, but not limited to, all of the following:

(i) A plan to purchase a device, as defined in subdivision (b), or a vehicle.

(ii) The cost estimates of the device or vehicle.

(2) Notify the California Energy Commission in a form and manner specified by the California Energy Commission that the device or vehicle has actually been purchased.

(3) Retain a copy of the certification issued by the California Energy Commission.

(4) Make the certification available to the Franchise Tax Board upon demand.

(5) The partnership shall disclose in its tax return each year all of the following:

(A) The name of each partner who received a credit allocation.

(B) The partner's social security number or identification number.

(C) The amount of credit allocation distributed to each partner.

(e) The California Energy Commission shall do all of the

following:

(1) Establish criteria for allocation of the credit amounts in the case where more than seven hundred fifty thousand dollars ($750,000) of credits are requested annually.

(2) Provide guidelines and criteria for application for credit allocation. These guidelines shall be exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. However, these guidelines shall be adopted by the California Energy Commission at a noticed meeting and after one or more public workshops.

(3) Accept applications and issue certificates including the credit amount to which the taxpayer or partnership is entitled.

(4) 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 Energy Commission) of the qualified taxpayers or partnerships who were issued the certification and the allowable amount of the credit allocated to each taxpayer or partnership.

(f) The taxpayers' social security numbers or identification numbers obtained through the tax credit application and certification process shall be used exclusively for state tax administrative purposes.

(g) The "qualified costs" shall be reduced by an amount equal to any amount allowable, for purposes of computing federal income tax, as a credit under Section 30 of the Internal Revenue Code, relating to credit for qualified electric vehicles, for the same vehicle.

(h) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(i) The aggregate amount of tax credits granted pursuant to this section and Section 23603 shall not exceed seven hundred fifty thousand dollars ($750,000) per year. The California Energy Commission shall not authorize any credit if the credit would cause the total amount of credit authorized in any year under the Personal Income Tax Law and the Bank and Corporation Tax Law to exceed seven hundred fifty thousand dollars ($750,000).

(j) (1) This section shall become operative on January 1, 1991.

(2) This section shall remain in effect only until December 1, 1996, and as of that date is repealed.

SEC. 3. Section 23603 of the Revenue and Taxation Code is amended to read:

23603. (a) For each income year beginning on or after January 1, 1991, and before January 1, 1996, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to 55 percent of the qualified costs paid or incurred by the taxpayer for low-emission vehicles or low-emission conversion devices. The credit allowed by this section shall be claimed in the income year the device is installed or, in the case of a new low-emission motor vehicle, the

income year the low-emission vehicle is placed in service, and shall not exceed one thousand dollars ($1,000) per automobile, motorcycle, or two person passenger vehicle, or three thousand five hundred dollars ($3,500) for a vehicle whose weight is in excess of 5,750 pounds.

(b) If two or more taxpayers share in the expenses eligible for the credit provided by this section, each taxpayer shall be eligible to receive the tax credit in proportion to 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 partner's distributive share.

(c) For purposes of this section:

(1) "Device" means any apparatus not otherwise required by federal or California law that is designed and installed to convert a new or used motor vehicle to a low-emission motor vehicle as certified by the state board.

(2) "Differential cost" means the difference in retail cost between a low-emission vehicle and a comparable vehicle that is not a low-emission vehicle. This amount shall be determined by the State Energy Resources Conservation and Development Commission (hereafter referred to as the California Energy Commission), based on information supplied by the taxpayer and subject to the guidelines adopted under subdivision (f).

(3) "Low-emission motor vehicle" means a vehicle as defined under Section 39037.05 of the Health and Safety Code.

(4) "Qualified costs" means each of the following:

(A) The total cost (including installation charges but excluding interest charges) of a device designed and installed to convert a qualified motor vehicle to a low-emission motor vehicle.

(B) The differential cost of a new qualified motor vehicle that is equipped from the factory to operate as a low-emission motor vehicle and is certified by the state board to be a low-emission motor vehicle.

(C) Fifteen percent of the purchase price of a nonrecreational motor vehicle that is a low-emission motor vehicle intended to be used on private roads, private school campuses, or commercial or industrial worksites in this state.

(5) "Qualified motor vehicle" means a motor vehicle, as defined by Section 415 of the Vehicle Code, that is either of the following:

(A) A motor vehicle that is intended to be used on public roads and highways and is registered in this state.

(B) A nonrecreational motor vehicle that is intended to be used on private roads, private school campuses, or commercial or industrial worksites in this state.

(6) "State board" refers to the Air Resources Board.

(d) The taxpayer shall qualify for the credit after application to and certification by the California Energy Commission that all of the

following conditions are met:

(1) The device or vehicle qualifies for the credit under this section.

(2) Credit allocation is available.

(e) The taxpayer shall do all of the following:

(1) (A) Apply to the California Energy Commission for credit allocation and certification.

(B) The application for credit allocation shall include all information that is required by the California Energy Commission, including, but not limited to, all of the following:

(i) A plan to purchase a device, as defined in subdivision (c), or a vehicle.

(ii) The cost estimates of the device or vehicle.

(2) Notify the California Energy Commission in a form and manner specified by the California Energy Commission that the device or vehicle has actually been purchased.

(3) Retain a copy of the certification issued by the California Energy Commission.

(4) Make the certification available to the Franchise Tax Board upon demand.

(5) The partnership or S corporation shall disclose in its tax return each year all of the following:

(A) The name of each partner or shareholder who received a credit allocation.

(B) The partner's or shareholder's social security number or identification number.

(C) The amount of credit allocation distributed to each partner or shareholder.

(f) The California Energy Commission shall do all of the following:

(1) Establish criteria for allocation of the credit amounts in the case where more than seven hundred fifty thousand dollars ($750,000) of credit are requested annually.

(2) Provide guidelines and criteria for application for credit allocation. These guidelines shall be exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. However, these guidelines shall be adopted by the California Energy Commission at a noticed meeting and after one or more public workshops.

(3) Accept applications and issue certificates including the credit amount to which the taxpayer is entitled.

(4) 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 Energy Commission) of the qualified taxpayers who were issued the certification and the allowable amount of the credit allocated to each taxpayer.

(g) The taxpayers' identification numbers obtained through the tax credit application and certification process shall be used

exclusively for state tax administrative purposes.

(h) If a federal income tax credit is enacted for costs incurred by a taxpayer for the purchase and installation of a device described in this section, then to the extent that credit is allowed or allowable, the state credit provided in subdivision (a) shall be reduced by the amount of the federal credit.

(i) In the case where the credit allowed by this section exceeds the "tax," the excess may not be carried over for application to subsequent years.

(j) The aggregate amount of tax credits granted pursuant to this section and Section 17052.11 shall not exceed seven hundred fifty thousand dollars ($750,000) per year. The California Energy Commission shall not authorize any credit if the credit would cause the total amount of credit authorized in any year under the Personal Income Tax Law and the Bank and Corporation Tax Law to exceed seven hundred fifty thousand dollars ($750,000).

(k) (1) This section shall become operative on January 1, 1991.

(2) This section shall remain in effect only until December 1, 1996, and as of that date is repealed.

SEC. 3.5. Section 23603 of the Revenue and Taxation Code is amended to read:

23603. (a) For income years beginning on or after January 1, 1991, and before January 1, 1996, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to 55 percent of the qualified cost paid or incurred by the taxpayer for low-emission vehicles or low-emission conversion devices. The credit allowed by this section shall be claimed in the income year the device is installed or, in the case of a new low-emission motor vehicle, the income year the low-emission vehicle is placed in service, and shall not exceed one thousand dollars ($1,000) per automobile, motorcycle, or two person passenger vehicle, or three thousand five hundred dollars ($3,500) for a vehicle whose weight is in excess of 5,750 pounds.

(b) For purposes of this section:

(1) "Device" means any apparatus not otherwise required by federal or California law that is designed and installed to convert a new or used motor vehicle to a low-emission motor vehicle as certified by the state board.

(2) "Differential cost" means the difference in retail cost between a low-emission vehicle and a comparable vehicle that is not a low-emission vehicle. This amount shall be determined by the State Energy Resources Conservation and Development Commission (hereafter referred to as the California Energy Commission), based on information supplied by the taxpayer and subject to the guidelines adopted under subdivision (e).

(3) "Low-emission motor vehicle" means a vehicle as defined under Section 39037.05 of the Health and Safety Code.

(4) "Qualified costs" means each of the following:

(A) The total cost (including installation charges but excluding

interest charges) of a device designed and installed to convert a qualified motor vehicle to a low-emission motor vehicle.

(B) The differential cost of a new qualified motor vehicle that is equipped from the factory to operate as a low-emission motor vehicle and is certified by the state board to be a low-emission motor vehicle.

(C) Fifteen percent of the purchase price of a nonrecreational motor vehicle that is a low-emission motor vehicle intended to be used on private roads, private school campuses, or commercial or industrial worksites in this state.

(5) "Qualified motor vehicle" means a motor vehicle, as defined by Section 415 of the Vehicle Code, that is either of the following:

(A) A motor vehicle that is intended to be used on public roads and highways and is registered in this state.

(B) A nonrecreational motor vehicle that is intended to be used on private roads, private school campuses, or commercial or industrial worksites in this state.

(6) "State board" refers to the Air Resources Board.

(c) The taxpayer shall qualify for the credit after application to and certification by the California Energy Commission that all of the following conditions are met:

(1) The device or vehicle qualifies for the credit under this section.

(2) Credit allocation is available.

(d) The taxpayer shall do all of the following:

(1) (A) Apply to the California Energy Commission for credit allocation and certification.

(B) The application for credit allocation shall include all information that is required by the California Energy Commission, including, but not limited to, all of the following:

(i) A plan to purchase a device, as defined in subdivision (b), or a vehicle.

(ii) The cost estimates of the device or vehicle.

(2) Notify the California Energy Commission in a form and manner specified by the California Energy Commission that the device or vehicle has actually been purchased.

(3) Retain a copy of the certification issued by the California Energy Commission.

(4) Make the certification available to the Franchise Tax Board upon demand.

(5) The partnership or S corporation shall disclose in its tax return each year all of the following:

(A) The name of each partner or shareholder who received a credit allocation.

(B) The partner's or shareholder's social security number or identification number.

(C) The amount of credit allocation distributed to each partner or shareholder.

(e) The California Energy Commission shall do all of the following:

(1) Establish criteria for allocation of the credit amounts in the case where more than seven hundred fifty thousand dollars ($750,000) of credit are requested annually.

(2) Provide guidelines and criteria for application for credit allocation. These guidelines shall be exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. However, these guidelines shall be adopted by the California Energy Commission at a noticed meeting and after one or more public workshops.

(3) Accept applications and issue certificates including the credit amount to which the taxpayer is entitled.

(4) 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 Energy Commission) of the qualified taxpayers who were issued the certification and the allowable amount of the credit allocated to each taxpayer.

(f) The taxpayers' identification numbers obtained through the tax credit application and certification process shall be used exclusively for state tax administrative purposes.

(g) The "qualified costs" shall be reduced by an amount equal to any amount allowable, for purposes of computing federal income tax, as a credit under Section 30 of the Internal Revenue Code, relating to credit for qualified electric vehicles, for the same vehicle.

(h) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(i) The aggregate amount of tax credits granted pursuant to this section and Section 17052.11 shall not exceed seven hundred fifty thousand dollars ($750,000) per year. The California Energy Commission shall not authorize any credit if the credit would cause the total amount of credit authorized in any year under the Personal Income Tax Law and the Bank and Corporation Tax Law to exceed seven hundred fifty thousand dollars ($750,000).

(j) (1) This section shall become operative on January 1, 1991.

(2) This section shall remain in effect only until December 1, 1996, and as of that date is repealed.

SEC. 4. (a) The Legislative Analyst shall conduct a study of the effectiveness of the low-emission vehicle tax credit that is provided in Sections 17052.11 and 23603 of the Revenue and Taxation Code. The study shall include, but not be limited to, the effect the provision of that credit has on all of the following:

(1) Consumer and business vehicle purchase decisions.

(2) The vehicle industry's decision to produce low-emission vehicles, with particular emphasis on any California based producer of those vehicles.

(3) The reduction of vehicle emission levels in California.

(b) The Legislative Analyst shall report his or her findings to the

Legislature on or before March 31, 1995.

SEC. 5. Sections 2.5 and 3.5 of this bill incorporate amendments to Sections 17052.11 and 23603 of the Revenue and Taxation Code proposed by both this bill and AB 35. Sections 2.5 and 3.5 shall only become operative if (1) both bills are enacted and become effective as a tax levy, (2) each bill amends Sections 17052.11 and 23603 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 35, in which case Sections 2 and 3 of this bill shall not become operative.

SEC. 6. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 876

An act to amend and repeal Sections 4384.5, 4390.3, 4390.10, 4390.14, 4700, and 4726 of, and to repeal Section 4706 of, the Civil Code, to amend Sections 683.130, 695.210, 695.220, and 697.320 of, to amend and repeal Sections 1697, 1698, and 1699 of, and to add Section 695.221 to, the Code of Civil Procedure, to amend Sections 2580, 3190, 3751, 4848, 4849, 4853, 5100, 5101, 5230, 5235, 5240, 5241, 5243, 5260, and 6343 of, to amend and renumber Section 6326 of, to add Section 4014 to, to add and repeal Sections 20024 and 20039 of, and to repeal Sections 5754 and 7712 of, the Family Code, to amend Sections 6159 and 68085 of the Government Code, to amend Section 4903 of the Labor Code, to amend Section 977 of the Penal Code, to amend Sections 408 and 3752.5 of, and to repeal Section 19001 of, the Revenue and Taxation Code, and to amend Sections 903, 903.5, and 11476 of, and to amend and repeal Sections 11478 and 11478.5 of, the Welfare and Institutions Code, relating to civil law, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 4384.5 of the Civil Code is amended to read:

4384.5. (a) Notwithstanding subdivision (b) or any other provision of law, a judgment for child support, spousal support, or family support, or a judgment for reimbursement arising under Section 11350 of the Welfare and Institutions Code or for arrearages, and including all lawful interest and penalties computed thereon, is exempt from any requirement that judgments be renewed and is enforceable until paid in full.

(b) Any judgment for child support, spousal support, or family support, or a judgment for reimbursement arising under Section 11350 of the Welfare and Institutions Code or for arrearages, and including all lawful interest computed thereon, may optionally be renewed by filing an application for renewal of the judgment in the

manner specified in Article 2 (commencing with Section 683.110) of Chapter 3 of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure.

(c) This section shall remain effective only until the date the Family Code, as added by Chapter 162 of the Statutes of 1992, becomes operative and on that date is repealed.

SEC. 2. Section 4390.3 of the Civil Code is amended to read:

4390.3. (a) On and after July 1, 1990, whenever the court orders either party to pay any amount of support or orders a modification of the amount of support to be paid, the court shall also order the obligor to assign to an obligee that portion of his or her earnings due or to be due in the future as will be sufficient to pay the amount ordered by the court for support and shall include an amount to be paid toward the liquidation of any arrearage. The court shall include a wage assignment order in any order or judgment establishing or modifying support. Upon the filing and service of a notice of motion or order to show cause with the supporting application, an obligee or custodial parent receiving services under Title IV-D of the federal Social Security Act may request the court to issue a wage assignment to enforce an existing support order or to modify an existing wage assignment order.

(b) All orders for wage assignment entered pursuant to this section shall be effective upon compliance with the procedures set forth in Section 4390.8, unless stayed pursuant to subdivision (c).

(c) The court may order that service of the wage assignment be stayed only if the court makes a finding of good cause or if an alternative arrangement exists for payment in accordance with paragraph (2). Notwithstanding any other provision of law, service of wage assignments issued for foreign orders for support, and service of foreign orders for the assignment of wages registered pursuant to Chapter 3 (commencing with Section 1670) of Title 10a of Part 3 of the Code of Civil Procedure, shall not be stayed pursuant to this subdivision. For purposes of this subdivision, good cause or an alternative arrangement for staying a wage assignment are as follows:

(1) Good cause for staying a wage assignment exists only when all of the following conditions exist:

(A) The court provides a written explanation of why the stay of the wage assignment would be in the best interests of the child.

(B) The obligor has a history of uninterrupted, full, and timely payment, other than through a wage assignment or other mandatory process of previously ordered support, during the previous 12 months.

(C) The obligor does not owe an arrearage for prior support.

(D) The obligor proves, and the court finds, by clear and convincing evidence that service of the wage assignment would cause extraordinary hardship upon the obligor. Whenever possible, the court shall specify a date that any stay ordered under this section will automatically terminate.

(2) An alternative arrangement for staying a wage assignment order shall require a written agreement between the parties that provides for payment of the support obligation as ordered other than through the immediate service of a wage assignment. Any agreement between the parties which includes the staying of a service of a wage assignment shall include the concurrence of the district attorney in any case in which support is ordered to be paid through a county officer designated for that purpose. The execution of an agreement pursuant to this paragraph shall not preclude a party from thereafter seeking a wage assignment in accordance with the procedures specified in Section 4390.4 upon violation of the agreement.

This section shall remain effective only until the date the Family Code, as added by Chapter 162 of the Statutes of 1992, becomes operative, and on that date is repealed.

SEC. 3. Section 4390.10 of the Civil Code is amended to read:

4390.10. (a) The employer shall continue to withhold and forward support as ordered by the court until served with notice terminating the wage assignment order.

(b) The employer shall send the amounts withheld to the obligee within 10 days of the date the obligor is paid and shall report to the obligee the date on which the amount was withheld from the obligor's wages.

(c) The employer may deduct from the earnings of the employee the sum of one dollar ($1) for each payment made pursuant to the order.

(d) An employer who willfully fails to withhold and forward support pursuant to a currently valid order entered and served upon the employer pursuant to this chapter is liable to the obligee for the amount of support not withheld, forwarded, or otherwise paid to the obligee. In addition to any other penalty or liability provided by law, willful failure by an employer to comply with such an order is punishable as a contempt pursuant to Section 1218 of the Code of Civil Procedure.

(e) Service of the wage assignment creates a lien on the earnings of the employee and the property of the employer to the same extent as the service of an earnings withholding order as provided in Section 706.029 of the Code of Civil Procedure.

(f) This section shall remain effective only until the Family Code, as added by Chapter 162 of the Statutes of 1992, becomes operative and on that date is repealed.

SEC. 4. Section 4390.14 of the Civil Code is amended to read:

4390.14. Upon the filing and service of a motion and a notice of motion by the obligor, the court shall terminate the service of an order of assignment if past due support has been paid in full, including any interest due, and if one of the following conditions exists:

(a) With regards to orders for spousal support, the death or remarriage of the spouse to whom support is owed.

(b) With regards to orders for child support, the death or emancipation of the child for whom support is owed.

(c) The court determines that there is good cause, as defined in Section 4390.3, to terminate the assignment. This subdivision does not apply if there has been more than one application for a wage assignment.

(d) The obligor meets the conditions of an alternative arrangement specified in paragraph (2) of subdivision (c) of Section 4390.3, and the wage assignment has not been previously terminated and subsequently reinitiated.

(e) There is no longer a current order for support.

(f) The termination of the stay of a wage assignment under Section 4390.4 was improper, but only if that termination was based upon the obligor's failure to make timely support payments as described in subdivision (b) of Section 4390.4.

(g) The employer or agency designated to provide services under Title IV-D of the Social Security Act is unable to deliver payment for a period of six months due to the failure of the obligee to notify that employer or agency of a change in the obligee's address.

(h) This section shall remain effective only until the date the Family Code, as added by Chapter 162 of the Statutes of 1992, becomes operative and on that date is repealed.

SEC. 5. Section 4700 of the Civil Code is amended to read:

4700. (a) In any proceeding where there is at issue the support of a minor child or a child for whom support is authorized under Section 206, the court may order either or both parents to pay any amount necessary for the support, maintenance, and education of the child. At the request of either party, the court shall make appropriate findings with respect to the circumstances on which the order for the support of a minor child is based. Upon a showing of good cause, the court may order the parent or parents required to make the payment of support to give reasonable security therefor. All payments of support shall be made by the person owing the support payment prior to the payment of any debts owing to creditors. Any order for child support may be modified or revoked as the court may deem necessary, except as to any amount that may have accrued prior to the date of the filing of the notice of motion or order to show cause to modify or revoke. Any order for child support issued or modified pursuant to this chapter shall include a provision requiring the obligor and child support obligee to notify the other parent or, if the order requires payment through an agency designated under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.), the agency named in the order, of the name and address of the obligor's current employer. The Judicial Council shall modify the support order form to inform the obligor of this obligation. Any order for child support, as well as any order of modification or revocation of such an order, may be made retroactive to the date of the filing of the notice of motion or order to show cause therefor, or to any subsequent date, except as may otherwise be prescribed by

federal law (42 U.S.C. Sec. 666(a)(9)).

(b) The court may order financial compensation for periods when a parent fails to assume the caretaker responsibility, or when a parent has been thwarted by the other parent when attempting to exercise visitation or custody rights, contemplated by a custody or visitation order entered pursuant to this part, including, but not limited to, an order for joint physical custody or by a written or oral agreement between the parents. The compensation shall be limited to (1) the reasonable expenses incurred for, or on behalf of, a child, resulting from the other parent's failure to assume his or her caretaker responsibility or (2) reasonable expenses incurred by a parent for or on behalf of a child resulting from the other parent's thwarting his or her efforts to exercise visitation or custody rights. These expenses may include the value of caretaker services, but are not limited to the cost of services provided by a third party during the relevant period.

The compensation may be requested by noticed motion or an order to show cause and shall allege, under penalty of perjury, a minimum of one hundred dollars ($100) of expenses so incurred or, at least three occurrences of failure to exercise visitation or custody rights or at least three occurrences of the thwarting of efforts to exercise visitation or custody rights within the six months prior to filing of the motion or order.

Attorney's fees shall be awarded to the prevailing party, upon a showing of the nonprevailing party's ability to pay.

(c) When a court orders a person to make specified payments for support of a child during the child's minority, or until the child is married or otherwise emancipated, or until the death of, or the occurrence of a specified event as to, a child for whom support is authorized under Section 206, the liability of the person ordered to pay support terminates upon the happening of the contingency. If the custodial parent or other person having physical custody of the child, to whom payments are to be made, fails to notify the person ordered to make those payments, or the attorney of record of the person ordered to pay support, of the happening of the contingency, and continues to accept support payments, the person shall refund any and all moneys received which accrued after the happening of the contingency, except that the overpayments shall first be applied to any and all support payments which are then in default. The court may, in the original order for support, order the custodial parent or other person to whom payments are to be made to notify the person ordered to make the payments, or his or her attorney of record, of the happening of the contingency.

(d) In the event obligations for support of a child are discharged in bankruptcy, the court may make all proper orders for the support, maintenance and education of the child, as the court may deem just.

(e) This section shall become operative January 1, 1993.

(f) This section shall remain effective only until the date the Family Code, as added by Chapter 162 of the Statutes of 1992, becomes operative and on that date is repealed.

SEC. 6. Section 4706 of the Civil Code is repealed.

SEC. 7. Section 4726 of the Civil Code is amended to read:

4726. (a) (1) The court shall require that health insurance coverage for the supported children shall be maintained by either or both parents if that insurance is available at no cost or at reasonable cost to the parent or parents. In cases in which the court determines that health insurance coverage is not available at no or reasonable cost, the court's order for support shall contain a provision which specifies that health insurance coverage shall be obtained if it becomes available at no or reasonable cost. Upon health insurance coverage at no or reasonable cost becoming available to the parent or parents, the parent or parents shall apply for that coverage.

(2) The court shall generally consider health insurance coverage to be reasonable in cost if it is employment-related group health insurance or other group health insurance, regardless of the service delivery mechanism. If the court determines that the cost of health insurance coverage is not reasonable, the court shall state its reasons on the record.

(3) As used in this section "health insurance coverage" includes vision care and dental care coverage whether the vision care or dental care coverage is part of existing health insurance coverage or is issued as a separate policy or plan. "Health insurance coverage" also includes provision for the delivery of health care services by a fee for service, health maintenance organization, preferred provider organization, or any other type of health care delivery system under which medical services could be provided to the dependent child or children of an absent parent.

(b) Where the district attorney has been designated as the assigned payee for child support, the court shall order the parent or parents to notify the district attorney upon applying for and obtaining health insurance coverage for the child within a reasonable period of time.

The district attorney shall obtain a completed medical form from the parent or parents in accordance with Section 11490 of the Welfare and Institutions Code and shall forward the completed form to the State Department of Health Services.

(c) In those cases where the district attorney is providing medical support enforcement services, the district attorney shall provide the parent or person having custody of the child or children with information pertaining to the health insurance policy which has been secured for that child or children.

(d) This section is applicable in all cases, irrespective of whether the support award made is based on the mandatory minimum schedule or a higher amount based on a state or county schedule.

(e) A child support order issued or modified pursuant to this chapter shall include a provision requiring the child support obligor to keep the obligee informed of whether the obligor has health insurance made available through the obligor's employer or has other group health insurance and, if so, the health insurance policy

information. The support obligee under a child support order shall inform the support obligor of whether the obligee has health insurance made available through the employer or other group health insurance and, if so, the health insurance policy information. The Judicial Council shall modify the health insurance assignment form to notify child support obligors of the requirements of this subdivision and of subdivision (b).

This section shall remain effective only until the date the Family Code, as added by Chapter 162 of the Statutes of 1992, becomes operative and on that date is repealed.

SEC. 8. Section 683.130 of the Code of Civil Procedure is amended to read:

683.130. (a) In the case of a lump-sum money judgment or a judgment for possession or sale of property, the application for renewal of the judgment may be filed at any time before the expiration of the 10-year period of enforceability provided by Section 683.020 or, if the judgment is a renewed judgment, at any time before the expiration of the 10-year period of enforceability of the renewed judgment provided by Section 683.120.

(b) Except as otherwise specified in subdivision (c), in the case of a money judgment payable in installments, the application for renewal of the judgment may be filed:

(1) If the judgment has not previously been renewed, at any time as to past due amounts that at the time of filing are not barred by the expiration of the 10-year period of enforceability provided by Sections 683.020 and 683.030.

(2) If the judgment has previously been renewed, within the time specified by subdivision (a) as to the amount of the judgment as previously renewed and, as to any past due amounts that became due and payable after the previous renewal, at any time before the expiration of the 10-year period of enforceability provided by Sections 683.020 and 683.030.

(c) (1) Notwithstanding any other provision of law, a judgment for child support, spousal support, or family support, or a judgment for reimbursement that includes, but is not limited to, reimbursement arising under Section 11350 of the Welfare and Institutions Code or other arrearages, and including all lawful interest and penalties computed thereon, is exempt from any requirement that judgments be renewed. A judgment for child, spousal, or family support, or a judgment for reimbursement or other arrearages, and including all lawful interest and penalties computed thereon, is enforceable until paid in full.

(2) In the case of a money judgment whether payable in installments or not, for the payment of child support, spousal support, or family support, or for reimbursement or arrearages, and including all lawful interest computed thereon, an application for renewal of the judgment may be filed:

(A) If the judgment has not previously been renewed as to past due amounts, at any time.

(B) If the judgment has previously been renewed, the amount of the judgment as previously renewed and any past due amount that became due and payable after the previous renewal may be renewed at any time after five years has elapsed from the time the judgment was previously renewed.

SEC. 9. Section 695.210 of the Code of Civil Procedure is amended to read:

695.210. The amount required to satisfy a money judgment is the total amount of the judgment as entered or renewed with the following additions and subtractions:

(a) The addition of costs added to the judgment pursuant to Section 685.090.

(b) The addition of interest added to the judgment as it accrues pursuant to Sections 685.010 to 685.030, inclusive.

(c) The subtraction of the amount of any partial satisfactions of the judgment.

(d) The subtraction of the amount of any portion of the judgment that is no longer enforceable.

SEC. 10. Section 695.220 of the Code of Civil Procedure is amended to read:

695.220. Money received in satisfaction of a money judgment, except a money judgment for support, shall be credited as follows:

(a) The money shall first be credited against the amounts described in subdivision (b) of Section 685.050 that are collected by the levying officer.

(b) Any remaining money shall next be credited against any fees due the court pursuant to Section 6103.5 of the Government Code, which are to be remitted to the court by the levying officer.

(c) Any remaining money shall next be credited against the accrued interest that remains unsatisfied.

(d) Any remaining money shall be credited against the principal amount of the judgment remaining unsatisfied. If the judgment is payable in installments, the remaining money shall be credited against the matured installments in the order in which they matured.

SEC. 11. Section 695.221 is added to the Code of Civil Procedure, to read:

695.221. Satisfaction of a money judgment for support shall be credited as follows:

(a) The money shall first be credited against the current month's support.

(b) Any remaining money is next to be credited against the accrued interest that remains unsatisfied.

(c) Any remaining money shall be credited against the principal amount of the judgment remaining unsatisfied. If the judgment is payable in installments, the remaining money shall be credited against the matured installments in the order in which they matured.

(d) Notwithstanding subdivisions (b) and (c), a collection received as a result of a tax refund offset shall first be credited against the interest and then the principal amount of past due support that

has been assigned to the state pursuant to Section 11350 of the Welfare and Institutions Code and federal regulations prior to the interest and then principal amount of any other past-due support remaining unsatisfied.

(e) Notwithstanding subdivisions (b) and (c), a collection received as a result of a lien on a workers' compensation award shall be credited as provided in subdivision (e) of Section 4903 of the Labor Code.

SEC. 12. Section 697.320 of the Code of Civil Procedure is amended to read:

697.320. (a) A judgment lien on real property is created under this section by recording an abstract or a certified copy of any of the following money judgments with the county recorder:

(1) A judgment for child, family, or spousal support payable in installments.

(2) A judgment entered pursuant to Section 667.7 (judgment against health care provider requiring periodic payments).

(b) Unless the money judgment is satisfied or the judgment lien is released, a judgment lien created under paragraph (1) of subdivision (a) continues during the period the judgment remains enforceable. Unless the money judgment is satisfied or the judgment lien is released, a judgment lien created under paragraph (2) of subdivision (a) continues for a period of 10 years from the date of its creation. The duration of a judgment lien created under paragraph (2) of subdivision (a) may be extended any number of times by recording during the time the judgment lien is in existence a certified copy of the judgment in the manner provided in this section for the initial recording; this rerecording has the effect of extending the duration of the judgment lien created under paragraph (2) of subdivision (a) until 10 years from the date of the rerecording.

SEC. 13. Section 1697 of the Code of Civil Procedure is amended to read:

1697. (a) If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in Sections 1698 to 1699, inclusive.

(b) A support order made in this state may also be registered pursuant to Sections 1698 to 1699, inclusive, in any county in which either the obligor, the obligee, or the child who is the subject of the order resides, or in any county in which the obligor has income, assets, or property.

(c) This section shall remain effective only until the date the Family Code, as added by Chapter 162 of the Statutes of 1992, becomes operative and on that date is repealed.

SEC. 14. Section 1698 of the Code of Civil Procedure is amended to read:

1698. The obligee may register a foreign support order or a foreign order for the assignment of wages for support in a court of this state in the manner, with the effect, and for the purposes provided in this chapter. These orders may be registered in any

county in which the obligor, the obligee, or the child who is the subject of the order resides, or in any county in which the obligor has income, assets, or property.

This section shall remain effective only until the date the Family Code, as added by Chapter 162 of the Statutes of 1992, becomes operative and on that date is repealed.

SEC. 15. Section 1699 of the Code of Civil Procedure is amended to read:

1699. (a) Except as specified in this section, upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this state and may be enforced and satisfied in like manner.

(b) The obligor has 20 days after the mailing or other service of notice of the registration of a foreign order of support in which to file a noticed motion requesting the court to vacate the registration or for other relief. In an action under this section there shall be no joinder of actions, coordination of actions, or cross- complaints and the claims or defenses shall be limited strictly to the identity of the obligor, the validity of the underlying foreign support order, or the accuracy of the obligee's statement of the amount of support remaining unpaid unless the amount has been previously established by a judgment or order. The obligor shall serve a copy of the motion, personally or by first-class mail, on the office of the district attorney, private attorney representing the obligee, or obligee representing himself or herself who filed the request for registration of the order, not less than 15 days prior to the date on which the motion is to be heard. If service is by mail, Section 1013 applies. If the obligor does not file the motion within 20 days, the registered foreign support order and all other documents filed pursuant to subdivision (a) of Section 1698.3 are confirmed.

(c) At the hearing on the motion to vacate registration of the order, the obligor may present only matters that would be available to the obligor as defenses in an action to enforce a support judgment. If the obligor shows and the court finds that an appeal from the order is pending or that a stay of execution has been granted the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering state. If the obligor shows and the court finds any ground upon which enforcement of a support order of this state may be stayed the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this state.

(d) Registration of an out-of-state order for the sole purpose of interstate wage withholding shall not confer jurisdiction on the court for any purpose other than income withholding.

(e) After registration, a foreign order for the assignment of wages or other earnings for support shall be treated for all purposes in the same manner as an order for assignment of earnings entered pursuant to Chapter 5 (commencing with Section 4390) of Title 1.5 of Part 5 of Division 4 of the Civil Code or, on and after January 1, 1994, Article 3 (commencing with Section 4820) of Chapter 6 of Part 5 of Division 9 of the Family Code. The registered foreign order for assignment of wages shall be served upon the obligor's employer and the obligor shall be sent, by first-class mail, a copy of the foreign assignment order at the same time that the employer is served with the notice. The obligor may move to quash the assignment in accordance with Section 4390.9 of the Civil Code or, on and after January 1, 1994, Section 5270 of the Family Code.

(f) This section shall remain in effect only until the date the Family Code, as added by Chapter 162 of the Statutes of 1992, becomes operative and on that date is repealed.

SEC. 15.2. Section 2580 of the Family Code, as added by Section 111.6 of Chapter 219 of the Statutes of 1993, is amended to read:

2580. The Legislature hereby finds and declares as follows:

(a) It is the public policy of this state to provide uniformly and consistently for the standard of proof in establishing the character of property acquired by spouses during marriage in joint title form, and for the allocation of community and separate interests in that property between the spouses.

(b) The methods provided by case and statutory law have not resulted in consistency in the treatment of spouses' interests in property they hold in joint title, but rather, have created confusion as to which law applies to property at a particular point in time, depending on the form of title, and, as a result, spouses cannot have reliable expectations as to the characterization of their property and the allocation of the interests therein, and attorneys cannot reliably advise their clients regarding applicable law.

(c) Therefore, a compelling state interest exists to provide for uniform treatment of property. Thus, former Sections 4800.1 and 4800.2 of the Civil Code, as operative on January 1, 1987, and as continued in Sections 2581 and 2640 of this code, apply to all property held in joint title regardless of the date of acquisition of the property or the date of any agreement affecting the character of the property, and those sections apply in all proceedings commenced on or after January 1, 1984. However, those sections do not apply to property settlement agreements executed before January 1, 1987, or proceedings in which judgments were rendered before January 1, 1987, regardless of whether those judgments have become final.

SEC. 15.4. Section 3190 of the Family Code, as amended by Section 1 of Chapter 301 of the Statutes of 1993, is amended to read:

3190. (a) The court may require parents involved in a custody or visitation dispute, and the minor child, to participate in outpatient counseling with a licensed mental health professional, or through other community programs and services that provide appropriate

counseling, including, but not limited to, mental health or substance abuse services, for not more than one year, provided that the program selected has counseling available for the designated period of time, if the court finds both of the following:

(1) The dispute between the parents or between a parent and the child poses a substantial danger to the best interest of the child.

(2) The counseling is in the best interest of the child.

(b) Where there has been a history of abuse by either parent against the child or by one parent against the other parent, and a protective order is in effect, the court may order the parties to participate in counseling separately and at separate times. Each party shall bear the cost of his or her own counseling separately, unless good cause is shown for a different apportionment. The costs associated with a minor child participating in counseling shall be apportioned in accordance with Section 4062.

(c) The court, in its finding, shall set forth reasons why it has found both of the following:

(1) The dispute poses a substantial danger to the best interest of the child and the counseling is in the best interest of the child.

(2) The financial burden created by the court order for counseling does not otherwise jeopardize a party's other financial obligations.

(d) The court shall not order the parties to return to court upon the completion of counseling. Either party may file a new order to show cause or motion after counseling has been completed, and the court may again order counseling consistent with this chapter.

SEC. 16. Section 3751 of the Family Code is amended to read:

3751. (a) (1) Support orders issued or modified pursuant to this chapter shall include a provision requiring the child support obligor to keep the agency designated under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.) informed of whether the obligor has health insurance coverage at reasonable cost and, if so, the health insurance policy information.

(2) The court shall require that health insurance coverage for a supported child shall be maintained by either or both parents if that insurance is available at no cost or at reasonable cost to the parent. The court shall generally consider health insurance coverage to be reasonable in cost if it is employment-related group health insurance or other group health insurance, regardless of the service delivery mechanism. If the court determines that the cost of health insurance coverage is not reasonable, the court shall state its reasons on the record.

(b) If the court determines that health insurance coverage is not available at no or reasonable cost, the court's order for support shall contain a provision that specifies that health insurance coverage shall be obtained if it becomes available at no or reasonable cost. Upon health insurance coverage at no or reasonable cost becoming available to a parent, the parent shall apply for that coverage.

SEC. 17. Section 3752.5 is added to the Family Code, to read:

3752.5. A child support order issued or modified pursuant to this division shall include a provision requiring the child support obligor to keep the obligee informed of whether the obligor has health insurance made available through the obligor's employer or has other group health insurance and, if so, the health insurance policy information. The support obligee under a child support order shall inform the support obligor of whether the obligee has health insurance made available through the employer or other group health insurance and, if so, the health insurance policy information. The Judicial Council shall modify the form of the order for health insurance coverage (family law) to notify child support obligors of the requirements of this section and of Section 3752.

SEC. 18. Section 4014 is added to the Family Code, to read:

4014. Any order for child support issued or modified pursuant to this chapter shall include a provision requiring the obligor and child support obligee to notify the other parent or, if the order requires payment through an agency designated under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.), the agency named in the order, of the name and address of his or her current employer. The Judicial Council shall modify the forms for an order requiring or changing child support to inform the obligor of this obligation.

SEC. 19. Section 4848 of the Family Code is amended to read:

4848. (a) If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in Sections 4849 to 4853, inclusive.

(b) A support order made in this state may also be registered pursuant to Sections 4849 to 4853, inclusive, in any county in which the obligor, the obligee, or the child who is the subject of the order resides, or in any county in which the obligor has income, assets, or property.

SEC. 20. Section 4849 of the Family Code, as amended by Section 151 of Chapter 219 of the Statutes of 1993, is amended to read:

4849. The obligee may register a foreign support order in a court of this state in the manner, with the effect, and for the purposes provided in this article. These orders may be registered in any county in which the obligor, the obligee, or the child who is the subject of the order resides, or in any county in which the obligor has income, assets, or property.

SEC. 20.5. Section 4853 of the Family Code, as amended by Section 152 of Chapter 219 of the Statutes of 1993, is amended to read:

4853. (a) Except as specified in this section, upon registration, the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this state and may be enforced and satisfied in like manner.

(b) The obligor has 20 days after the mailing or other service of notice of the registration of a foreign order of support in which to file a noticed motion requesting the court to vacate the registration or

for other relief. In an action under this section, there shall be no joinder of actions, coordination of actions, or cross-complaints, and the claims or defenses shall be limited strictly to the identity of the obligor, the validity of the underlying foreign support order, or the accuracy of the obligee's statement of the amount of support remaining unpaid unless the amount has been previously established by a judgment or order. The obligor shall serve a copy of the motion, personally or by first-class mail, on the office of the district attorney, private attorney representing the obligee, or obligee representing himself or herself who filed the request for registration of the order, not less than 15 days prior to the date on which the motion is to be heard. If service is by mail, Section 1013 of the Code of Civil Procedure applies. If the obligor does not file the motion within 20 days, the registered foreign support order and all other documents filed pursuant to subdivision (a) of Section 4852 are confirmed.

(c) At the hearing on the motion to vacate the registration of the order, the obligor may present only matters that would be available to the obligor as defenses in an action to enforce a support judgment. If the obligor shows and the court finds that an appeal from the order is pending or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering state. If the obligor shows and the court finds any ground upon which enforcement of a support order of this state may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this state.

(d) Registration of an out-of-state order for the sole purpose of interstate wage withholding does not confer jurisdiction on the court for any purpose other than income withholding.

(e) After registration, a foreign order for the assignment of wages or other earnings for support shall be treated for all purposes in the same manner as an order for assignment of earnings entered pursuant to Chapter 5 (commencing with Section 4390) of Title 1.5 of Part 5 of Division 4 of the Civil Code or, on and after January 1, 1994, this article. The registered foreign order for assignment of wages shall be served upon the obligor's employer and the obligor shall be sent, by first-class mail, a copy of the foreign assignment order at the same time that the employer is served with the notice. The obligor may move to quash the assignment in accordance with Section 4390.9 of the Civil Code or, on and after January 1, 1994, Section 5270.

SEC. 21. Section 5100 of the Family Code is amended to read:

5100. Notwithstanding Section 290, a child or family support order may be enforced by a writ of execution without prior court approval as long as the support order remains enforceable.

SEC. 22. Section 5101 of the Family Code is amended to read:

5101. Notwithstanding Section 290, a spousal support order may be enforced by a writ of execution without prior court approval as long as the support order remains enforceable.

SEC. 22.5. Section 5230 of the Family Code is amended to read:

5230. (a) When the court orders a party to pay an amount for support or orders a modification of the amount of support to be paid, the court shall include in its order an earnings assignment order for support that orders the employer of the obligor to pay to the obligee that portion of the obligor's earnings due or to become due in the future as will be sufficient to pay an amount to cover both of the following:

(1) The amount ordered by the court for support.

(2) An amount which shall be ordered by the court to be paid toward the liquidation of any arrearage.

(b) Upon the filing and service of a notice of motion or order to show cause with the supporting application, an obligee or custodial parent receiving services under Title IV-D of the Social Security Act may request the court to issue an earnings assignment order for support to enforce a support order made or modified before July 1, 1990, including any arrearages, or to modify the support order.

SEC. 23. Section 5235 of the Family Code is amended to read:

5235. (a) The employer shall continue to withhold and forward support as required by the assignment order until served with notice terminating the assignment order.

(b) The employer shall send the amounts withheld to the obligee within 10 days of the date the obligor is paid and shall report to the obligee the date on which the amount was withheld from the obligor's wages.

(c) The employer may deduct from the earnings of the employee the sum of one dollar ($1) for each payment made pursuant to the order.

SEC. 24. Section 5240 of the Family Code is amended to read:

5240. Upon the filing and service of a motion and a notice of motion by the obligor, the court shall terminate the service of an assignment order if past due support has been paid in full, including any interest due, and if any of the following conditions exist:

(a) With regard to orders for spousal support, the death or remarriage of the spouse to whom support is owed.

(b) With regard to orders for child support, the death or emancipation of the child for whom support is owed.

(c) The court determines that there is good cause, as defined in Section 5260, to terminate the assignment order. This subdivision does not apply if there has been more than one application for an assignment order.

(d) The obligor meets the conditions of an alternative arrangement specified in paragraph (2) of subdivision (b) of Section 5260, and a wage assignment has not been previously terminated and subsequently initiated.

(e) There is no longer a current order for support.

(f) The termination of the stay of an assignment order under Section 5261 was improper, but only if that termination was based upon the obligor's failure to make timely support payments as described in subdivision (b) of Section 5261.

(g) The employer or agency designated to provide services under Title IV-D of the Social Security Act is unable to deliver payment for a period of six months due to the failure of the obligee to notify that employer or agency of a change in the obligee's address.

SEC. 25. Section 5241 of the Family Code is amended to read:

5241. (a) An employer who willfully fails to withhold and forward support pursuant to a currently valid assignment order entered and served upon the employer pursuant to this chapter is liable to the obligee for the amount of support not withheld, forwarded, or otherwise paid to the obligee.

(b) In addition to any other penalty or liability provided by law, willful failure by an employer to comply with an assignment order is punishable as a contempt pursuant to Section 1218 of the Code of Civil Procedure.

SEC. 26. Section 5243 of the Family Code is amended to read:

5243. An assignment order for support has priority as against any attachment, execution, or other assignment as specified in Section 706.031 of the Code of Civil Procedure.

SEC. 27. Section 5260 of the Family Code is amended to read:

5260. (a) The court may order that service of the assignment order be stayed only if the court makes a finding of good cause or if an alternative arrangement exists for payment in accordance with paragraph (2) of subdivision (b). Notwithstanding any other provision of law, service of wage assignments issued for foreign orders for support, and service of foreign orders for the assignment of wages registered pursuant to Article 3 (commencing with Section 4820) of Chapter 6 shall not be stayed pursuant to this subdivision.

(b) For purposes of this section, good cause or an alternative arrangement for staying an assignment order is as follows:

(1) Good cause for staying a wage assignment exists only when all of the following conditions exist:

(A) The court provides a written explanation of why the stay of the wage assignment would be in the best interests of the child.

(B) The obligor has a history of uninterrupted, full, and timely payment, other than through a wage assignment or other mandatory process of previously ordered support, during the previous 12 months.

(C) The obligor does not owe an arrearage for prior support.

(D) The obligor proves, and the court finds, by clear and convincing evidence that service of the wage assignment would cause extraordinary hardship upon the obligor. Whenever possible, the court shall specify a date that any stay ordered under this section will automatically terminate.

(2) An alternative arrangement for staying a wage assignment order shall require a written agreement between the parties that

provides for payment of the support obligation as ordered other than through the immediate service of a wage assignment. Any agreement between the parties which includes the staying of a service of a wage assignment shall include the concurrence of the district attorney in any case in which support is ordered to be paid through a county officer designated for that purpose. The execution of an agreement pursuant to this paragraph shall not preclude a party from thereafter seeking a wage assignment in accordance with the procedures specified in Section 4390.4 upon violation of the agreement.

SEC. 27.1. Section 5754 of the Family Code, as amended by Section 2 of Chapter 301 of the Statutes of 1993, is repealed.

SEC. 27.2. Section 6326 of the Family Code, as added by Section 154 of Chapter 219 of the Statutes of 1993, is amended and renumbered to read:

6327. Part 4 (commencing with Section 240) of Division 2 applies to the issuance of an ex parte order under this article.

SEC. 27.3. Section 6343 of the Family Code, as added by Section 154 of Chapter 219 of the Statutes of 1993, is amended to read:

6343. (a) After notice and a hearing, the court may issue an order requiring any party to participate in counseling with a licensed mental health professional, or through other community programs and services that provide appropriate counseling, including, but not limited to, mental health or substance abuse services, 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. The court may also order a restrained party to participate in batterer's treatment counseling.

(b) Where there has been a history of domestic violence between the parties or where a protective order, as defined in Section 6218, is in effect, at the request of the party alleging domestic violence in a written declaration under penalty of perjury or who is protected by the order, the parties shall participate in counseling separately and at separate times. The court may also order a restrained party to participate in batterer's treatment counseling for up to one year, provided that the program selected has counseling available for the designated period of time.

(c) Each party shall bear the cost of his or her own counseling separately, unless good cause appears for a different apportionment.

SEC. 27.4. Section 7712 of the Family Code, as added by Section 3 of Chapter 301 of the Statutes of 1993, is repealed.

SEC. 27.5. Section 20024 is added to the Family Code, to read:

20024. (a) The costs of the Family Law Evaluator, any staff necessary to assist the Family Law Evaluator, and the cost of the booklet describing the program, if any, shall be borne by an increase and an equalization of filing fees in San Mateo County to one hundred fifty dollars ($150) for all petitions for marital dissolution, annulment, and legal separation, and all first papers on behalf of respondents in proceedings for martial dissolution, annulment, and

legal separation. Alternatively, the costs associated with this pilot program may be paid from other funding sources.

(b) A donation of computers, printers, software, and other equipment shall be solicited from existing hardware and software providers.

(c) This section shall be repealed on July 1, 1994, unless a later enacted statute, which is enacted before July 1, 1994, deletes or extends that date.

SEC. 27.6. Section 20039 is added to the Family Code, to read:

20039. (a) The costs of the pilot project shall be borne by an equalization of filing fees in Santa Clara County for all petitions for marital dissolution, annulment, and legal separation, and all first papers on behalf of respondents in proceedings for marital dissolution, annulment, and legal separation and by equalization of filing fees for motions and responsive pleadings.

(b) A donation of computers, printers, software, and other equipment shall be solicited from existing hardware and software providers.

(c) The court shall administer funds for the various components of the pilot program.

(d) This section shall be repealed on July 1, 1994, unless a later enacted statute, which is enacted before July 1, 1994, deletes or extends that date.

SEC. 27.7. Section 6159 of the Government Code, as amended by Section 212 of Chapter 219 of the Statutes of 1993, is amended to read:

6159. (a) As used in this section:

(1) "Credit card" means any card, plate, coupon book, or other credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, labor, or services on credit.

(2) "Card issuer" means any person who issues a credit card and purchases credit card drafts or the agent of such person for such purposes with respect to such card.

(3) "Cardholder" means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

(4) "Draft purchaser" means any person who purchases credit card drafts.

(b) Subject to the provisions of subdivision (c), a court, city, county, city and county, or other public agency may authorize the acceptance of a credit card for any of the following:

(1) The payment for the deposit of bail or for any fine for any offense not declared to be a felony.

(2) The payment of a filing fee or other court fee.

(3) The payment of any towage or storage costs for a vehicle which has been removed from a highway, or from public or private property, as a result of parking violations.

(4) The payment of child, family, or spousal support, including

reimbursement of public assistance, related fees, costs, or penalties, with the authorization of the cardholder.

(5) The payment for services rendered by any city, county, or city and county.

(c) A court desiring to authorize the use of a credit card pursuant to subdivision (b) shall obtain the approval of its county board of supervisors. A city desiring to authorize the use of a credit card pursuant to subdivision (b) shall obtain the approval of its city council. Any other public agency desiring to authorize the use of a credit card pursuant to subdivision (b) shall obtain the approval of the governing body which has fiscal responsibility for the agency. After approval is obtained, a contract may be executed with one or more credit card issuers or draft purchasers. The contract shall provide for:

(1) The respective rights and duties of the court, city, county, city and county, or other public agency and card issuer or draft purchaser regarding the presentment, acceptability and payment of credit card drafts.

(2) The establishment of a reasonable means by which to facilitate payment settlements.

(3) The payment to the card issuer or draft purchaser of a reasonable fee or discount.

(4) Such other matters appropriately included in contracts with respect to the purchase of credit card drafts as may be agreed upon by the parties to the contract.

(d) The honoring of a credit card pursuant to subdivision (b) constitutes payment of the amount owing to the court, city, county, city and county, or other public agency as of the date the credit card is honored provided the credit card draft is paid following its due presentment to a card issuer or draft purchaser.

(e) If any credit card draft is not paid following due presentment to a card issuer or draft purchaser or is charged back to the court, city, county, city and county, or other public agency for any reason, any record of payment made by the court, city, or other public agency honoring the credit card shall be void. Any receipt issued in acknowledgment of payment shall also be void. The obligation of the cardholder shall continue as an outstanding obligation as though no payment had been attempted.

(f) Notwithstanding Title 1.3 (commencing with Section 1747) of Part 4 of Division 3 of the Civil Code, a court, city, county, city and county, or any other public agency may impose a fee for the use of a credit card, not to exceed the costs incurred by the agency in providing for payment of the credit card. These costs may include, but shall not be limited to, the payment of fees or discounts as specified in paragraph (3) of subdivision (c). Any fee imposed pursuant to this subdivision for the use of a credit card shall be approved by the governing body responsible for the fiscal decisions of the public agency.

(g) Fees or discounts provided for under paragraph (3) of

subdivision (c) shall be deducted or accounted for prior to any statutory or other distribution of funds received from the card issuer or draft purchaser to the extent not recovered from the cardholder pursuant to subdivision (f).

SEC. 27.8. Section 68085 of the Government Code, as amended by Section 214.7 of Chapter 219 of the Statutes of 1993, is amended to read:

68085. (a) There is hereby established the Trial Court Trust Fund, the proceeds of which may only be expended, upon appropriation by the Legislature, for the purpose of funding trial court operations, as defined in Section 77003.

(b) Notwithstanding any other provision of law, the fees listed in subdivision (c) shall all be deposited upon collection in a special account in the county treasury, and transmitted therefrom monthly to the Controller for deposit in the Trial Court Trust Fund.

(c) Except as specified in subdivision (d), this section applies to all fees collected pursuant to Sections 26820.4, 26826, 26827, 68086, 72055, and 72056.

(d) This section does not apply to that portion of a filing fee collected pursuant to Section 26820.4, 26826, 26827, 72055, or 72056 which is allocated for dispute resolution pursuant to Section 470.3 of the Business and Professions Code, the county law library pursuant to Section 6320 of the Business and Professions Code, the Judges' Retirement Fund pursuant to Section 26822.3, automated recordkeeping or conversion to micrographics pursuant to Sections 26863 and 68090.7, and courthouse financing pursuant to Section 76238.

(e) Notwithstanding any other provision of law, no agency shall take action to change the amounts allocated to any of the above funds.

SEC. 28. Section 4903 of the Labor Code is amended to read:

4903. The appeals board may determine, and allow as liens against any sum to be paid as compensation, any amount determined as hereinafter set forth in subdivisions (a) through (i). If more than one such lien be allowed, the appeals board may determine the priorities, if any, between the liens allowed. The liens which may be allowed hereunder are as follows:

(a) A reasonable attorney's fee for legal services pertaining to any claim for compensation either before the appeals board or before any of the appellate courts, and the reasonable disbursements in connection therewith. No fee for legal services shall be awarded to any representative who is not an attorney, except with respect to those claims for compensation for which an application, pursuant to Section 5501, has been filed with the appeals board on or before December 31, 1991, or for which a disclosure form, pursuant to Section 4906, has been sent to the employer, or insurer or third-party administrator, if either is known, on or before December 31, 1991.

(b) The reasonable expense incurred by or on behalf of the injured employee, as provided by Article 2 (commencing with

Section 4600) and, to the extent the employee is entitled to reimbursement under Section 4621, medical-legal expenses as provided by Article 2.5 (commencing with Section 4620) of Chapter 2 of Part 2.

(c) The reasonable value of the living expenses of an injured employee or of his or her dependents, subsequent to the injury.

(d) The reasonable burial expenses of the deceased employee, not to exceed the amount provided for by Section 4701.

(e) The reasonable living expenses of the spouse or minor children of the injured employee, or both, subsequent to the date of the injury, where the employee has deserted or is neglecting his or her family. These expenses shall be allowed in such proportion as the appeals board deems proper, under application of the spouse, guardian of the minor children, or the assignee, pursuant to subdivision (a) of Section 11477 of the Welfare and Institutions Code, of the spouse, a former spouse, or minor children. A collection received as a result of a lien against a workers' compensation award imposed pursuant to this subdivision for payment of child support ordered by a court shall first be credited against the current month's support, shall next be credited against the interest on past due child support for periods commencing on or after the date of the injury upon which the award is based, shall next be credited against the principal amount of past due child support that accrued for periods commencing on or after the date of the injury upon which the award is based, shall next be credited against interest on past due child support for periods prior to the date of the injury upon which the award is based, and shall then be credited against the principal amount of child support that accrued for periods commencing prior to the date of the injury upon which the award is based.

(f) The amount of unemployment compensation disability benefits which have been paid under or pursuant to the Unemployment Insurance Code in those cases where, pending a determination under this division there was uncertainty whether such benefits were payable under the Unemployment Insurance Code or payable hereunder; provided, however, that any lien under this subdivision shall be allowed and paid as provided in Section 4904.

(g) The amount of unemployment compensation benefits and extended duration benefits paid to the injured employee for the same day or days for which he or she receives, or is entitled to receive, temporary total disability indemnity payments under this division; provided, however, that any lien under this subdivision shall be allowed and paid as provided in Section 4904.

(h) The amount of indemnification granted pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code.

(i) The amount of compensation, including expenses of medical treatment, and recoverable costs which have been paid by the Asbestos Workers' Account pursuant to the provisions of Chapter 11 (commencing with Section 4401) of Part 1.

SEC. 28.5. Section 977 of the Penal Code, as amended by Section 1 of Chapter 220 of the Statutes of 1993, is amended to read:

977. (a) (1) In all cases in which the accused is charged with a misdemeanor only, he or she may appear by counsel only, except as provided in paragraph (2). If the accused agrees, the initial court appearance, arraignment, and plea may be by video, as provided by subdivision (c).

(2) When the accused is charged with a misdemeanor offense involving domestic violence, as defined in Section 6211 of the Family Code , or a misdemeanor violation of Section 273.6, upon a satisfactory showing of necessity, the court may order through counsel that the accused be personally present in court for the purpose of the service of an order under Section 136.2, unless the court determines that the defendant will make another court appearance within a reasonable period of time and the defendant could be served with a restraining order at that time.

(b) (1) In all cases in which a felony is charged, the accused shall be present at the arraignment, at the time of plea, during the preliminary hearing, during those portions of the trial when evidence is taken before the trier of fact, and at the time of the imposition of sentence. The accused shall be personally present at all other proceedings unless he or she shall, with leave of court, execute in open court, a written waiver of his or her right to be personally present, as provided by paragraph (2). If the accused agrees, the initial court appearance, arraignment, and plea may be by video, as provided by subdivision (c).

(2) The accused may execute a written waiver of his or her right to be personally present, approved by his or her counsel, and the waiver shall be filed with the court. However, the court may specifically direct the defendant to be personally present at any particular proceeding or portion thereof. The waiver shall be substantially in the following form:

"WAIVER OF DEFENDANT'S PERSONAL PRESENCE"

"The undersigned defendant, having been advised of his or her right to be present at all stages of the proceedings, including, but not limited to, presentation of and arguments on questions of fact and law, and to be confronted by and cross-examine all witnesses, hereby waives the right to be present at the hearing of any motion or other proceeding in this cause. The undersigned defendant hereby requests the court to proceed during every absence of the defendant that the court may permit pursuant to this waiver, and hereby agrees that his or her interest is represented at all times by the presence of his or her attorney the same as if the defendant were personally present in court, and further agrees that notice to his or her attorney that his or her presence in court on a particular day at a particular time is required is notice to the defendant of the requirement of his or her appearance at that time and place."

(c) The court may permit the initial court appearance and arraignment in municipal or superior court of defendants held in any state, county, or local 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 audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom. If the defendant is represented by counsel, the attorney shall be present with the defendant at the initial court appearance and arraignment, and may enter a plea during the arraignment. However, if the defendant is represented by counsel at an initial hearing in superior court, and if the defendant does not plead guilty or nolo contendere to any charge, the attorney shall be present with the defendant or if the attorney is not present with the defendant, the attorney shall be present in court during the hearing. The defendant shall have the right to make his or her plea while physically present in the courtroom if he or she so requests. If the defendant decides not to exercise the right to be physically present in the courtroom, he or she shall execute a written waiver of that right. A judge may order a defendant's personal appearance in court for the initial court appearance and arraignment. In a misdemeanor case, a judge may, pursuant to this subdivision, accept a plea of guilty or no contest from a defendant who is not physically in the courtroom. In a felony case, a judge may, pursuant to this subdivision, accept a plea of guilty or no contest from a defendant who is not physically in the courtroom if the parties stipulate thereto.

(d) Notwithstanding subdivision (c), if the defendant is represented by counsel, the attorney shall be present with the defendant in any county exceeding 4,000,000 persons in population.

SEC. 29. Section 408 of the Revenue and Taxation Code is amended to read:

408. (a) Except as otherwise provided in subdivisions (b), (c), and (d), any information and records in the assessor's office which are not required by law to be kept or prepared by the assessor, and homeowners' exemption claims, are not public documents and shall not be open to public inspection. Property receiving the homeowners' exemption shall be clearly identified on the assessment roll. The assessor shall maintain records which shall be open to public inspection to identify those claimants who have been granted the homeowners' exemption.

(b) The assessor may provide any appraisal data in his or her possession to the assessor of any county and shall provide any market data in his or her possession to an assessee of property or his or her designated representative upon request. The assessor shall permit an assessee of property or his or her designated representative to inspect at the assessor's office any information and records, whether or not required to be kept or prepared by the assessor, relating to the appraisal and the assessment of his or her property. Except as provided in Section 408.1, an assessee or his or her designated

representative, however, shall not be provided or permitted to inspect information and records, other than market data, which also relate to the property or business affairs of another person, unless that disclosure is ordered by a competent court in a proceeding initiated by a taxpayer seeking to challenge the legality of his or her assessment.

(c) The assessor shall disclose information, furnish abstracts, or permit access to all records in his or her office to law enforcement agencies, the county grand jury, the board of supervisors or their duly authorized agents, employees or representatives when conducting an investigation of the assessor's office pursuant to Section 25303 of the Government Code, the Controller, employees of the Controller for property tax postponement purposes, probate referees, employees of the Franchise Tax Board for tax administration purposes only, staff appraisers of the Department of Savings and Loan, the Department of Transportation, the Department of General Services, the State Board of Equalization, the State Department of Social Services, and other duly authorized legislative or administrative bodies of the state pursuant to their authorization to examine the records. Whenever the assessor discloses information, furnishes abstracts, or permits access to records in his or her office to staff appraisers of the Department of Savings and Loan, the Department of Transportation, or the Department of General Services pursuant to this section, the department shall reimburse the assessor for any costs incurred as a result thereof.

(d) Upon the request of the tax collector, the assessor shall disclose and provide to the tax collector information used in the preparation of that portion of the unsecured roll for which the taxes thereon are delinquent. The tax collector shall certify to the assessor that he or she needs the information requested for the enforcement of the assessor's tax lien in collecting those delinquent taxes. Information requested by the tax collector may include social security numbers, and the assessor shall recover from the tax collector his or her actual and reasonable costs for providing the information. The tax collector shall add the costs described in the preceding sentence to the assessee's delinquent tax lien and collect those costs subject to subdivision (e) of Section 2922.

(e) For purposes of this section, "market data" means any information in the assessor's possession, whether or not required to be prepared or kept by him or her, relating to the sale of any property comparable to the property of the assessee, if the assessor bases his or her assessment of the assessee's property, in whole or in part, on that comparable sale or sales. The assessor shall provide the names of the seller and buyer of each property on which the comparison is based, the location of that property, the date of the sale, and the consideration paid for the property, whether paid in money or otherwise, but for purposes of providing market data, the assessor shall not display any document relating to the business affairs

or property of another.

SEC. 30. Section 408 of the Revenue and Taxation Code is amended to read:

408. (a) Except as otherwise provided in subdivisions (b), (c), (d), and (e) any information and records in the assessor's office which are not required by law to be kept or prepared by the assessor, and homeowners' exemption claims, are not public documents and shall not be open to public inspection. Property receiving the homeowners' exemption shall be clearly identified on the assessment roll. The assessor shall maintain records which shall be open to public inspection to identify those claimants who have been granted the homeowners' exemption.

(b) The assessor may provide any appraisal data in his or her possession to the assessor of any county.

The assessor shall disclose information, furnish abstracts, or permit access to all records in his or her office to law enforcement agencies, the county grand jury, the board of supervisors or their duly authorized agents, employees or representatives when conducting an investigation of the assessor's office pursuant to Section 25303 of the Government Code, the Controller, employees of the Controller for property tax postponement purposes, probate referees, employees of the Franchise Tax Board for tax administration purposes only, staff appraisers of the Department of Savings and Loan, the Department of Transportation, the Department of General Services, the State Board of Equalization, the State Department of Social Services, and other duly authorized legislative or administrative bodies of the state pursuant to their authorization to examine the records. Whenever the assessor discloses information, furnishes abstracts, or permits access to records in his or her office to staff appraisers of the Department of Savings and Loan, the Department of Transportation, or the Department of General Services pursuant to this section, the department shall reimburse the assessor for any costs incurred as a result thereof.

(c) Upon the request of the tax collector, the assessor shall disclose and provide to the tax collector information used in the preparation of that portion of the unsecured roll for which the taxes thereon are delinquent. The tax collector shall certify to the assessor that he or she needs the information requested for the enforcement of the assessor's tax lien in collecting those delinquent taxes. Information requested by the tax collector may include social security numbers, and the assessor shall recover from the tax collector his or her actual and reasonable costs for providing the information. The tax collector shall add the costs described in the preceding sentence to the assessee's delinquent tax lien and collect those costs subject to subdivision (e) of Section 2922.

(d) The assessor shall, upon the request of an assessee or his or her designated representative, permit the assessee or representative to inspect or copy any market data in the assessor's possession. For purposes of this subdivision, "market data" means any information

in the assessor's possession, whether or not required to be prepared or kept by him or her, relating to the sale of any property comparable to the property of the assessee, if the assessor bases his or her assessment of the assessee's property, in whole or in part, on that comparable sale or sales. The assessor shall provide the names of the seller and buyer of each property on which the comparison is based, the location of that property, the date of the sale, and the consideration paid for the property, whether paid in money or otherwise. However, for purposes of providing market data, the assessor shall not display any document relating to the business affairs or property of another.

(e) With respect to information, documents, and records, other than market data as defined in subdivision (d), the assessor shall, upon request of an assessee of property, or his or her designated representative, permit the assessee or representative to inspect or copy all information, documents, and records, including auditors' narrations and workpapers, whether or not required to be kept or prepared by the assessor, relating to the appraisal and the assessment of the assessee's property, and any penalties and interest thereon. However, except as provided in Section 408.1, an assessee, or his or her designated representative, shall not be permitted to inspect or copy information and records that also relate to the property or business affairs of another, unless that disclosure is ordered by a competent court in a proceeding initiated by a taxpayer seeking to challenge the legality of the assessment of his or her property.

(f) (1) Permission for the inspection or copying requested pursuant to subdivision (d) or (e) shall be granted as soon as reasonably possible to the assessee or his or her designated representative.

(2) If the assessee, or his or her designated representative, requests the assessor to make copies of any of the requested records, the assessee shall reimburse the assessor for the reasonable costs incurred in reproducing and providing the copies.

SEC. 30.5. Section 19001 of the Revenue and Taxation Code, as amended by Section 225 of Chapter 219 of the Statutes of 1993, is repealed.

SEC. 31. Section 903 of the Welfare and Institutions Code is amended to read:

903. (a) A parent of a minor, the estate of a parent, and the estate of the minor, shall be liable for the reasonable costs of support of the minor while the minor is placed, or detained in, or committed to, any institution or other place pursuant to Section 625 or pursuant to an order of the juvenile court. However, a county shall not levy charges for the costs of support of a minor detained pursuant to Section 625 unless, at the detention hearing, the juvenile court determines that detention of the minor should be continued, the petition for the offense for which the minor is detained is subsequently sustained, or the minor agrees to a program of supervision pursuant to Section 654. The liability of these persons and estates shall be a joint and several

liability.

(b) The county shall limit the charges it seeks to impose to the reasonable costs of support of the minor and shall exclude any costs of incarceration, treatment, or supervision for the protection of society and the minor and the rehabilitation of the minor. In the event that court-ordered child support paid to the county pursuant to subdivision (a) exceeds the amount of the costs authorized by this subdivision and subdivision (a), the county shall either hold the excess in trust for the minor's future needs pursuant to Section 302.52 of Title 45 of the Code of Federal Regulations or, with the approval of the minor's caseworker or the probation officer, pay the excess directly to the minor.

(c) It is the intent of the Legislature in enacting this subdivision to protect the fiscal integrity of the county, to protect persons against whom the county seeks to impose liability from excessive charges, to ensure reasonable uniformity throughout the state in the level of liability being imposed, and to ensure that liability is imposed only on persons with the ability to pay. In evaluating a family's financial ability to pay under this section, the county shall take into consideration the family income, the necessary obligations of the family, and the number of persons dependent upon this income. Except as provided in paragraphs (1), (2), (3), and (4), "costs of support" as used in this section means only actual costs incurred by the county for food and food preparation, clothing, personal supplies, and medical expenses, not to exceed a combined maximum cost of fifteen dollars ($15) per day, except that:

(1) The maximum cost of fifteen dollars ($15) per day shall be adjusted every third year beginning January 1, 1988, to reflect the percentage change in the calendar year annual average of the California Consumer Price Index, All Urban Consumers, published by the Department of Industrial Relations, for the three-year period.

(2) No cost for medical expenses shall be imposed by the county until the county has first exhausted any eligibility the minor may have under private insurance coverage, standard or medically indigent Medi-Cal coverage, and the Robert W. Crown California Children's Services Act (Article 2 (commencing with Section 248) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code).

(3) In calculating the cost of medical expenses, the county shall not charge in excess of 100 percent of the AFDC fee for service average Medi-Cal payment for that county for that fiscal year as calculated by the State Department of Health Services; however, if a minor has extraordinary medical or dental costs that are not met under any of the coverages listed in paragraph (2), the county may impose these additional costs.

(4) For those placements of a minor subject to this section in which an AFDC–FC grant is made, the district attorney shall seek an order pursuant to Section 11350 and the statewide child support guidelines in effect in Chapter 2 (commencing with Section 4720) of Title 5 of Part 5 of Division 4 of the Civil Code or Article 2

(commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 of the Family Code. For purposes of determining the correct amount of support of a minor subject to this section, the rebuttable presumption set forth in subdivision (d) of Section 4721 of the Civil Code or Section 4057 of the Family Code shall be applicable.

SEC. 32. Section 903.5 of the Welfare and Institutions Code is amended to read:

903.5. In addition to the requirements of Section 903.4, and notwithstanding any other provision of law, the parent or other person legally liable for the support of a minor, who voluntarily places the minor in 24-hour out-of-home care, shall be liable for the cost of the minor's care, support, and maintenance when the minor receives Aid to Families with Dependent Children-Foster Care (AFDC-FC), Supplemental Security Income-State Supplementary Program (SSI-SSP), or county-only funds. As used in this section "parent" includes any person specified in Section 903. Whenever the county welfare department or the placing agency determines that a court order would be advisable and effective, the department or the agency shall notify the district attorney, or the financial evaluation officer designated pursuant to Section 903.45, who shall proceed pursuant to Section 903.4.

SEC. 33. Section 11476 of the Welfare and Institutions Code is amended to read:

11476. It shall be the duty of the county department to refer all cases where a parent is absent from the home, or where the parents are unmarried and parentage has not been determined by a court of competent jurisdiction, to the district attorney immediately at the time the application for public assistance, including Medi-Cal benefits, or certificate of eligibility, is signed by the applicant or recipient. If an applicant is found to be ineligible, the applicant shall be notified in writing that the referral of the case to the district attorney may be terminated at the applicant's request. The county department shall cooperate with the district attorney and shall make available to him or her all pertinent information as provided in Section 11478.

Upon referral from the county department, the district attorney shall investigate the question of nonsupport or paternity and shall take all steps necessary to obtain child support for the needy child, enforce spousal support as part of the state plan under Section 11475.2, and determine paternity in the case of a child born out of wedlock. Upon the advice of the county department that a child is being considered for adoption, the district attorney shall delay the investigation and other actions with respect to the case until advised that the adoption is no longer under consideration. The granting of public assistance or Medi-Cal benefits to an applicant shall not be delayed or contingent upon investigation by the district attorney.

In cases where Medi-Cal benefits are the only assistance provided, the district attorney shall provide child and spousal support services unless the recipient of the services notifies the district attorney that

only services related to securing Medi-Cal benefits are requested.

Where a court order has been obtained, any contractual agreement for support between the district attorney or the county department and the noncustodial parent shall be deemed null and void to the extent that it is not consistent with the court order.

Whenever a family which has been receiving public assistance, including Medi-Cal, ceases to receive assistance, including Medi-Cal, the district attorney shall, to the extent required by federal regulations, continue to enforce support payments from the noncustodial parent until such time as the individual on whose behalf the enforcement efforts are made sends written notice to the district attorney requesting that enforcement services be discontinued.

The district attorney shall, where appropriate, utilize reciprocal arrangements adopted with other states in securing support from an absent parent. In individual cases where utilization of reciprocal arrangements has proven ineffective, the district attorney may forward to the Attorney General a request to utilize federal courts in order to obtain or enforce orders for child or spousal support. If reasonable efforts to collect amounts assigned pursuant to Section 11477 have failed, the district attorney may request that the case be forwarded to the Treasury Department for collection in accordance with federal regulations. The Attorney General, where appropriate, shall forward these requests to the Secretary of Health and Human Services, or a designated representative.

SEC. 34. Section 11478 of the Welfare and Institutions Code is amended to read:

11478. (a) All state, county, and local agencies shall cooperate with the district attorney (1) in carrying out Sections 4604 and 4605 of the Civil Code concerning the location, seizure, and recovery of abducted, concealed, or detained minor children, (2) in the enforcement of any child support obligation to the extent required under the state plan under Section 11475.2 of this code, Section 1650 of the Code of Civil Procedure, and Section 270 of the Penal Code, and (3) the enforcement of spousal support orders to the extent required by law, and location of parents or putative parents. This subdivision applies irrespective of whether the children are or are not receiving aid to families with dependent children.

(b) On request, all state, county, and local agencies shall supply the district attorney of any county in this state and the California Parent Locator Service with all the information on hand concerning the location, income, or property of any parents, putative parents, spouses, or former spouses, notwithstanding any other provisions of law making the information confidential, and with all information on hand concerning the location and prosecution of any person who has, by means of false statement or representation, or by impersonation or other fraudulent device, obtained aid for a child under this chapter.

(c) The State Department of Social Services' Statewide Automated Child Support System shall be entitled to the same

cooperation and information provided to the California Parent Locator Service, to the extent allowed by law. The Statewide Automated Child Support System shall be allowed access to criminal offender record information only to the extent that access is allowed by law.

(d) This section shall be repealed on January 1, 1994, unless another statute which is effective on or before that date deletes or extends that date.

SEC. 34.5. Section 11478 of the Welfare and Institutions Code, as amended by Section 230 of Chapter 219 of the Statutes of 1993, is amended to read:

11478. (a) All state, county, and local agencies shall cooperate with the district attorney (1) in carrying out Chapter 8 (commencing with Section 3130) of Part 2 of Division 8 of the Family Code concerning the location, seizure, and recovery of abducted, concealed, or detained minor children, (2) in the enforcement of any child support obligation or to the extent required under the state plan under Section 11475.2 of this code, Chapter 6 (commencing with Section 4800) of Part 5 of Division 9 of the Family Code, and Section 270 of the Penal Code, and (3) the enforcement of spousal support orders and in the location of parents or putative parents. This subdivision applies irrespective of whether the children are or are not receiving aid to families with dependent children.

(b) On request, all state, county, and local agencies shall supply the district attorney of any county in this state or the California Parent Locator Service with all information on hand relative to the location, income, or property of any parents, putative parents, spouses, or former spouses, notwithstanding any other provision of law making the information confidential, and with all information on hand relative to the location and prosecution of any person who has, by means of false statement or representation or by impersonation or other fraudulent device, obtained aid for a child under this chapter.

(c) The State Department of Social Services' Statewide Automated Child Support System shall be entitled to the same cooperation and information provided to the California Parent Locator Service, to the extent allowed by law. The Statewide Automated Child Support System shall be allowed access to criminal offender record information only to the extent that access is allowed by law.

(d) This section shall be operative January 1, 1994.

SEC. 35. Section 11478.5 of the Welfare and Institutions Code is amended to read:

11478.5. (a) There is in the Department of Justice the California Parent Locator Service and Central Registry which shall collect and disseminate all of the following, with respect to any parent, putative parent, spouse, or former spouse:

(1) The full and true name of the parent together with any known aliases.

(2) Date and place of birth.
(3) Physical description.
(4) Social security number.
(5) Employment history and earnings.
(6) Military status and Veterans Administration or military service serial number.
(7) Last known address, telephone number, and date thereof.
(8) Driver's license number, driving record, and vehicle registration information.
(9) Criminal, licensing, and applicant records and information.
(10) (A) Any additional location, asset, and income information, including income tax return information obtained pursuant to Section 19285.1 of the Revenue and Taxation Code, and the address, telephone number, and social security information obtained from a public utility that may be of assistance in locating the parent, putative parent, abducting, concealing, or detaining parent, spouse, or former spouse, in establishing a parent and child relationship, in enforcing the child support liability of the absent parent, or enforcing the spousal support liability of the spouse or former spouse to the extent required by the state plan pursuant to Section 11475.2.
(B) For purposes of this subdivision "income tax return information" means all of the following regarding the taxpayer:
(i) Assets.
(ii) Credits.
(iii) Deductions.
(iv) Exemptions.
(v) Identity.
(vi) Liabilities.
(vii) Nature, source, and amount of income.
(viii) Net worth.
(ix) Payments.
(x) Receipts.
(xi) Address.
(xii) Social security number.
(b) To effectuate the purposes of this section, the California Parent Locator Service and Central Registry shall utilize the federal Parent Locator Service to the extent necessary, and may request and shall receive from all departments, boards, bureaus, or other agencies of the state, or any of its political subdivisions, and those entities shall provide, that assistance and data which will enable the Department of Justice and other public agencies to carry out their powers and duties to locate parents, spouses, and former spouses, and to identify their assets, to establish parent-child relationships, and to enforce liability for child or spousal support, and for any other obligations incurred on behalf of children, and shall also provide that information to any district attorney in fulfilling the duties prescribed in Section 270 of the Penal Code, and in Sections 4604 and 4605 of the Civil Code, relating to abducted, concealed, or detained children. The State Department of Social Services' Statewide Automated

Child Support System shall be entitled to the same cooperation and information as the California Parent Locator Service, to the extent allowed by law. The Statewide Automated Child Support System shall be allowed access to criminal record information only to the extent that access is allowed by state and federal law.

(c) (1) To effectuate the purposes of this section, and notwithstanding any other provision of California law, regulation, or tariff, and to the extent permitted by federal law, the California Parent Locator Service and Central Registry and the Statewide Automated Child Support System may request and shall receive from public utilities, as defined in Section 216 of the Public Utilities Code, customer service information, including the full name, address, telephone number, date of birth, and social security number of customers of the public utility, to the extent that this information is stored within the computer data base of the public utility.

(2) In order to protect the privacy of utility customers, a request to a public utility for customer service information pursuant to this section shall meet the following requirements:

(A) Be submitted to the public utility in writing, on a transmittal document prepared by the California Parent Locator Service and Central Registry or the Statewide Automated Child Support System and approved by all of the public utilities.

(B) Have the signature of a representative authorized by the California Parent Locator Service and Central Registry or the Statewide Automated Child Support System.

(C) Contain at least three of the following data elements regarding the person sought:

(i) First and last name, and middle initial, if known.

(ii) Social security number.

(iii) Driver's license number.

(iv) Birth date.

(v) Last known address.

(vi) Spouse's name.

(D) The California Parent Locator Service and Central Registry and the Statewide Automated Child Support System shall ensure that each public utility has at all times a current list of the names of persons authorized to request customer service information.

(E) The California Parent Locator Service and Central Registry and the Statewide Automated Child Support System shall ensure that customer service information supplied by a public utility is applicable to the person who is being sought before releasing the information pursuant to subdivision (d).

(3) The public utility may charge a fee to the California Parent Locator Service and Central Registry or the Statewide Automated Child Support System for each search performed pursuant to this subdivision to cover the actual costs to the public utility for providing this information.

(4) No public utility, or official or employee thereof, shall be subject to criminal or civil liability for the release of customer service

information as authorized by this subdivision.

(d) Notwithstanding Section 14202 of the Penal Code, any records established pursuant to this section shall be disseminated only to the Department of Justice, the California Parent Locator Service and Central Registry, the parent locator services and central registries of other states as defined by federal statutes and regulations, a district attorney of any county in this state, the federal Parent Locator Service, and official child support enforcement agencies. The State Department of Social Services' Statewide Automated Child Support Enforcement System shall be allowed access to criminal offender record information only to the extent that access is allowed by law.

(e) (1) At no time shall any information received by the California Parent Locator Service and Central Registry or by the Statewide Automated Child Support System be disclosed to any person, agency, or other entity, other than those persons, agencies, and entities specified pursuant to Section 11478, this section, or any other provision of law.

(2) This subdivision shall not otherwise affect discovery between parties in any action to establish, modify, or enforce child, family, or spousal support, that relates to custody or visitation.

(f) (1) The Department of Justice, in consultation with the State Department of Social Services, shall promulgate rules and regulations to facilitate maximum and efficient use of the California Parent Locator Service and Central Registry.

(2) The Department of Justice, in consultation with the State Department of Social Services and the Public Utilities Commission, shall develop procedures for obtaining the information described in subdivision (c) from public utilities, and for compensating the public utilities for providing that information.

(g) The State Department of Social Services and the Department of Justice shall implement the provisions of this section regarding public utilities, as defined by Section 216 of the Public Utilities Code, only where there is a reasonable likelihood that the cost of obtaining customer service information from public utilities pursuant to this section would be less than the additional collections obtained through use of that information.

(h) The California Parent Locator Service and Central Registry may charge a fee not to exceed eighteen dollars ($18) for any service it provides pursuant to this section that is not performed or funded pursuant to Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code.

(i) This section shall be construed in a manner consistent with the other provisions of this article.

(j) This section shall be repealed on January 1, 1994, unless another statute which is effective on or before that date deletes or extends that date.

SEC. 35.5. Section 11478.5 of the Welfare and Institutions Code, as amended by Section 232 of Chapter 219 of the Statutes of 1993, is amended to read:

11478.5. (a) There is in the Department of Justice the California Parent Locator Service and Central Registry which shall collect and disseminate all of the following, with respect to any parent, putative parent, spouse, or former spouse:

(1) The full and true name of the parent together with any known aliases.

(2) Date and place of birth.

(3) Physical description.

(4) Social security number.

(5) Employment history and earnings.

(6) Military status and Veterans Administration or military service serial number.

(7) Last known address, telephone number, and date thereof.

(8) Driver's license number, driving record, and vehicle registration information.

(9) Criminal, licensing, and applicant records and information.

(10) (A) Any additional location, asset, and income information, including income tax return information obtained pursuant to Section 19285.1 of the Revenue and Taxation Code, and the address, telephone number, and social security information obtained from a public utility that may be of assistance in locating the parent, putative parent, abducting, concealing, or detaining parent, spouse, or former spouse, in establishing a parent and child relationship, in enforcing the child support liability of the absent parent, or enforcing the spousal support liability of the spouse or former spouse to the extent required by the state plan pursuant to Section 11475.2.

(B) For purposes of this subdivision "income tax return information" means all of the following regarding the taxpayer:

(i) Assets.

(ii) Credits.

(iii) Deductions.

(iv) Exemptions.

(v) Identity.

(vi) Liabilities.

(vii) Nature, source, and amount of income.

(viii) Net worth.

(ix) Payments.

(x) Receipts.

(xi) Address.

(xii) Social security number.

(b) To effectuate the purposes of this section, the California Parent Locator Service and Central Registry shall utilize the federal Parent Locator Service to the extent necessary, and may request and shall receive from all departments, boards, bureaus, or other agencies of the state, or any of its political subdivisions, and those entities shall provide, that assistance and data which will enable the Department of Justice and other public agencies to carry out their powers and duties to locate parents, spouses, and former spouses, and to identify their assets, to establish parent-child relationships, and to

enforce liability for child or spousal support, and for any other obligations incurred on behalf of children, and shall also provide that information to any district attorney in fulfilling the duties prescribed in Section 270 of the Penal Code, and in Sections 4604 and 4605 of the Civil Code, relating to abducted, concealed, or detained children. The State Department of Social Services' Statewide Automated Child Support System shall be entitled to the same cooperation and information as the California Parent Locator Service, to the extent allowed by law. The Statewide Automated Child Support System shall be allowed access to criminal record information only to the extent that access is allowed by state and federal law.

(c) (1) To effectuate the purposes of this section, and notwithstanding any other provision of California law, regulation, or tariff, and to the extent permitted by federal law, the California Parent Locator Service and Central Registry and the Statewide Automated Child Support System may request and shall receive from public utilities, as defined in Section 216 of the Public Utilities Code, customer service information, including the full name, address, telephone number, date of birth, and social security number of customers of the public utility, to the extent that this information is stored within the computer data base of the public utility.

(2) In order to protect the privacy of utility customers, a request to a public utility for customer service information pursuant to this section shall meet the following requirements:

(A) Be submitted to the public utility in writing, on a transmittal document prepared by the California Parent Locator Service and Central Registry or the Statewide Automated Child Support System and approved by all of the public utilities.

(B) Have the signature of a representative authorized by the California Parent Locator Service and Central Registry or the Statewide Automated Child Support System.

(C) Contain at least three of the following data elements regarding the person sought:

(i) First and last name, and middle initial, if known.

(ii) Social security number.

(iii) Driver's license number.

(iv) Birth date.

(v) Last known address.

(vi) Spouse's name.

(D) The California Parent Locator Service and Central Registry and the Statewide Automated Child Support System shall ensure that each public utility has at all times a current list of the names of persons authorized to request customer service information.

(E) The California Parent Locator Service and Central Registry shall ensure that customer service information supplied by a public utility is applicable to the person who is being sought before releasing the information pursuant to subdivision (d).

(3) The public utility may charge a fee to the California Parent Locator Service and Central Registry or the Statewide Automated

Child Support System for each search performed pursuant to this subdivision to cover the actual costs to the public utility for providing this information.

(4) No public utility, or official or employee thereof, shall be subject to criminal or civil liability for the release of customer service information as authorized by this subdivision.

(d) Notwithstanding Section 14202 of the Penal Code, any records established pursuant to this section shall be disseminated only to the Department of Justice, the California Parent Locator Service and Central Registry, the parent locator services and central registries of other states as defined by federal statutes and regulations, a district attorney of any county in this state, the federal Parent Locator Service, and official child support enforcement agencies. The State Department of Social Services' Statewide Automated Child Support Enforcement System shall be allowed access to criminal offender record information only to the extent that access is allowed by law.

(e) (1) At no time shall any information received by the California Parent Locator Service and Central Registry or by the Statewide Automated Child Support System be disclosed to any person, agency, or other entity, other than those persons, agencies, and entities specified pursuant to Section 11478, this section, or any other provision of law.

(2) This subdivision shall not otherwise affect discovery between parties in any action to establish, modify, or enforce child, family, or spousal support, that relates to custody or visitation.

(f) (1) The Department of Justice, in consultation with the State Department of Social Services, shall promulgate rules and regulations to facilitate maximum and efficient use of the California Parent Locator Service and Central Registry.

(2) The Department of Justice, in consultation with the State Department of Social Services and the Public Utilities Commission, shall develop procedures for obtaining the information described in subdivision (c) from public utilities, and for compensating the public utilities for providing that information.

(g) The State Department of Social Services and the Department of Justice shall implement the provisions of this section regarding public utilities, as defined by Section 216 of the Public Utilities Code, only where there is a reasonable likelihood that the cost of obtaining customer service information from public utilities pursuant to this section would be less than the additional collections obtained through use of that information.

(h) The California Parent Locator Service and Central Registry may charge a fee not to exceed eighteen dollars ($18) for any service it provides pursuant to this section that is not performed or funded pursuant to Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code.

(i) This section shall be construed in a manner consistent with the other provisions of this article.

(j) This section shall be operative January 1, 1994.

SEC. 36. Sections 27.7, 27.8, 28.5, and 30.5 of this bill shall be operative January 1, 1994.

SEC. 37. The amendments and additions to the Family Code made by this act shall not become operative until January 1, 1994.

SEC. 38. Section 30 of this bill incorporates amendments to Section 408 of the Revenue and Taxation Code proposed by both this bill and SB 143. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 408 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 143, in which case Section 26 of the Revenue and Taxation Code, as amended by Section 30 of this bill, shall remain operative only until the operative date of SB 143, at which time Section 30 of this bill shall become operative.

SEC. 39. 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. 40. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to comply with federal regulations which became effective in 1992 without further delay, it is necessary that this act take effect immediately. Additionally, it is necessary that this act take effect immediately in order to permit optional renewal of judgments for support, reimbursement, and other arrearages at the earliest possible time. Further, in order to make necessary changes in matter related to family law and the courts, it is necessary that this bill take effect immediately.

CHAPTER 877

An act to amend Sections 17008.5, 17020.7, 17020.8, 17020.11, 17020.12, 17020.13, 17021.5, 17034, 17041, 17042, 17054, 17054.7, 17078, 17250, 17274, 17671, 18180, 18622, 19029, 19043, 19057, 19059, 19167, 19254, 19311, 19702, 23002, 23038.5, 23045.6, 23046, 23047, 23049, 23058, 23732, 23734, 23735, 24271, 24276, 24307, 24343, 24344, 24347.5, 24349.1, 24365, 24369, 24372.3, 24379, 24382, 24414, 24422.3, 24427, 24436.5, 24437, 24440, 24442.5, 24443, 24449, 24652, 24654, 24661, 24667, 24673.2, 24681, 24682, 24688, 24689, 24692, 24693, 24701, 24708, 24721, 24726, 24872, 24905, 24918, 24941, 24950, 24951, 24954, 24966.1, 24966.2, 24981, 24988, and 24989, of, to amend and repeal Sections 18461, 18583, 18586, 18586.3, 18591.1, 18689.5, 25662, 25662.1, 25663, 25674, and 25937 of, to amend, repeal, and add Section 23101.5 of, to add Sections 18682.10, 19136.5, and 19393 to, and to repeal Section 24371 of, the Revenue and Taxation Code, and to amend Sections 2629.1, 13017, 13043, and 13050 of the Unemployment Insurance Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 17008.5 of the Revenue and Taxation Code is amended to read:

17008.5. Section 7704 of the Internal Revenue Code, relating to certain publicly traded partnerships treated as corporations, shall apply, except as otherwise provided.

SEC. 2. Section 17020.7 of the Revenue and Taxation Code is amended to read:

17020.7. Section 7701(a)(46) of the Internal Revenue Code, relating to determination of whether there is a collective bargaining agreement, shall apply, except as otherwise provided.

SEC. 3. Section 17020.8 of the Revenue and Taxation Code is amended to read:

17020.8. Section 7701(e) of the Internal Revenue Code, relating to treatment of certain contracts for providing services, etc., shall apply, except as otherwise provided.

SEC. 4. Section 17020.11 of the Revenue and Taxation Code is amended to read:

17020.11. Section 7701(h) of the Internal Revenue Code, relating to motor vehicle operating leases, shall apply.

SEC. 5. Section 17020.12 of the Revenue and Taxation Code is amended to read:

17020.12. Section 7701(a)(20) of the Internal Revenue Code, relating to definition of "employee," shall apply, except as otherwise provided.

SEC. 6. Section 17020.13 of the Revenue and Taxation Code is

amended to read:

17020.13. Section 7701(k) of the Internal Revenue Code, relating to treatment of certain amounts paid to charity, shall apply, except as otherwise provided.

SEC. 7. Section 17021.5 of the Revenue and Taxation Code is amended to read:

17021.5. Section 7703 of the Internal Revenue Code, relating to determination of marital status, shall apply, except as otherwise provided.

SEC. 7.1. Section 17034 of the Revenue and Taxation Code, as amended by Chapter 31 of the Statutes of 1993, is amended to read:

17034. Unless otherwise specifically provided therein, the provisions of any act:

(a) That affect the imposition or computation of taxes, additions to tax, penalties, or the allowance of credits against the tax, shall be applied to taxable years beginning on or after January 1 of the year in which the act takes effect.

(b) That otherwise affect the provisions of this part shall be applied on and after the date the act takes effect.

SEC. 8. Section 17041 of the Revenue and Taxation Code is amended to read:

17041. (a) (1) There shall be imposed for each taxable year upon the entire taxable income of every resident of this state, except the head of a household as defined in Section 17042, taxes in the following amounts and at the following rates upon the amount of taxable income:

If the taxable income is:	The tax is:
Not over $3,650	1% of the taxable income
Over $3,650 but not over $8,650	$36.50 plus 2% of the excess over $3,650
Over $8,650 but not over $13,650	$136.50 plus 4% of the excess over $8,650
Over $13,650 but not over $18,950	$336.50 plus 6% of the excess over $13,650
Over $18,950 but not over $23,950	$654.50 plus 8% of the excess over $18,950
Over $23,950	$1,054.50 plus 9.3% of the excess over $23,950

(2) (A) For any taxable year beginning on or after January 1, 1991, and before January 1, 1996, the income tax brackets and rates set forth in paragraph (1) shall be modified by each of the following:

(i) For that portion of taxable income that is over one hundred thousand dollars ($100,000) but not over two hundred thousand

dollars ($200,000), the tax rate is 10 percent of the excess over one hundred thousand dollars ($100,000).

(ii) For that portion of taxable income that is over two hundred thousand dollars ($200,000), the tax rate is 11 percent of the excess over two hundred thousand dollars ($200,000).

(B) The income tax brackets specified in this paragraph shall be recomputed, as otherwise provided in subdivision (h), only for taxable years beginning on and after January 1, 1992.

(b) There shall be imposed for each taxable year upon the entire taxable income of every nonresident or part-year resident which is derived from sources in this state, except the head of a household as defined in Section 17042, a tax which shall be equal to the tax computed under subdivision (a) as if the nonresident or part-year resident were a resident multiplied by the ratio of California adjusted gross income to total adjusted gross income from all sources. For purposes of computing the tax under subdivision (a) and gross income from all sources, the net operating loss deduction provided in Section 172 of the Internal Revenue Code, as modified by Section 17276, shall be computed as if the taxpayer was a resident for all prior years.

(c) (1) There shall be imposed for each taxable year upon the entire taxable income of every resident of this state, when the resident is the head of a household, as defined in Section 17042, taxes in the following amounts and at the following rates upon the amount of taxable income:

If the taxable income is:	The tax is:
Not over $7,300	1% of the taxable income
Over $7,300 but not over $17,300	$73 plus 2% of the excess over $7,300
Over $17,300 but not over $22,300	$273 plus 4% of the excess over $17,300
Over $22,300 but not over $27,600	$473 plus 6% of the excess over $22,300
Over $27,600 but not over $32,600	$791 plus 8% of the excess over $27,600
Over $32,600	$1,191 plus 9.3% of the excess over $32,600

(2) (A) For any taxable year beginning on or after January 1, 1991, and before January 1, 1996, the income tax brackets and rates set forth in paragraph (1) shall be modified by each of the following:

(i) For that portion of taxable income that is over one hundred thirty-six thousand one hundred fifteen dollars ($136,115) but not over two hundred seventy-two thousand two hundred thirty dollars

($272,230), the tax rate is 10 percent of the excess over one hundred thirty-six thousand one hundred fifteen dollars ($136,115).

(ii) For that portion of taxable income that is over two hundred seventy-two thousand two hundred thirty dollars ($272,230), the tax rate is 11 percent of the excess over two hundred seventy-two thousand two hundred thirty dollars ($272,230).

(B) The income tax brackets specified in this paragraph shall be recomputed, as otherwise provided in subdivision (h), only for taxable years beginning on and after January 1, 1992.

(d) There shall be imposed for each taxable year upon the entire taxable income of every nonresident or part-year resident which is derived from sources within this state when the nonresident or part-year resident is the head of a household, as defined in Section 17042, a tax which shall be equal to the tax computed under subdivision (c) as if the nonresident or part-year resident were a resident multiplied by the ratio of California adjusted gross income to total adjusted gross income from all sources. For purposes of computing the tax under subdivision (c) and gross income from all sources, the net operating loss deduction provided in Section 172 of the Internal Revenue Code, as modified by Section 17276, shall be computed as if the taxpayer was a resident for all prior years.

(e) There shall be imposed for each taxable year upon the taxable income of every estate, trust, or common trust fund taxes equal to the amount computed under subdivision (a) for an individual having the same amount of taxable income.

(f) The tax imposed by this part is not a surtax.

(g) (1) Section 1 (g) of the Internal Revenue Code, relating to certain unearned income of minor children taxed as if the parent's income, shall apply, except as otherwise provided.

(2) Section 1(g) (7) (B) (ii) (II) of the Internal Revenue Code, relating to income included on parent's return, is modified, for purposes of this part, by substituting "five dollars ($5)" for "seventy-five dollars ($75)" and "1 percent" for "15 percent."

(h) For each taxable year beginning on or after January 1, 1988, the Franchise Tax Board shall recompute the income tax brackets prescribed in subdivisions (a) and (c). That computation shall be made as follows:

(1) The California Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index for all items from June of the prior calendar year to June of the current calendar year, no later than August 1 of the current calendar year.

(2) The Franchise Tax Board shall do both of the following:

(A) Compute an inflation adjustment factor by adding 100 percent to the percentage change figure that is furnished pursuant to paragraph (1) and dividing the result by 100.

(B) Multiply the preceding taxable year income tax brackets by the inflation adjustment factor determined in subparagraph (A) and round off the resulting products to the nearest one dollar ($1).

(i) (1) For purposes of this section, the term "California adjusted gross income" includes each of the following:

(A) For any part of the taxable year during which the taxpayer was a resident of this state (as defined by Section 17014), all items of adjusted gross income, regardless of source.

(B) For any part of the taxable year during which the taxpayer was not a resident of this state, only those items of adjusted gross income which were derived from sources within this state, determined in accordance with Chapter 11 (commencing with Section 17951).

(2) For purposes of computing "California adjusted gross income" under paragraph (1), the amount of any net operating loss sustained in any taxable year during any part of which the taxpayer was not a resident of this state shall be limited to the sum of the following:

(A) The amount of the loss attributable to the part of the taxable year in which the taxpayer was a resident.

(B) The amount of the loss which, during the part of the taxable year the taxpayer is not a resident, is attributable to California source income and deductions allowable in arriving at adjusted gross income.

SEC. 9. Section 17042 of the Revenue and Taxation Code is amended to read:

17042. Section 2(b) and (c) of the Internal Revenue Code, relating to definitions of head of household and certain married individuals living apart, respectively, shall apply, except as otherwise provided.

SEC. 11. 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 Section 17041 or 17048, less any increases imposed under paragraph (1) of subdivision (d) or paragraph (1) of subdivision (e), or both, of Section 17560.

(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) 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) for whom an exemption is allowable under Section 151 (c) of the Internal Revenue Code (relating to additional exemption for dependents).

(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. 12. Section 17054.7 of the Revenue and Taxation Code is amended 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.

(b) For each taxable year beginning on or after January 1, 1991, the Franchise Tax Board shall recompute the adjusted gross income specified in paragraph (3) of subdivision (c). Those computations 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 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 pursuant to paragraph (1) and divide the result by 100.

(3) The Franchise Tax Board shall multiply the amount for the immediately preceding taxable year for the adjusted gross income limitation specified in paragraph (3) of subdivision (c) by the inflation adjustment factor determined in paragraph (2), and round off the resulting product 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. 13. Section 17078 of the Revenue and Taxation Code is amended to read:

17078. (a) Section 988 of the Internal Revenue Code, relating to treatment of certain foreign currency transactions, shall apply, except as otherwise provided.

(b) Section 988(a)(3) of the Internal Revenue Code, relating to source, shall not apply.

SEC. 14. Section 17250 of the Revenue and Taxation Code is amended to read:

17250. (a) (1) Section 168 of the Internal Revenue Code, relating to the accelerated cost recovery system, shall apply to assets placed in service on or after January 1, 1987, in taxable years beginning on or after January 1, 1987.

(2) In the case of assets placed in service on or after January 1, 1987, in taxable years beginning prior to January 1, 1987, a taxpayer may elect to have Sections 168 and 179 of the Internal Revenue Code apply by doing all of the following:

(A) Making an election on the return for the first taxable year beginning on or after January 1, 1987.

(B) Establishing a depreciation adjustment account for each asset (or group of assets) in an amount equal to the difference between the depreciation allowed on the federal return for each asset (or group of assets) and the depreciation allowed under this part.

(C) The depreciation adjustment account (or accounts) established under subparagraph (B) shall be amortized over 60 months beginning with the first taxable year beginning on or after January 1, 1987.

(3) In the case of assets placed in service prior to January 1, 1987, in taxable years beginning prior to January 1, 1987, Section 168 of the Internal Revenue Code shall apply only to residential rental property as provided by former Section 17250.5 (as amended by Chapter 1461 of the Statutes of 1985).

(b) For purposes of subdivision (a), any reference to "tax imposed by this chapter" in Section 168 of the Internal Revenue Code means "net tax," as defined in Section 17039.

(c) For purposes of paragraph (1) of subdivision (a), Section 168 of the Internal Revenue Code shall be modified as follows:

(1) Section 168(e)(3) shall be modified to provide that any grapevine, replaced in a vineyard in California in any taxable year beginning on or after January 1, 1992, as a direct result of a phylloxera infestation in that vineyard, shall be "five-year property," rather than "10-year property."

(2) Section 168(g)(3) of the Internal Revenue Code shall be modified to provide that any grapevine, replaced in a vineyard in California in any taxable year beginning on or after January 1, 1992, as a direct result of a phylloxera infestation in that vineyard, shall have a class life of 10 years.

(d) Every taxpayer claiming a depreciation deduction with respect to grapevines as described in subdivision (c) shall obtain a written certification from an independent state-certified integrated pest management advisor, or a state agricultural commissioner or advisor, that specifies that the replanting was necessary to restore a vineyard infested with phylloxera. The taxpayer shall retain the certification for future audit purposes.

(e) (1) Section 169 of the Internal Revenue Code, relating to amortization of pollution control facilities, shall apply, except as otherwise provided.

(2) The deduction allowed by this section shall be available only

with respect to facilities located in this state.

(3) The "state certifying authority," as defined in Section 169(d)(2) of the Internal Revenue Code, means the State Air Resources Board, in the case of air pollution, and the State Water Resources Control Board, in the case of water pollution.

(f) For property used in a trade or business, or held for production of income, there shall be allowed as a depreciation deduction a reasonable allowance for the cost of a solar energy system and allowable conservation measures over a 60-month period for taxable years beginning before January 1, 1987.

(g) Section 7622(c)[e of Public Law 101-239, relating to the effective date of changes in treatment of transfers of franchises, trademarks, and trade names, shall apply.

(h) Section 7645(b) of Public Law 101-239, relating to the effective date of disallowance of depreciation for certain term interests, shall apply.

SEC. 15. Section 17274 of the Revenue and Taxation Code is amended to read:

17274. (a) Notwithstanding any other provisions in this part to the contrary, in the case of a taxpayer who derives rental income from substandard housing located in this state, no deduction shall be allowed for interest, taxes, depreciation, or amortization paid or incurred in the taxable year with respect to the substandard housing, except as provided in subdivision (e).

(b) "Substandard housing" means housing for which both of the following apply:

(1) The housing has been determined by a state or local government regulatory agency to violate state law or local codes dealing with health, safety, or building.

(2) Either of the following occur:

(A) After written notice of violation by the regulatory agency, specifying the applicability of this section, the housing has not been brought to a condition of compliance within six months after the date of the notice or the time prescribed in the notice, whichever period is later.

(B) Good faith efforts for compliance have not been commenced, as determined by the regulatory agency.

"Substandard housing" shall also mean employee housing that has not, within 30 days of the date of the written notice of violation or the date for compliance prescribed in the written notice of violation, been brought into compliance with the conditions stated in the written notice of violation of the Employee Housing Act (Part 1 (commencing with Section 17000) of Division 13 of the Health and Safety Code) issued by the enforcement agency that specifies the application of this section. The regulatory agency may, for good cause shown, extend the compliance date prescribed in a violation notice.

(c) (1) When the period specified in subdivision (b) has expired without compliance, the regulatory agency shall mail to the taxpayer

a notice of noncompliance. The notice of noncompliance shall be in a form and shall include information prescribed by the Franchise Tax Board, shall be mailed by certified mail to the taxpayer at the taxpayer's last known address, and shall advise the taxpayer (A) of an intent to notify the Franchise Tax Board of the noncompliance within 10 days unless an appeal is filed, (B) where an appeal may be filed, and (C) of a general description of the tax consequences of the filing with the Franchise Tax Board. Appeals shall be made to the same body and in the same manner as appeals from other actions of the regulatory agency. If no appeal is made within 10 days or after disposition of the appeal if the regulatory agency is sustained, the regulatory agency shall notify, in writing, the Franchise Tax Board of the noncompliance.

(2) The notice of noncompliance shall contain the legal description or the lot and block numbers of the real property, the assessor's parcel number, and the name of the owner of record as shown on the latest equalized assessment roll. In addition, the regulatory agency shall, at the same time as notification of the notice of noncompliance is sent to the Franchise Tax Board, record a copy of the notice of noncompliance in the office of the recorder for the county in which the substandard housing is located that includes a statement of tax consequences that may be determined by the Franchise Tax Board. However, the failure to record a notice with the county recorder shall not relieve the liability of any taxpayer nor shall it create any liability on the part of the regulatory agency.

(3) The regulatory agency may charge the taxpayer a fee in an amount not to exceed the regulatory agency's costs incurred in recording any notice of noncompliance or issuing any release of that notice. The notice of compliance shall be recorded and shall serve to expunge the notice of noncompliance. The notice of compliance shall contain the same recording information required for the notice of noncompliance. No deduction by the taxpayer, or any other taxpayer who obtains title to the property subsequent to the recordation of the notice of noncompliance, shall be allowed for the items provided in subdivision (a) from the date of the notice of noncompliance until the date the regulatory agency determines that the substandard housing has been brought to a condition of compliance. The regulatory agency shall mail to the Franchise Tax Board and the taxpayer a notice of compliance, which notice shall be in the form and include the information prescribed by the Franchise Tax Board. In the event the period of noncompliance does not cover an entire taxable year, the deductions shall be denied at the rate of $\frac{1}{12}$ for each full month during the period of noncompliance.

(4) If the property is owned by more than one owner or if recorded title is in the name of a fictitious owner, the notice requirements provided in subdivision (b) and this subdivision shall be satisfied for each owner if the notices are mailed to one owner or to the fictitious name owner at the address appearing on the latest available property tax bill. However, notices made pursuant to this

subdivision shall not relieve the regulatory agency from furnishing taxpayer identification information required to implement this section to the Franchise Tax Board.

(d) For the purposes of this section, a notice of noncompliance shall not be mailed by the regulatory agency to the Franchise Tax Board if any of the following occur:

(1) The rental housing was rendered substandard solely by reason of earthquake, flood, or other natural disaster except where the condition remains for more than three years after the disaster.

(2) The owner of the rental housing has secured financing to bring the housing into compliance with those laws or codes which have been violated, causing the housing to be classified as substandard, and has commenced repairs or other work necessary to bring the housing into compliance.

(3) The owner of rental housing which is not within the meaning of housing accommodation as defined by subdivision (d) of Section 35805 of the Health and Safety Code has done both of the following:

(A) Attempted to secure financing to bring the housing into compliance with those laws or codes which have been violated, causing the housing to be classified as substandard.

(B) Been denied that financing solely because the housing is located in a neighborhood or geographical area in which financial institutions do not provide financing for rehabilitation of any of that type of housing.

(e) This section does not apply to deductions from income derived from property rendered substandard solely by reason of a change in applicable state or local housing standards unless the violations cause substantial danger to the occupants of the property, as determined by the regulatory agency which has served notice of violation pursuant to subdivision (b).

(f) The owner of rental housing found to be in noncompliance shall, upon total or partial divestiture of interest in the property, immediately notify the regulatory agency of the name and address of the person or persons to whom the property has been sold or otherwise transferred and the date of the sale or transference.

(g) By July 1 of each year, the regulatory agency shall report to the appropriate legislative body of its jurisdiction all of the following information, for the preceding calendar year, regarding its activities to secure code enforcement, which shall be public information:

(1) The number of written notices of violation issued for substandard dwellings under subdivision (b).

(2) The number of violations complied with within the period prescribed in subdivision (b).

(3) The number of notices of noncompliance issued pursuant to subdivision (c).

(4) The number of appeals from those notices pursuant to subdivision (c).

(5) The number of successful appeals by owners.

(6) The number of notices of noncompliance mailed to the

Franchise Tax Board pursuant to subdivision (c).

(7) The number of cases in which a notice of noncompliance was not sent pursuant to subdivision (d).

(8) The number of extensions for compliance granted pursuant to subdivision (b) and the mean average length of the extensions.

(9) The mean average length of time from the issuance of a notice of violation to the mailing of a notice of noncompliance to the Franchise Tax Board where the notice is actually sent to the Franchise Tax Board.

(10) The number of cases where compliance is achieved after a notice of noncompliance has been mailed to the Franchise Tax Board.

(11) The number of instances of disallowance of tax deductions by the Franchise Tax Board resulting from referrals made by the regulatory agency. This information may be filed in a supplemental report in succeeding years as it becomes available.

SEC. 16. Section 17671 of the Revenue and Taxation Code is amended to read:

17671. (a) Section 584 of the Internal Revenue Code, relating to common trust funds, shall apply, except as otherwise provided.

(b) (1) Section 1008(e)(5) of Public Law 100-647, relating to taxable year of common trust fund, shall apply.

(2) Section 806(e)(2) of Public Law 99-514, relating to the effective date for change in accounting period, as modified by Section 1008(e)(5) of Public Law 100-647, shall apply.

(3) If a return was filed for the short taxable year prior to January 1, 1990, which included the full amount of income in excess of expenses for that period, the taxpayer shall be permitted, prior to January 1, 1990, to file an amended return to spread that income ratably over the first four taxable years beginning after December 31, 1987.

SEC. 17. Section 18180 of the Revenue and Taxation Code is amended to read:

18180. (a) Section 7872 of the Internal Revenue Code, relating to the treatment of loans with below market interest rates, shall apply, except as otherwise provided.

(b) Section 307 of the Support for East European Democracy (SEED) Act of 1989 (Public Law 101-179) shall not apply for purposes of this part.

SEC. 20. Section 18583 of the Revenue and Taxation Code is amended to read:

18583. (a) If the Franchise Tax Board determines that the self-assessed tax disclosed by the taxpayer on an original or amended return, including an amended return reporting federal adjustments pursuant to Section 18451, is less than the tax disclosed by its examination, it shall mail notice or notices to the taxpayer of the deficiency proposed to be assessed.

(b) This section shall remain in effect only until January 1, 1994, and as of that date is repealed.

SEC. 21. Section 18586 of the Revenue and Taxation Code is amended to read:

18586. (a) Except in the case of a false or fraudulent return and except as otherwise expressly provided in this part, every notice of a proposed deficiency assessment shall be mailed to the taxpayer within four years after the return was filed. No deficiency shall be assessed or collected with respect to the year for which the return was filed unless the notice is mailed within the four-year period or the period otherwise fixed.

(b) The running of the period of limitations provided in subdivision (a) on mailing a notice of proposed deficiency assessment shall, in a case under Title 11 of the United States Code, be suspended for any period during which the Franchise Tax Board is prohibited by reason of that case from mailing the notice of proposed deficiency assessment and 60 days thereafter.

(c) Where, within the 60-day period ending on the day on which the time prescribed in this section for the assessment of any tax imposed by this part for any taxable year would otherwise expire, the Franchise Tax Board receives a written document signed by the taxpayer showing that the taxpayer owes an additional amount of that tax for that taxable year, the period for the assessment of an additional amount in excess of the amount shown on either an original or amended return shall not expire before the day 60 days after the day on which the Franchise Tax Board receives that document.

(d) This section shall remain in effect only until January 1, 1994, and as of that date is repealed.

SEC. 22. Section 18586.3 of the Revenue and Taxation Code is amended to read:

18586.3. (a) If a taxpayer is required by subdivision (a) of Section 18451 to report a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other competent authority and does report the change or correction within six months after the final federal determination, a notice of proposed deficiency assessment resulting from those adjustments may be mailed to the taxpayer within two years from the date when the notice is filed with the Franchise Tax Board by the taxpayer, or within the periods provided in Sections 18586, 18586.1, and 18587, whichever period expires later.

(b) If a taxpayer is required by subdivision (b) of Section 18451 to file an amended return and does file the return within six months of filing an amended return with the Commissioner of Internal Revenue, a notice of proposed deficiency assessment in excess of the self-assessed tax on the amended return, and resulting from the adjustments may be mailed to the taxpayer within two years from the date when the amended return is filed with the Franchise Tax Board by the taxpayer, or within the periods provided in Sections 18586, 18586.1, and 18587, whichever period expires later.

(c) This section shall remain in effect only until January 1, 1994,

and as of that date is repealed.

SEC. 23. Section 18591.1 of the Revenue and Taxation Code is amended to read:

18591.1. (a) For purposes of this part, the term "deficiency" means the amount by which the tax imposed by this part exceeds the excess of—

(1) The sum of—

(A) The amount shown as the tax by the taxpayer upon his or her original or amended return, if an original or amended return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

(B) The amounts previously assessed (or collected without assessment) as a deficiency, over—

(2) The amount of rebates, as defined in paragraph (2) of subdivision (b), made.

(b) For purposes of this section:

(1) The tax imposed by this part and the tax shown on the original or amended return shall both be determined without regard to payments on account of estimated tax, and without regard to the credit under Section 18551.1.

(2) The term "rebate" means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed by this part was less than the excess of the amount specified in paragraph (1) of subdivision (a) over the rebates previously made.

(3) The term "deficiency" shall include the amount by which a credit subject to carryover is reduced by any action of the Franchise Tax Board.

(c) This section shall remain in effect only until January 1, 1994, and as of that date is repealed.

SEC. 23.1. Section 18622 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

18622. (a) If the amount of gross income or deductions for any year of any taxpayer as returned to the United States Treasury Department is changed or corrected by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States results in a change in gross income or deductions, that taxpayer shall report the change or correction, or the results of the renegotiation, within six months after the final federal determination of the change or correction or renegotiation, or as required by the Franchise Tax Board, and shall concede the accuracy of the determination or state wherein it is erroneous. The changes or corrections need not be reported unless they increase the amount of tax payable under this part.

(b) Any taxpayer filing an amended return with the Commissioner of Internal Revenue shall also file within six months thereafter an amended return with the Franchise Tax Board which shall contain any information as it shall require. However, an amended return need not be filed unless the change therein would

increase the amount of tax payable under this part.

(c) Notification of a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, or renegotiation of a contract or subcontract with the United States that results in a change in gross income or deductions or the filing of an amended return shall be reported in the form and manner as prescribed by the Franchise Tax Board.

SEC. 23.2. Section 18682.10 is added to the Revenue and Taxation Code, to read:

18682.10. (a) No addition to tax shall be made under Section 18682 for any installment of tax due on or after January 1, 1993, to the extent that the underpayment is attributable solely to changes made to the laws of other states applicable to the determination of credits that make Section 18001 inapplicable, by its terms, to a resident of this state.

(b) This section shall remain in effect only until January 1, 1994, and as of that date is repealed.

SEC. 24. Section 18689.5 of the Revenue and Taxation Code is amended to read:

18689.5. (a) The provisions of Section 6657 of the Internal Revenue Code, relating to bad checks, shall apply.

(b) Section 6657 of the Internal Revenue Code, relating to bad checks, is modified to apply to payments made by credit card remittance in addition to payments made by check or money order.

(c) For payments received prior to January 1, 1993, this section shall be applied only to payments pertaining to taxable years beginning on or after January 1, 1990.

(d) For payments received on or after January 1, 1993, this section shall be applied to all payments without regard to taxable year.

(e) This section shall remain in effect only until January 1, 1994, and as of that date is repealed.

SEC. 25. Section 19029 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

19029. (a) All payments required under this part regardless of the income year to which the payments apply shall be remitted to the Franchise Tax Board by electronic funds transfer pursuant to Division 11 (commencing with Section 11101) of the Commercial Code, once any of the following conditions is met with respect to any taxpayer:

(1) The estimated tax payment made pursuant to Section 19025 or the payment made pursuant to Section 18604 with regard to an extension of time to file exceeds fifty thousand dollars ($50,000) in any income year beginning on or after January 1, 1991, or twenty thousand dollars ($20,000) in any income year beginning on or after January 1, 1995.

(2) The total tax liability exceeds two hundred thousand dollars ($200,000) in any income year beginning on or after January 1, 1991, or eighty thousand dollars ($80,000) in any income year beginning on or after January 1, 1995. For purposes of this section, total tax liability

shall be the total tax liability as shown on the original return, after any adjustment pursuant to Section 19051.

(3) A taxpayer submits a request to the Franchise Tax Board and is granted permission to make electronic funds transfers.

(4) A taxpayer required to remit payments to the Franchise Tax Board by electronic funds transfer may elect to discontinue making payments where the threshold requirements set forth in paragraphs (1) and (2) were not met for the preceding income year. The election shall be made in a form and manner prescribed by the Franchise Tax Board.

(b) Any taxpayer required to remit payment by electronic funds transfer pursuant to this section who makes payment by other means shall pay a penalty of 10 percent of the amount paid, unless it is shown that the failure to make payment as required was for reasonable cause and was not the result of willful neglect.

(c) Any taxpayer required to remit payments by electronic funds transfer pursuant to this section may request a waiver of those requirements from the Franchise Tax Board. The Franchise Tax Board may grant a waiver only if it determines that the particular amounts paid in excess of the threshold amounts established in this section were not representative of the taxpayer's tax liability. If a taxpayer is granted a waiver, subsequent remittances by electronic funds transfer shall be required only on those terms set forth in the waiver.

(d) The Franchise Tax Board shall accept remittances by electronic funds transfer pursuant to this section no later than January 1, 1993. Electronic funds transfer procedures, in addition to those described in subdivision (e), shall be as prescribed by the Franchise Tax Board. Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(e) For purposes of this section:

(1) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfer shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, a Federal Reserve Wire Transfer (Fedwire), or an international funds transfer.

(2) "Automated clearinghouse" means any federal reserve bank, or an organization established by agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or

bank accounts and that authorizes an electronic transfer of funds between those banks or bank accounts.

(3) "Automated clearinghouse debit" means a transaction in which any department of the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the taxpayer's bank account and crediting the state's bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction by the taxpayer shall be paid by the state.

(4) "Automated clearinghouse credit" means an automated clearinghouse transaction in which the taxpayer, through its own bank, originates an entry crediting the state's bank account and debiting its own bank account. Banking costs incurred by the state for the automated clearinghouse credit transaction may be charged to the taxpayer.

(5) "Fedwire" means any transaction originated by the taxpayer and utilizing the national electronic payment system to transfer funds through federal reserve banks, pursuant to which the taxpayer debits its own bank account and credits the state's bank account. Electronic funds transfers may be made by Fedwire only if prior approval is obtained from the Franchise Tax Board and the taxpayer is unable, for reasonable cause, to make payments pursuant to paragraph (3) or (4). Banking costs charged to the taxpayer and to the state may be charged to the taxpayer.

(6) "International funds transfer" means any transaction originated by the taxpayer and utilizing the international electronic payment system to transfer funds, pursuant to which the taxpayer debits its own bank account, and credits the funds to a United States bank that credits the state's bank account. Banking costs charged to the taxpayer and to the state may be charged to the taxpayer.

(7) In determining whether a payment or total tax liability exceeds the amounts established in subdivision (a), all taxpayers whose income derived from, or attributable to, sources within this state is required to be determined by a combined report shall be aggregated and the total aggregate amount shall be considered to be the payment or total tax liability of a single taxpayer.

SEC. 26. Section 19033 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

19033. If the Franchise Tax Board determines that the tax disclosed by the taxpayer on an original or amended return, including an amended return reporting federal adjustments pursuant to Section 18622, is less than the tax disclosed by its examination, it shall mail notice or notices to the taxpayer of the deficiency proposed to be assessed.

SEC. 26.1. Section 19043 of Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

19043. (a) For purposes of this part, "deficiency" means the amount by which the tax imposed by Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) exceeds

the excess of—

(1) The sum of—

(A) The amount shown as the tax by the taxpayer on an original or amended return, if an original or amended return was filed, plus

(B) The amounts previously assessed (or collected without assessment) as a deficiency, over—

(2) The amount of rebates, as defined in paragraph (2) of subdivision (b), made.

(b) For purposes of this section:

(1) The tax imposed by Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001) and the tax shown on an original or amended return shall both be determined without regard to payments on account of estimated tax, and without regard to the credit under Section 19002.

(2) "Rebate" means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed by Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) was less than the excess of the amount specified in paragraph (1) of subdivision (a) over the rebates previously made.

(3) "Deficiency" includes the amount by which a credit subject to carryover is reduced by any action of the Franchise Tax Board.

SEC. 27. Section 19057 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

19057. (a) Except in the case of a false or fraudulent return and except as otherwise expressly provided in this part, every notice of a proposed deficiency assessment shall be mailed to the taxpayer within four years after the return was filed. No deficiency shall be assessed or collected with respect to the year for which the return was filed unless the notice is mailed within the four-year period or the period otherwise provided.

(b) The running of the period of limitations provided in subdivision (a) on mailing a notice of proposed deficiency assessment shall, in a case under Title 11 of the United States Code, be suspended for any period during which the Franchise Tax Board is prohibited by reason of that case from mailing the notice of proposed deficiency assessment and 60 days thereafter.

(c) Where, within the 60-day period ending on the day on which the time prescribed in this section for the assessment of any tax imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) for any taxable year would otherwise expire, the Franchise Tax Board receives a written document, other than an amended return or a report required by Section 18622, signed by the taxpayer showing that the taxpayer owes an additional amount of that tax for that taxable year, the period for the assessment of an additional amount in excess of the amount shown on either an original or amended return shall not expire before the day 60 days after the day on which the Franchise Tax Board receives that document.

(d) If a taxpayer determines in good faith that it is an exempt organization and files a return as such under Section 23772, and if the taxpayer is thereafter held to be a taxable organization for the taxable year for which the return is filed, that return shall be deemed the return of the organization for the purposes of this section.

SEC. 28. Section 19059 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

19059. (a) If a taxpayer is required by subdivision (a) of Section 18622 to report a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other competent authority and does report the change or correction within six months after the final federal determination, a notice of proposed deficiency assessment resulting from those adjustments may be mailed to the taxpayer within two years from the date when the notice is filed with the Franchise Tax Board by the taxpayer, or within the periods provided in Sections 19057, 19058, and 19065, whichever period expires later.

(b) If a taxpayer is required by subdivision (b) of Section 18622 to file an amended return and does file the return within six months of filing an amended return with the Commissioner of Internal Revenue, a notice of proposed deficiency assessment in excess of the self-assessed tax on the amended return in excess of the self-assessed tax on the amended return, and resulting from the adjustments may be mailed to the taxpayer within two years from the date when the amended return is filed with the Franchise Tax Board by the taxpayer, or within the periods provided in Sections 19057, 19058, and 19065, whichever period expires later.

SEC. 28.1. Section 19136.5 is added to the Revenue and Taxation Code, to read:

19136.5. No addition to tax shall be made under Section 19136 for any installment of tax due on or after January 1, 1993, to the extent that the underpayment is attributable solely to changes made to the laws of other states applicable to the determination of credits that make Section 18001 inapplicable, by its terms, to a resident of this state.

SEC. 28.2. Section 19167 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

19167. A penalty shall be imposed under this section for any of the following:

(a) In accordance with Section 6695(a) of the Internal Revenue Code, for failure to furnish a copy of the return to the taxpayer, as required by Section 18625.

(b) In accordance with Section 6695(c) of the Internal Revenue Code, for failure to furnish an identifying number, as required by Section 18624.

(c) In accordance with Section 6695(d) of the Internal Revenue Code, for failure to retain a copy or list, as required by Section 18625.

SEC. 28.3. Section 19254 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

19254. (a) (1) If any person, other than an organization exempt from taxation under Section 23701, fails to pay any amount of tax, penalty, addition to tax, interest, or other liability imposed and delinquent under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part, a collection cost recovery fee shall be imposed if the Franchise Tax Board has mailed notice to that person for payment that advises that continued failure to pay the amount due may result in collection action, including the imposition of a collection cost recovery fee. The collection cost recovery fee shall be in the amount of:

(A) In the case of an individual, partnership, or fiduciary, eighty-eight dollars ($88) or an amount as adjusted under subdivision (b).

(B) In the case of a bank or corporation, one hundred sixty-six dollars ($166) or an amount as adjusted under subdivision (b).

(2) If any person, other than an organization exempt from taxation under Section 23701, fails or refuses to make and file a tax return required by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part, within 25 days after formal legal demand to file the tax return is mailed to that person by the Franchise Tax Board, the Franchise Tax Board shall impose a filing enforcement cost recovery fee in the amount of:

(A) In the case of an individual, partnership, or fiduciary, fifty-one dollars ($51) or an amount as adjusted under subdivision (b).

(B) In the case of a bank or corporation, one hundred nineteen dollars ($119) or an amount as adjusted under subdivision (b).

(b) For fees imposed under this section during the fiscal year 1993–94 and fiscal years thereafter, the amount of those fees shall be set to reflect actual costs and shall be specified in the annual Budget Act.

(c) Interest shall not accrue with respect to the cost recovery fees provided by this section.

(d) The amounts provided by this section are obligations imposed by this part and may be collected in any manner provided under this part for the collection of a tax.

(e) Subdivision (a) is operative with respect to the notices for payment or formal legal demands to file, either of which is mailed on or after September 15, 1992.

(f) The Franchise Tax Board shall determine the total amount of the cost recovery fees collected or accrued through June 30, 1993, and shall notify the Controller of that amount. The Controller shall transfer that amount to the Franchise Tax Board, and that amount is hereby appropriated to the board for the 1992–93 fiscal year for reimbursement of its collection and filing enforcement efforts.

SEC. 29. Section 19311 of the Revenue and Taxation Code, as added by Chapter 93 of the Statutes of 1993, is amended to read:

19311. (a) If a change or correction is made or allowed by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, a claim for credit or refund

resulting from the adjustment may be filed by the taxpayer within two years from the date of the final federal determination, or within the period provided in Section 19306, 19307, or 19308, whichever period expires later.

(b) This section shall apply to any federal determination that becomes final on or after January 1, 1993.

SEC. 30. Section 19393 is added to the Revenue and Taxation Code, to read:

19393. For the purposes of the tax imposed under Chapter 2 (commencing with Section 23101) of Part 11, if any deduction, credit or exclusion provided for in Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) is finally adjudged discriminatory against a national banking association contrary to Section 548 of Title 12 of the United States Code, or is for any reason finally adjudged invalid, or discriminatory under the California Constitution, or the laws or the Constitution of the United States, the tax of the favored taxpayer shall be recomputed by the Franchise Tax Board for the taxable year in question, as of the time of allowance of the deduction, credit, or exclusion, by disallowing the deduction, credit, or exclusion, and any difference between the amount of the tax as recomputed and the amount of the tax as originally computed shall be subject to the provisions hereof relating to original computations.

SEC. 30.1. Section 19702 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

19702. The prosecutor may, with the consent of the Franchise Tax Board, compromise any penalty for which he or she may bring action under this chapter. The penalties provided by this chapter are additional to all other penalties provided in Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

SEC. 31. Section 23002 of the Revenue and Taxation Code is amended to read:

23002. Except where otherwise expressly provided, all of the provisions of this part are applicable to the taxes imposed respectively under Chapter 2 (commencing with Section 23101), Chapter 2.5 (commencing with Section 23400), or Chapter 3 (commencing with Section 23501), or to the predecessor acts of this part, the Bank and Corporation Franchise Tax Act or the Corporation Income Tax Act, respectively.

SEC. 32. Section 23038.5 of the Revenue and Taxation Code is amended to read:

23038.5. Section 7704 of the Internal Revenue Code, relating to certain publicly traded partnerships treated as corporations, shall apply, except as otherwise provided.

SEC. 33. Section 23045.6 of the Revenue and Taxation Code is amended to read:

23045.6. Section 7701(a)(20) of the Internal Revenue Code, relating to the definition of "employee," shall apply, except as

otherwise provided.

SEC. 34. Section 23046 of the Revenue and Taxation Code is amended to read:

23046. Section 7701(a)(46) of the Internal Revenue Code, relating to determination of whether there is a collective bargaining agreement, shall apply, except as otherwise provided.

SEC. 35. Section 23047 of the Revenue and Taxation Code is amended to read:

23047. Section 7701(e) of the Internal Revenue Code, relating to treatment of certain contracts for providing services, etc., shall apply, except as otherwise provided.

SEC. 36. Section 23049 of the Revenue and Taxation Code is amended to read:

23049. Section 7701(h) of the Internal Revenue Code, relating to motor vehicle operating leases, shall apply, except as otherwise provided.

SEC. 37. Section 23058 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

23058. Unless otherwise specifically provided therein, the provisions of any act:

(a) That affect the imposition or computation of taxes, additions to tax penalties, or the allowance of credits against the tax, shall be applied to income years beginning on or after January 1 of the year in which the act takes effect.

(b) That otherwise affect the provisions of this part shall be applied on and after the date the act takes effect.

SEC. 37.2. Section 23101.5 of the Revenue and Taxation Code is amended to read:

23101.5. (a) The Franchise Tax Board may determine that a corporation is not doing business in this state for purposes of this chapter or deriving income from sources within this state for purposes of Chapter 3 (commencing with Section 23501) if its only activities within this state consist of either or both of the following:

(1) The purchase of personal property or services solely for its own use or use by its affiliate outside this state if:

(A) The corporation does not have more than 100 employees in this state, whose duties are limited to solicitation, negotiation, liaison, monitoring, auditing, and inspecting the personal property or services acquired, or providing technical advice with respect to its requirements, and

(B) The corporation does not have more than 200 employees in this state, whose duties are limited to solicitation, negotiation, liaison, monitoring, auditing, and inspecting the personal property or services acquired, or providing technical advice with respect to its requirements, and the personal property or services purchased by the corporation or its affiliate are used for the construction or modification of a physical plant or facility located outside the state, and

(C) The combined number of employees in this state pursuant to

subparagraphs (A) and (B) does not exceed 200.

(2) The presence of employees in this state only for the purpose of attending a public or private school, college or university.

(b) A corporation may petition the Franchise Tax Board for a determination in accord with procedures established by the Franchise Tax Board. The filing of that petition shall be deemed a waiver of the confidentiality provisions of Section 26451 with respect to the facts alleged in the petition and any additional evidence produced with respect to those facts.

(c) If the determination is made, it shall remain in force for five years as long as the corporation continues to meet the above criteria. However, with respect to corporations meeting the above criteria on or before January 1, 1978, the determination shall remain in force indefinitely as long as the corporation continues to meet the above criteria.

(d) The corporation shall annually confirm with the Franchise Tax Board within two months and 15 days after the close of its fiscal year, in the manner as the Franchise Tax Board may prescribe, that the facts relevant to the granting of the determination then in effect remain unchanged or shall state and explain any changes that have occurred since the preceeding report was filed.

(e) Where a corporation applying for or relying on the determination is engaged in a unitary business, the limitation of 100 or 200 employees, as applicable, that is specified in paragraph (1) of subdivision (a) shall apply to the aggregation of all corporations within the unitary group.

(f) Each taxpayer that sells property or services to a corporation with more than 100 employees in this state, with respect to which the determination has been made, shall file annually with the Franchise Tax Board in the manner as the Franchise Tax Board may prescribe, a report identifying the number of its employees within this state directly attributable to the construction or modification of a physical plant or facility located outside the state.

(g) This section shall remain in effect only until January 1, 1994, and as of that date is repealed.

SEC. 37.5. Section 23101.5 is added to the Revenue and Taxation Code, to read:

23101.5. (a) The Franchise Tax Board may determine that a corporation is not doing business in this state for purposes of this chapter or deriving income from sources within this state for purposes of Chapter 3 (commencing with Section 23501) if its only activities within this state are either or both of the following:

(1) The purchase of personal property or services solely for its own use or use by its affiliate outside this state if:

(A) The corporation does not have more than 100 employees in this state, whose duties are limited to solicitation, negotiation, liaison, monitoring, auditing, and inspecting the personal property or services acquired, or providing technical advice with respect to its requirements, and

(B) The corporation does not have more than 200 employees in this state, whose duties are limited to solicitation, negotiation, liaison, monitoring, auditing, and inspecting the personal property or services acquired, or providing technical advice with respect to its requirements, and the personal property or services purchased by the corporation or its affiliate are used for the construction or modification of a physical plant or facility located outside the state, and

(C) The combined number of employees in this state pursuant to subparagraphs (A) and (B) does not exceed 200.

(2) The presence of employees in this state only for the purpose of attending a public or private school, college, or university.

(b) A corporation may petition the Franchise Tax Board for a determination in accord with procedures established by the Franchise Tax Board. The filing of that petition shall be deemed a waiver of the confidentiality provisions of Section 19542 with respect to the facts alleged in the petition and any additional evidence produced with respect to those facts.

(c) If the determination is made, it shall remain in force for five years as long as the corporation continues to meet the above criteria. However, with respect to corporations meeting the above criteria on or before January 1, 1978, the determination shall remain in force indefinitely so long as the corporation continues to meet the above criteria.

(d) The corporation shall annually confirm with the Franchise Tax Board within two months and 15 days after the close of its fiscal year, in the manner as the Franchise Tax Board may prescribe, that the facts relevant to the granting of the determination then in effect remain unchanged or shall state and explain any changes that have occurred since the preceding report was filed.

(e) Where a corporation applying for or relying on the determination is engaged in a unitary business, the limitation of 100 or 200 employees, as applicable, that is specified in paragraph (1) of subdivision (a) shall apply to the aggregation of all corporations within the unitary group.

(f) Each taxpayer that sells property or services to a corporation with more than 100 employees in this state, with respect to which the determination has been made, shall file annually with the Franchise Tax Board, in the manner as the Franchise Tax Board may prescribe, a report identifying the number of its employees within this state directly attributable to the construction or modification of a physical plant or facility located outside the state.

(g) This section shall become operative on January 1, 1994.

SEC. 38. Section 23732 of the Revenue and Taxation Code is amended to read:

23732. Section 512 of the Internal Revenue Code, relating to unrelated business taxable income, shall apply, except as otherwise provided.

(a) Section 512(a)(2) of the Internal Revenue Code, relating to

special rules for foreign organizations, shall not be applicable.

(b) Section 512(a)(3) of the Internal Revenue Code, relating to special rules applicable to certain organizations, shall be modified as follows:

(1) The reference to Section 501(c)(7) of the Internal Revenue Code, relating to clubs organized for pleasure, recreation, and other nonprofitable purposes, shall be modified to refer to Section 23701g.

(2) The reference to Section 501(c)(9) of the Internal Revenue Code, relating to voluntary employees' beneficiary associations, shall be modified to refer to Section 23701i.

(3) The reference to Section 501(c)(17) of the Internal Revenue Code, relating to trusts providing for payment of supplemental unemployment compensation benefits, shall be modified to refer to Section 23701n.

(4) The reference to Section 501(c)(20) of the Internal Revenue Code, relating to qualified group legal services plans, shall be modified to refer to Section 23701q.

(c) Section 512(b)(10) of the Internal Revenue Code, relating to charitable contributions, shall be modified to provide that such deductions shall not exceed 5 percent of the unrelated business taxable income, rather than 10 percent.

SEC. 39. Section 23734 of the Revenue and Taxation Code is amended to read:

23734. (a) Section 513 of the Internal Revenue Code, relating to unrelated trade or business, shall apply, except as otherwise provided.

(b) Section 513(g) of the Internal Revenue Code, relating to certain pole rentals, shall not apply.

SEC. 40. Section 23735 of the Revenue and Taxation Code is amended to read:

23735. (a) Section 514 of the Internal Revenue Code, relating to unrelated debt-financed income, shall apply, except as otherwise provided.

(b) Section 10214 of Public Law 100-203, relating to the treatment of certain partnership allocations, shall apply to income years beginning on or after January 1, 1990, for property acquired by the partnership after October 13, 1987, and partnership interests acquired after October 13, 1987.

SEC. 41. Section 24271 of the Revenue and Taxation Code is amended to read:

24271. (a) Section 61 of the Internal Revenue Code, relating to gross income defined, shall apply, except as otherwise provided.

(b) A distributive share of partnership gross income shall be determined in accordance with Part 10 (commencing with Section 17001).

(c) Income from an interest in an estate or trust shall be determined in accordance with Part 10 (commencing with Section 17001).

SEC. 42. Section 24276 of the Revenue and Taxation Code is

amended to read:

24276. Section 90 of the Internal Revenue Code, relating to illegal federal irrigation subsidies, shall apply to water delivered to the taxpayer on or after January 1, 1988, in income years beginning on or after January 1, 1989, except as otherwise provided.

SEC. 43. Section 24307 of the Revenue and Taxation Code is amended to read:

24307. (a) Section 108 of the Internal Revenue Code, relating to income from discharge of indebtedness, shall apply, except as otherwise provided.

(b) Section 108(b) (2) (B) of the Internal Revenue Code, relating to general business credit, is modified by substituting "this part" in lieu of "Section 38 (relating to general business credit)."

(c) Section 108(b) (2) (E) of the Internal Revenue Code, relating to foreign tax credit carryovers, shall not apply. In the case where more than one credit is allowable under this part, the credit shall be reduced on a pro rata basis.

(d) Section 108(b) (3) (B) of the Internal Revenue Code, relating to credit carryover reduction, is modified by substituting "11.1 cents" in lieu of "33 ⅓ cents."

(e) Section 108(g) (3) (B) of the Internal Revenue Code, relating to adjusted tax attributes, is modified by substituting "$9" in lieu of "$3."

SEC. 44. Section 24343 of the Revenue and Taxation Code is amended to read:

24343. (a) Section 162 of the Internal Revenue Code, relating to trade as business expenses, shall apply, except as otherwise provided.

(b) For purposes of applying Section 162 of the Internal Revenue Code, any reference to Section 170 of the Internal Revenue Code shall be modified to refer to Sections 24357 to 24359.1, inclusive, of this part.

SEC. 45. Section 24344 of the Revenue and Taxation Code is amended to read:

24344. (a) Section 163 of the Internal Revenue Code, relating to interest, shall apply, except as otherwise provided.

(b) If income of the taxpayer which is derived from or attributable to sources within this state is determined pursuant to Section 25101 or 25110, the interest deductible shall be an amount equal to interest income subject to apportionment by formula, plus the amount, if any, by which the balance of interest expense exceeds interest and dividend income (except dividends deductible under the provisions of Section 24402 and dividends subject to the deductions provided for in Section 24411 to the extent of those deductions) not subject to apportionment by formula. Interest expense not included in the preceding sentence shall be directly offset against interest and dividend income (except dividends deductible under the provisions of Section 24402 and dividends subject to the deductions provided for in Section 24411 to the extent of those deductions) not subject to apportionment by formula.

(c) Notwithstanding subdivision (b), interest expense allowable under Section 163 of the Internal Revenue Code that is incurred for purposes of foreign investments may be offset against dividends deductible under Section 24411.

(d) The provisions of Section 7210(b) of Public Law 101-239, relating to the effective date for limitation on deduction for certain interest paid to a related person, shall apply.

(e) Section 163(j)(6)(C) of the Internal Revenue Code, relating to treatment of an affiliated group, is modified to apply to all members of a combined report filed under Section 25102.

SEC. 46. Section 24347.5 of the Revenue and Taxation Code is amended to read:

24347.5. (a) In lieu of Section 24347, Section 165(i) of the Internal Revenue Code, relating to disaster losses, shall apply to each of the following:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in October 1987 in California.

(5) Earthquake, aftershock, or any related casualty occurring in October 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(8) Riots, arson, or any other related casualty occurring in April or May 1992 in California.

(b) To the extent that losses under subdivision (a) exceed the net income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the net income of the year preceding the loss, then that "excess loss," at the election of the taxpayer, may be carried forward to each of the five income years following the income year the loss is claimed. However, if there is any "excess loss" remaining after the five-year period, then 50 percent of that "excess loss" may be carried forward to each of the next 10 income years.

(c) The entire amount of any "excess loss" as defined in subdivision (b) shall be carried to the earliest of the income years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other income years shall be the excess, if any, of the amount of "excess loss" over the sum of the net income for each of the prior income years to which that "excess loss" may be carried.

(d) This section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the following losses sustained in any

county or city in this state which was proclaimed by the Governor to be in a state of disaster:

(1) Any loss sustained during February 1986 as a result of storm, flooding, or any other related casualty.

(2) Any loss sustained during 1987 as a result of forest fire or any other related casualty.

(3) Any loss sustained during October 1987 as the result of earthquake, aftershock, or any other related casualty.

(4) Any loss resulting from the earthquake which occurred in October 1989, aftershock, or any other related casualty.

(5) Any loss sustained during 1990 as the result of fire in the County of Santa Barbara.

(6) Any loss sustained during April 1992 as a result of earthquake, aftershock, or any other related casualty in the County of Humboldt.

(7) Any loss sustained during April or May 1992 as a result of riots, arson, or any other related casualty.

(e) Any corporation subject to the provisions of Section 25101 or 25101.15 that has disaster losses pursuant to this section, shall determine the "excess loss" to be carried to other income years under the principles specified in Section 25108 relating to net operating losses.

(f) Losses described in this section may not be taken into account in computing a net operating loss deduction under Section 24416 or 24416.1.

SEC. 47. Section 24349.1 of the Revenue and Taxation Code is amended to read:

24349.1. (a) Section 280F of the Internal Revenue Code, relating to limitations on depreciation for luxury automobiles and certain property used for personal purposes, shall apply, except as otherwise provided.

(b) Except as provided in subdivision (c), Section 280F of the Internal Revenue Code shall be modified as follows:

(1) The terms "deduction" or "recovery deduction," relating to amounts allowable as a deduction under Section 168 of the Internal Revenue Code, mean the amount allowable as a deduction for depreciation under this part.

(2) The term "recovery period," relating to property under Section 168 of the Internal Revenue Code, means the class life asset depreciation range allowable under this part.

(3) The provisions of Section 280F of the Internal Revenue Code which relate to the investment tax credit shall not be applicable for purposes of this part.

(c) Paragraphs (1) and (2) of subdivision (b) shall not apply to Section 24356.2 property.

SEC. 48. Section 24365 of the Revenue and Taxation Code is amended to read:

24365. (a) Section 174 of the Internal Revenue Code, relating to research and experimental expenditures, shall apply, except as otherwise provided.

(b) Section 174(b) of the Internal Revenue Code is modified to refer to subdivision (a) of Section 24916 in lieu of Section 1016(a) (1) of the Internal Revenue Code.

(c) Section 174(c) of the Internal Revenue Code is modified to refer to Sections 24349 to 24356, inclusive, in lieu of Section 167 of the Internal Revenue Code.

SEC. 49. Section 24369 of the Revenue and Taxation Code is amended to read:

24369. Section 175 of the Internal Revenue Code, relating to soil and water conservation expenditures, shall apply, except as otherwise provided.

SEC. 50. Section 24371 of the Revenue and Taxation Code is repealed.

SEC. 51. Section 24372.3 of the Revenue and Taxation Code is amended to read:

24372.3. (a) Section 169 of the Internal Revenue Code, relating to amortization of pollution control facilities, shall apply, except as otherwise provided.

(b) The deduction allowed by this section shall be available only with respect to facilities located in this state.

(c) The "state certifying authority," as defined in Section 169(d)(2) of the Internal Revenue Code, means the State Air Resources Board, in the case of air pollution, and the State Water Resources Control Board, in the case of water pollution.

SEC. 52. Section 24379 of the Revenue and Taxation Code is amended to read:

24379. Section 83 of the Internal Revenue Code, relating to property transferred in connection with performance of services, shall apply, except as otherwise provided.

SEC. 53. Section 24382 of the Revenue and Taxation Code is amended to read:

24382. (a) Section 216 of the Internal Revenue Code, relating to deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder, shall apply, except as otherwise provided.

(b) Section 6282(b) of Public Law 100-647, relating to the effective date for distributions by cooperative housing corporations, shall apply.

SEC. 54. Section 24414 of the Revenue and Taxation Code is amended to read:

24414. (a) Section 195 of the Internal Revenue Code, relating to startup expenditures, shall apply, except as otherwise provided.

(b) Sections 163(a), 164, 165, and 174 of the Internal Revenue Code, relating to interest, taxes, losses, and research and experimental expenditures, shall be modified to refer to Sections 24344, 24345, 24347, and 24365, respectively.

SEC. 55. Section 24422.3 of the Revenue and Taxation Code is amended to read:

24422.3. Section 263A of the Internal Revenue Code, relating to

capitalization and inclusion in inventory costs of certain expenses, shall apply, except as otherwise provided.

SEC. 56. Section 24427 of the Revenue and Taxation Code is amended to read:

24427. Section 267 of the Internal Revenue Code, relating to losses, expenses, and interest with respect to transactions between related taxpayers, shall apply, except as otherwise provided.

SEC. 57. Section 24436.5 of the Revenue and Taxation Code is amended to read:

24436.5. (a) In the case of a taxpayer who derives rental income from substandard housing located in this state, no deductions for interest, depreciation, taxes, or amortization under Section 24343, 24344, 24345, 24349, or 24354.2 shall be allowed which relate to that substandard housing.

(b) Substandard housing means housing for which both of the following apply:

(1) The housing has been determined by a state or local government regulatory agency to violate state law or local codes dealing with health, safety, or building.

(2) Either of the following occur:

(A) After written notice of violation by the regulatory agency, specifying the applicability of this section, the housing has not been repaired or brought to a condition of compliance within six months after the date of the notice or the time prescribed in the notice, whichever period is longest.

(B) Good faith efforts for compliance have not been commenced, as determined by the regulatory agency.

"Substandard housing" shall also mean employee housing that has not, within 30 days of the date of the written notice of violation or the date for compliance prescribed in the written notice of violation, been brought into compliance with the conditions stated in the written notice of violation of the Employee Housing Act (Part 1 (commencing with Section 17000) of Division 13 of the Health and Safety Code) issued by the enforcement agency that specifies the application of this section. The regulatory agency may, for good cause shown, extend the compliance date prescribed in a violation notice.

(c) (1) When the period specified in subdivision (b) has expired without compliance, the government regulatory agency shall mail to the taxpayer a notice of noncompliance. The notice of noncompliance shall be in a form and shall include information prescribed by the Franchise Tax Board, shall be mailed by certified mail to the taxpayer at his or her last known address, and shall advise the taxpayer (A) of an intent to notify the Franchise Tax Board of the noncompliance within 10 days unless an appeal is filed, (B) where an appeal may be filed, and (C) a general description of the tax consequences of that filing with the Franchise Tax Board. Appeals shall be made to the same body and in the same manner as appeals from other actions of the regulatory agency. If no appeal is

made within 10 days or after disposition of the appeal if the regulatory agency is sustained, the regulatory agency shall notify, in writing, the Franchise Tax Board of the noncompliance.

(2) The notice of noncompliance shall contain the legal description or the lot and block numbers of the real property, the assessor's parcel number, and the name of the owner of record as shown on the latest equalized assessment roll. In addition, the regulatory agency shall, at the same time as notification of the notice of noncompliance is sent to the Franchise Tax Board, record a copy of the notice of noncompliance in the office of the recorder for the county in which the substandard housing is located that includes a statement of tax consequences that may be determined by the Franchise Tax Board. However, the failure to record a notice with the county recorder shall not relieve the liability of any taxpayer nor shall it create any liability on the part of the regulatory agency.

(3) The regulatory agency may charge the taxpayer a fee in an amount not to exceed the regulatory agency's costs incurred in recording any notice of noncompliance or issuing any release of that notice. The notice of compliance shall be recorded and shall serve to expunge the notice of noncompliance. The notice of compliance shall contain the same recording information required for the notice of noncompliance. No deduction by the taxpayer, or any other taxpayer who obtains title to the property subsequent to the recordation of the notice of noncompliance, shall be allowed for the items provided in subdivision (a) from the date of the notice of noncompliance until the date the regulatory agency determines that the substandard housing has been brought to a condition of compliance. The regulatory agency shall mail to the Franchise Tax Board and the taxpayer a notice of compliance, which notice shall be in the form and include the information prescribed by the Franchise Tax Board. In the event the period of noncompliance does not cover an entire income year, the deductions shall be denied at the rate of $\frac{1}{12}$ for each full month during the period of noncompliance.

(4) If the property is owned by more than one owner or the recorded title is in the name of a fictitious owner, the notice requirements provided in subdivision (b) and this subdivision shall be satisfied for each owner if the notices are mailed to one owner or to the fictitious name owner at the address appearing on the latest available property tax bill. However, notices made pursuant to this subdivision shall not relieve the regulatory agency from furnishing taxpayer identification information required to implement this section to the Franchise Tax Board.

(d) For the purposes of this section, a notice of noncompliance shall not be mailed by the regulatory agency to the Franchise Tax Board if any of the following occur:

(1) The rental housing was rendered substandard solely by reason of earthquake, flood or other natural disaster except where the condition remains for more than three years after the disaster.

(2) The owner of the rental housing has secured financing to

bring the housing into compliance with those laws or codes which have been violated, causing the housing to be classified as substandard, and has commenced repairs or other work necessary to bring the housing into compliance.

(3) The owner of rental housing which is not within the meaning of housing accommodation, as defined in subdivision (d) of Section 35805 of the Health and Safety Code, has done both of the following:

(A) Attempted to secure financing to bring the housing into compliance with those laws or codes which have been violated, causing the housing to be classified as substandard.

(B) Been denied that financing solely because the housing is located in a neighborhood or geographical area in which financial institutions do not provide financing for rehabilitation of any of that type of housing.

(e) The provisions of this section do not apply to deductions from income derived from property rendered substandard solely by reason of a change in applicable state or local housing standards unless those violations cause substantial danger to the occupants of the property, as determined by the regulatory agency which has served notice of violation pursuant to subdivision (b).

(f) The owner of rental housing found to be in noncompliance shall, upon total or partial divestiture of interest in the property, immediately notify the regulatory agency of the name and address of the person or persons to whom the property has been sold or otherwise transferred and the date of the sale or transference.

(g) By July 1 of each year, the regulatory agency shall report to the appropriate legislative body of its jurisdiction all of the following information, for the preceding calendar year, regarding its activities to secure code enforcement, which shall be public information:

(1) The number of written notices of violation issued for substandard dwellings under subdivision (b).

(2) The number of violations complied with within the period prescribed in subdivision (b).

(3) The number of notices of noncompliance issued pursuant to subdivision (c).

(4) The number of appeals from those notices pursuant to subdivision (c).

(5) The number of successful appeals by owners.

(6) The number of notices of noncompliance mailed to the Franchise Tax Board pursuant to subdivision (c).

(7) The number of cases in which a notice of noncompliance was not sent pursuant to the provisions of subdivision (d).

(8) The number of extensions for compliance granted pursuant to subdivision (b) and the mean average length of the extensions.

(9) The mean average length of time from the issuance of a notice of violation to the mailing of a notice of noncompliance to the Franchise Tax Board where the notice is actually sent to the Franchise Tax Board.

(10) The number of cases where compliance is achieved after a

notice of noncompliance has been mailed to the Franchise Tax Board.

(11) The number of instances of disallowance of tax deductions by the Franchise Tax Board resulting from referrals made by the regulatory agency. This information may be filed in a supplemental report in succeeding years as it becomes available.

SEC. 58. Section 24437 of the Revenue and Taxation Code is amended to read:

24437. Section 277 of the Internal Revenue Code, relating to deductions incurred by certain membership organizations in transactions with members, shall apply, except as otherwise provided.

SEC. 59. Section 24440 of the Revenue and Taxation Code is amended to read:

24440. (a) Section 280C(b) of the Internal Revenue Code relating to credit for qualified clinical testing expenses for certain drugs, shall apply, except as otherwise provided.

(b) (1) Section 280C(c) of the Internal Revenue Code, relating to credit for increasing research activities, shall apply, except as otherwise provided.

(2) Section 280C(c)(3)(B) of the Internal Revenue Code is modified to refer to Section 23151, 23186, or 23802 in lieu of Section 11(b)(1) of the Internal Revenue Code.

SEC. 60. Section 24442.5 of the Revenue and Taxation Code is amended to read:

24442.5. Section 280H of the Internal Revenue Code, relating to limitation on certain amounts paid to employee-owners by personal service corporations electing alternative taxable years, shall apply to income years beginning on or after January 1, 1989, except as otherwise provided.

SEC. 61. Section 24443 of the Revenue and Taxation Code is amended to read:

24443. (a) Section 274 of the Internal Revenue Code, relating to the disallowance of certain entertainment, gift, travel, etc., expenses, shall apply, except as otherwise provided.

(b) For each income year beginning in 1987 or 1988, Section 274(n) of the Internal Revenue Code shall not apply to any expense if the expense is for food or beverage—

(1) Required by federal law to be provided to crew members of a vessel at sea, or

(2) Provided on an oil or gas platform or drilling rig located offshore in Alaska.

(c) For each income year beginning on or after January 1, 1989, the amendments made to Section 274 of the Internal Revenue Code by Section 6003 of Public Law 100-647, relating to only 80 percent of meal and entertainment expenses allowed as a deduction, shall apply.

SEC. 62. Section 24449 of the Revenue and Taxation Code is amended to read:

24449. (a) Section 291 of the Internal Revenue Code, relating to special rules relating to corporate preference items, shall apply, except as otherwise provided.

(b) For purposes of this section:

(1) The reference in Section 291(a)(3) to "a deduction under this chapter" shall be modified to mean the deduction under Section 24348 of this part.

(2) The reference in Section 291(b)(1) to "Section 263(c)" shall be modified to mean the deduction under Section 24423 of this part.

SEC. 63. Section 24652 of the Revenue and Taxation Code is amended to read:

24652. Section 447 of the Internal Revenue Code, relating to method of accounting for corporations engaged in farming, shall apply, except as otherwise provided.

SEC. 64. Section 24654 of the Revenue and Taxation Code is amended to read:

24654. (a) Section 448 of the Internal Revenue Code, relating to limitation on use of cash method of accounting, shall apply, except as otherwise provided.

(b) For purposes of applying Section 448 of the Internal Revenue Code, Sections 801(d)(2), 801(d)(3), and 801(d)(5) of the Tax Reform Act of 1986 (Public Law 99-514), as modified by Section 1008(a) of Public Law 100-647, shall apply to each income year beginning on or after January 1, 1987.

SEC. 65. Section 24661 of the Revenue and Taxation Code is amended to read:

24661. (a) Section 451 of the Internal Revenue Code, relating to the general rule for taxable year of inclusion, shall apply, except as otherwise provided.

(b) The amendments to Section 451 of the Internal Revenue Code made by Section 6030 of Public Law 100-647 shall be applied in the same manner as specified by Section 6030(b) of that act.

(c) The amendments to Section 451 of the Internal Revenue Code made by Section 6033 of Public Law 100-647 shall be applied in the same manner as specified by Section 6033(b) of that act.

SEC. 66. Section 24667 of the Revenue and Taxation Code is amended to read:

24667. (a) (1) Sections 453, 453A, and 453B of the Internal Revenue Code, relating to installment method, special rules for nondealers, and gain or loss on disposition of installment obligations, respectively, shall apply, except as otherwise provided.

(2) Sections 811(c)(2), 811(c)(4), 811(c)(6), and 811(c)(7) of Public Law 99-514, as modified by Section 1008(f) of Public Law 100-647, shall apply to each income year beginning on or after January 1, 1988.

(3) Section 812 of Public Law 99-514, relating to the disallowance of use of the installment method for certain obligations, as modified by Section 1008(g) of Public Law 100-647, shall apply to each income year beginning on or after January 1, 1988.

(b) For purposes of subdivision (a), any references in the Internal Revenue Code to sections that have not been incorporated into this part by reference shall be deemed to refer to the corresponding section, if any, of this part.

(c) In the case of any taxpayer who made sales under a revolving credit plan and was on the installment method under former Section 24667 or 24668 for the taxpayer's last income year beginning before January 1, 1988, the provisions of this section shall be treated as a change in method of accounting for the first income year beginning after December 31, 1987, and all of the following shall apply:

(1) That change shall be treated as initiated by taxpayer.

(2) That change shall be treated as having been made with the consent of the Franchise Tax Board.

(3) The period for taking into account adjustments under Article 6 (commencing with Section 24721) by reason of that change shall not exceed four years.

(d) The repeal of Section 453C of the Internal Revenue Code by Section 10202(a) of Public Law 100-203, relating to repeal of the proportionate disallowance of the installment method, shall apply to dispositions on or after January 1, 1990, in income years beginning on or after January 1, 1990.

(e) (1) In the case of any installment obligations to which Section 453(*l*) (2) (B) of the Internal Revenue Code applies, in lieu of the provisions of Section 453(*l*) (3) (A) of the Internal Revenue Code, the "tax" (as defined by subdivision (a) of Section 23036) for any income year for which payment is received on that obligation shall be increased by the amount of interest determined in the manner provided under Section 453(*l*) (3) (B) of the Internal Revenue Code.

(2) Sections 10202 and 10204 of Public Law 100-203, are modified to provide for each of the following:

(A) Section 10202 shall apply to dispositions in income years beginning on or after January 1, 1990.

(B) Section 10204 shall apply to costs incurred in income years beginning on or after January 1, 1990.

(C) Any adjustments required by Section 481 of the Internal Revenue Code shall be included in gross income as follows:

(i) Fifty percent in the first income year beginning on or after January 1, 1990.

(ii) Fifty percent in the second income year beginning on or after January 1, 1990.

(f) (1) The amendments to Section 453A of the Internal Revenue Code made by Section 2004 of Public Law 100-647, relating to special rules for nondealers, shall apply to each income year beginning on or after January 1, 1990.

(2) In the case of any installment obligation to which Section 453A of the Internal Revenue Code applies and which is outstanding as of the close of the income year, in lieu of the provisions of Section 453A(c) (1) of the Internal Revenue Code, the "tax" (as defined by subdivision (a) of Section 23036) for the income year shall be

increased by the amount of interest determined in the manner provided under Section 453A(c)(2) of the Internal Revenue Code.

(3) The provisions of Section 453A(c)(3)(B) of the Internal Revenue Code, relating to the maximum rate used in calculating the deferred tax liability, are modified to refer to the maximum rate of tax imposed under Section 23151, 23186, or 23802, whichever applies, in lieu of the maximum rate of tax imposed under Section 1 or 11 of the Internal Revenue Code.

SEC. 67. Section 24673.2 of the Revenue and Taxation Code is amended to read:

24673.2. (a) Section 460 of the Internal Revenue Code, relating to special rules for long-term contracts, shall apply, except as otherwise provided.

(b) (1) Section 804(d) of Public Law 99-514, relating to the effective date of modifications in the method of accounting for long-term contracts, shall apply to income years beginning on or after January 1, 1987.

(2) In the case of a contract entered into after February 28, 1986, during an income year beginning before January 1, 1987, an adjustment to income shall be made upon completion of the contract, if necessary, to correct any underreporting or overreporting of income, for purposes of this part, resulting from differences between state and federal law for the income year in which the contract began.

(c) (1) The amendments to Section 460 of the Internal Revenue Code made by Section 10203 of Public Law 100–203, relating to a reduction in the percentage of items taken into account under the completed contract method, shall apply to each income year beginning on or after January 1, 1990.

(2) In the case of a contract entered into after October 13, 1987, during an income year beginning before January 1, 1990, an adjustment to income shall be made upon completion of the contract, if necessary, to correct any underreporting or overreporting of income, for purposes of this part, resulting from differences between state and federal law for each income year beginning prior to January 1, 1990.

(d) (1) The amendments to Section 460 of the Internal Revenue Code made by Section 5041 of Public Law 100–647, relating to a reduction in the percentage of items taken into account under the completed contract method, shall apply to each income year beginning on or after January 1, 1990.

(2) In the case of a contract entered into after June 20, 1988, during an income year beginning before January 1, 1990, an adjustment to income shall be made upon completion of the contract, if necessary, to correct any underreporting or overreporting of income, for purposes of this part, resulting from differences between state and federal law for each income year beginning prior to January 1, 1990.

(e) (1) The amendments to Section 460 of the Internal Revenue

Code made by Section 7621 of Public Law 101-239, relating to the repeal of the completed contract method of accounting for long-term contracts, shall apply to each income year beginning on or after January 1, 1990.

(2) In the case of a contract entered into after July 10, 1989, during an income year beginning on or before January 1, 1990, an adjustment to income shall be made upon completion of the contract, if necessary, to correct any underreporting or overreporting of income, for purposes of this part, resulting from differences between state and federal law for each income year beginning prior to January 1, 1990.

(f) For purposes of applying paragraphs (2) to (5), inclusive, of Section 460(b) of the Internal Revenue Code, relating to the look-back method, any adjustment to income computed under paragraph (2) of subdivision (b), (c), (d), or (e) shall be deemed to have been reported in the income year from which the adjustment arose, rather than the income year in which the contract was completed.

SEC. 68. Section 24681 of the Revenue and Taxation Code is amended to read:

24681. Section 461 of the Internal Revenue Code, relating to the general rule for taxable year of deduction, shall apply, except as otherwise provided.

SEC. 69. Section 24682 of the Revenue and Taxation Code is amended to read:

24682. Section 464 of the Internal Revenue Code, relating to limitations on deductions for certain farming expenses, shall apply, except as otherwise provided.

SEC. 70. Section 24688 of the Revenue and Taxation Code is amended to read:

24688. Section 467 of the Internal Revenue Code, relating to certain payments for the use of property or services, shall apply, except as otherwise provided.

SEC. 71. Section 24689 of the Revenue and Taxation Code is amended to read:

24689. Section 468 of the Internal Revenue Code, relating to special rules for mining and solid waste reclamation and closing costs, shall apply, except as otherwise provided.

SEC. 72. Section 24692 of the Revenue and Taxation Code is amended to read:

24692. (a) Section 469 of the Internal Revenue Code, relating to passive activity losses and credits limited, shall apply, except as otherwise provided.

(b) For purposes of this part, Section 469(d)(2) of the Internal Revenue Code, relating to passive activity credits, is modified to refer to the following credits:

(1) The credit for research expenses allowed by Section 23609.

(2) The credit for clinical testing expenses allowed by Section 23609.5.

(3) The credit for low-income housing allowed by Section 23610.5.

(4) The credit for certain wages paid (targeted jobs) allowed by Section 23621.

(c) For purposes of applying Section 469(i) of the Internal Revenue Code, relating to the twenty-five thousand dollars ($25,000) offset for rental real estate activities, the dollar limitation for the credit allowed under Section 23610.5 (relating to low-income housing) shall be equal to seventy-five thousand dollars ($75,000) in lieu of the amount specified in Section 469(i)(2) of the Internal Revenue Code.

(d) Section 502 of the Tax Reform Act of 1986 (Public Law 99-514) shall apply.

(e) For each income year beginning on or after January 1, 1987, Section 10212 of Public Law 100-203, relating to treatment of publicly traded partnerships under Section 469 of the Internal Revenue Code, shall apply, except as otherwise provided.

(f) The amendments to Section 469(k) of the Internal Revenue Code made by Section 2004 of Public Law 100-647, relating to separate application of section in case of publicly traded partnerships, shall apply to each income year beginning on or after January 1, 1990, except as otherwise provided.

SEC. 73. Section 24693 of the Revenue and Taxation Code is amended to read:

24693. (a) Section 468B of the Internal Revenue Code, relating to special rules for designated settlement funds, shall apply, except as otherwise provided.

(b) Section 468B(b) of the Internal Revenue Code, which imposes a tax upon the designated settlement fund, shall be modified for purposes of this part to provide that a tax shall be imposed upon the gross income of the fund at a rate equal to the rate in effect for the taxable year under Section 23501. The income tax imposed upon the gross income of the fund by this section is in lieu of any other tax imposed by this part or Part 10 (commencing with Section 17001) upon or measured by that income.

SEC. 74. Section 24701 of the Revenue and Taxation Code is amended to read:

24701. (a) Section 471 of the Internal Revenue Code, relating to the general rule for inventories, shall apply, except as otherwise provided.

(b) Section 472 of the Internal Revenue Code, relating to last-in, first-out inventories, shall apply, except as otherwise provided.

SEC. 75. Section 24708 of the Revenue and Taxation Code is amended to read:

24708. Section 474 of the Internal Revenue Code, relating to simplified dollar-value LIFO method for certain small businesses, shall apply, except as otherwise provided.

SEC. 76. Section 24721 of the Revenue and Taxation Code is amended to read:

24721. Section 481 of the Internal Revenue Code, relating to

adjustments required by changes in method of accounting, shall apply, except as otherwise provided.

SEC. 77. Section 24726 of the Revenue and Taxation Code is amended to read:

24726. Section 483 of the Internal Revenue Code, relating to interest on certain deferred payments, shall apply, except as otherwise provided.

SEC. 78. Section 24872 of the Revenue and Taxation Code is amended to read:

24872. Sections 856 to 860, inclusive, of the Internal Revenue Code, relating to real estate investment trusts, shall be applicable for purposes of this part, except that:

(a) In applying Section 857 (a) (1) of the Internal Revenue Code, a real estate investment trust subject to this part shall be subject to this section if it satisfies the distribution requirements for real estate investment trusts for federal purposes.

(b) (1) Section 857 (b) (1) of the Internal Revenue Code, relating to imposition of tax on real estate investment trusts, shall not apply.

(2) Every real estate investment trust shall be subject to the taxes imposed under Chapter 2 (commencing with Section 23101) and Chapter 3 (commencing with Section 23501), except that its "net income" shall be equal to its "real estate investment trust income," as defined in subdivision (b).

(c) "Real estate investment trust income" means real estate investment trust taxable income, as defined in Section 857 (b) (2) of the Internal Revenue Code, modified as follows:

(1) In lieu of the provisions of Section 857 (b) (2) (A) of the Internal Revenue Code, relating to special deductions for corporations, no deduction shall be allowed under Section 24402.

(2) Section 857 (b) (2) (D) of the Internal Revenue Code, relating to an exclusion for an amount equal to the net income from foreclosure property, shall not apply.

(3) Section 857 (b) (2) (E) of the Internal Revenue Code, relating to a deduction for an amount equal to the tax imposed in the case of failure to meet certain requirements for the taxable year, shall not apply.

(4) Section 857 (b) (2) (F) of the Internal Revenue Code, relating to an exclusion for an amount equal to any net income derived from prohibited transactions, shall not apply.

(d) Section 857 (b) (3) of the Internal Revenue Code, relating to an alternative tax in case of capital gains, shall not apply.

(e) Section 857 (b) (4) (A) of the Internal Revenue Code, relating to the imposition of tax on income from foreclosure property, shall not apply.

(f) Section 857 (b) (5) of the Internal Revenue Code, relating to the imposition of tax in case of failure to meet certain requirements, shall not apply.

(g) Section 857 (b) (6) (A) of the Internal Revenue Code, relating to the imposition of tax on income from prohibited transactions, shall

not apply.

(h) Section 857(c) of the Internal Revenue Code, relating to restrictions applicable to dividends received from real estate investment trusts is modified to refer to Sections 24106, 24110, 24402, and 24406 in lieu of Section 243 of the Internal Revenue Code.

(i) The amendments to this section by the act adding this subdivision are clarifications of legislative intent and shall apply to taxable and income years beginning on or after January 1, 1987.

SEC. 79. Section 24905 of the Revenue and Taxation Code is amended to read:

24905. (a) Section 988 of the Internal Revenue Code, relating to treatment of certain foreign currency transactions, shall apply, except as otherwise provided.

(b) Section 988(a)(3) of the Internal Revenue Code, relating to source, shall not apply.

SEC. 80. Section 24918 of the Revenue and Taxation Code is amended to read:

24918. Section 1017 of the Internal Revenue Code, relating to discharge of indebtedness, shall apply, except as otherwise provided. References to affiliated groups which file a consolidated return under Section 1501 of the Internal Revenue Code shall be treated as meaning members of the same unitary group which file a combined report under Article 1 (commencing with Section 25101) of Chapter 17.

SEC. 81. Section 24941 of the Revenue and Taxation Code is amended to read:

24941. Section 1031 of the Internal Revenue Code, relating to exchange of property held for productive use or investment, shall apply, except as otherwise provided.

SEC. 82. Section 24950 of the Revenue and Taxation Code is amended to read:

24950. Section 1035 of the Internal Revenue Code, relating to certain exchanges of insurance policies, shall apply, except as otherwise provided.

SEC. 83. Section 24951 of the Revenue and Taxation Code is amended to read:

24951. Section 1036 of the Internal Revenue Code, relating to stock for stock of same corporation, shall apply, except as otherwise provided.

SEC. 84. Section 24954 of the Revenue and Taxation Code is amended to read:

24954. (a) Section 1042 of the Internal Revenue Code, relating to sales of stock to employee stock ownership plans or certain cooperatives, shall apply, except as otherwise provided.

(b) (1) This section shall not apply to income years beginning on or after January 1, 1995.

(2) This section shall remain in effect only until December 1, 1995, and as of that date is repealed.

SEC. 85. Section 24966.1 of the Revenue and Taxation Code is

amended to read:

24966.1. Section 1059A of the Internal Revenue Code, relating to limitation on taxpayer's basis or inventory cost in property imported from related persons, shall apply, except as otherwise provided.

SEC. 86. Section 24966.2 of the Revenue and Taxation Code is amended to read:

24966.2. Section 1060 of the Internal Revenue Code, relating to special allocation rules for certain asset acquisitions, shall apply, except as otherwise provided.

SEC. 87. Section 24981 of the Revenue and Taxation Code is amended to read:

24981. Section 1081 of the Internal Revenue Code, relating to nonrecognition of gain or loss on exchanges or distributions in obedience to orders of the federal Securities and Exchange Commission, shall apply, except as otherwise provided.

SEC. 88. Section 24988 of the Revenue and Taxation Code is amended to read:

24988. For purposes of Section 24981, Section 1082 of the Internal Revenue Code, relating to basis for determining gain or loss, shall apply, except as otherwise provided.

SEC. 89. Section 24989 of the Revenue and Taxation Code is amended to read:

24989. Section 1056 of the Internal Revenue Code, relating to basis limitation for player contracts transferred in connection with the sale of a franchise, shall apply, except as otherwise provided.

SEC. 90. Section 25662 of the Revenue and Taxation Code is amended to read:

25662. (a) If the Franchise Tax Board determines that the self-assessed tax disclosed by the taxpayer on an original or amended return, including an amended return reporting federal adjustments pursuant to Section 25432, is less than the tax disclosed by its examination it shall mail notice or notices to the taxpayer of the additional tax proposed to be assessed. Each notice shall set forth the reasons for the proposed additional assessment and the details of the computation thereof.

(b) This section shall remain in effect only until January 1, 1994, and as of that date is repealed.

SEC. 91. Section 25662.1 of the Revenue and Taxation Code is amended to read:

25662.1. (a) For purposes of this part, the term "deficiency" means the amount by which the tax imposed by this part exceeds the excess of—

(1) The sum of—

(A) The amount shown as the tax by the taxpayer upon its original or amended return, if an original or amended return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

(B) The amounts previously assessed (or collected without assessment) as a deficiency, over—

(2) The amount of rebates, as defined in paragraph (2) of subdivision (b), made.

(b) For purposes of this section:

(1) The tax imposed by this part and the tax shown on the original or amended return shall both be determined without regard to payments on account of estimated tax.

(2) "Rebate" means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed by this part was less than the excess of the amount specified in paragraph (1) of subdivision (a) over the rebates previously made.

(3) The term "deficiency" shall include the amount by which a credit subject to carryover is reduced by any action of the Franchise Tax Board.

(c) This section shall remain in effect only until January 1, 1994, and as of that date is repeal.

SEC. 92. Section 25663 of the Revenue and Taxation Code is amended to read:

25663. (a) Except in the case of a false or fraudulent return, and except as otherwise expressly provided in this part, every notice of additional tax proposed to be assessed shall be mailed to the taxpayer within four years after the return was filed. No deficiency shall be assessed or collected with respect to the year for which such return was filed unless the notice is mailed within the four-year period or as otherwise provided.

(b) For the purposes of this section and Sections 25663a and 25663c a return filed before the last day prescribed by law for the filing thereof (determined without regard to any extension of time for filing the return) shall be considered as filed on such last day. For purposes of Section 26073, payment of any portion of the tax made before the last day prescribed for the payment of the tax shall be considered made on such last day.

(c) If a taxpayer determines in good faith that it is an exempt organization and files a return as such under Section 23772, and if such taxpayer is thereafter held to be a taxable organization for the taxable year for which the return is filed, such return shall be deemed the return of the organization for the purposes of this section.

(d) The running of the period of limitations provided in subdivision (a) on mailing a notice of additional tax proposed to be assessed shall, in a case under Title 11 of the United States Code, be suspended for any period during which the Franchise Tax Board is prohibited by reason of such case from mailing a notice of additional tax proposed to be assessed and 60 days thereafter.

(e) Where, within the 60-day period ending on the day on which the time prescribed in this section for the assessment of any tax imposed by this part for any year would otherwise expire, the Franchise Tax Board receives a written document signed by the taxpayer showing that the taxpayer owes an additional amount in excess of the amount shown on either an original or an amended

return of that tax for that year, the period for the assessment of an additional amount shall not expire before the day 60 days after the day on which the Franchise Tax Board receives that document.

(f) This section shall remain in effect only until January 1, 1994, and as of that date is repealed.

SEC. 93. Section 25674 of the Revenue and Taxation Code is amended to read:

25674. (a) If a taxpayer is required by subdivision (a) of Section 25432 to report a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other competent authority and does report the change or correction within six months after the final federal determination, a notice of proposed deficiency assessment resulting from those adjustments may be mailed to the taxpayer within two years from the date the notice is filed with the Franchise Tax Board by the taxpayer, or within the periods provided in Sections 25663, 25663a, and 25663c, whichever period expires later.

(b) If a taxpayer is required by subdivision (b) of Section 25432 to file an amended return and does file the return within six months of filing an amended return with the Commissioner of Internal Revenue, a notice of proposed deficiency assessment in excess of the self-assessed tax on the amended return, and resulting from the adjustments may be mailed to the taxpayer within two years from the date when the amended return is filed with the Franchise Tax Board by the taxpayer, or within the periods provided in Sections 25663, 25663a, and 25663c, whichever period expires later.

(c) This section shall remain in effect only until January 1, 1994, and as of that date is repealed.

SEC. 94. Section 25937 of the Revenue and Taxation Code is amended to read:

25937. (a) The provisions of Section 6657 of the Internal Revenue Code, relating to bad checks, shall apply.

(b) Section 6657 of the Internal Revenue Code, relating to bad checks, is modified to apply to payments made by credit card remittance or electronic funds transfer (as provided by Section 25555.5) in addition to payments made by check or money order.

(c) For payments received prior to January 1, 1993, this section shall be applied only to payments pertaining to income years beginning on or after January 1, 1990.

(d) For payments received on or after January 1, 1993, this section shall be applied to all payments without regard to income year.

(e) This section shall remain in effect only until January 1, 1994, and as of that date is repealed.

SEC. 95. Section 2629.1 of the Unemployment Insurance Code is amended to read:

2629.1. (a) Nothing in Section 2629 shall be construed to authorize the delay of payment of unemployment compensation disability benefits except where the claimant is currently in receipt of other benefits or where the department has received notice that

the claimant's employer or insurer has agreed to commence the payment of other benefits.

(b) Notwithstanding Section 2701.5, payments shall commence within 14 days after notice to the employer or insurer under this section unless the employer or insurer has either paid or has agreed to commence the payment of other benefits.

(c) Upon the filing of a claim for unemployment compensation disability benefits, the department shall make an initial determination as to the claimant's entitlement to other benefits for purposes of Section 2629.

(1) The department shall notify the claimant and the claimant's employer if it determines that the claimant is entitled to other benefits.

(2) The notice to the claimant shall inform the claimant that disability benefits will be paid pending receipt of other benefits if the employer fails to agree to pay these other benefits within 14 days of notification of industrial injury and shall advise the claimant of the provisions of Section 2629.

(3) The department shall also include with the claimant's notice a pamphlet to be provided by the Department of Industrial Relations which meets the criteria specified in subdivision (b) of Section 139.6 of the Labor Code.

(4) The notice to the employer shall constitute a claim for compensation and knowledge of an injury for purposes of Section 5402 of the Labor Code, and shall inform the employer of its potential liability for interest and penalties under this section.

(d) If the employer or the insurance carrier disputes liability for the payment of other benefits, or the extent thereof, the department's right to reimbursement shall be subject to the jurisdiction of the Workers' Compensation Appeals Board in accordance with Part 4 (commencing with Section 5300) of Division 4 of the Labor Code.

(e) An employer or insurance carrier who subsequently assumes liability or is determined to be liable for reimbursement to the department for unemployment compensation disability benefits which the department has paid in lieu of other benefits shall be assessed for this liability by the department. In addition, the employer shall pay the department interest on the disability benefits at the annual rate provided in Section 19521 of the Revenue and Taxation Code. The employer shall also pay a penalty of 10 percent of the amount reimbursed to the department if the Workers' Compensation Appeals Board finds that the failure of the employer to pay other benefits upon notice by the department under this section was unreasonable and a penalty has not been awarded for the delay under Section 5814 of the Labor Code. All funds received by the department pursuant to this section shall be deposited in the Disability Fund.

(f) The employer shall reimburse the department in accordance with subdivision (e) within 60 days of either voluntarily accepting

liability for other benefits or after a final award, order, or decision of the Workers' Compensation Appeals Board.

SEC. 96. Section 13017 of the Unemployment Insurance Code is amended to read:

13017. Unless otherwise specifically provided, the provisions of any law effecting changes in withholding under this division shall begin in the manner set forth by Section 18665 of the Revenue and Taxation Code.

SEC. 97. Section 13043 of the Unemployment Insurance Code is amended to read:

13043. (a) The amount to be deducted and withheld under this division shall be prescribed pursuant to Section 18663 of the Revenue and Taxation Code when a payment of wages is made to an employee by an employer in any of the following cases:

(1) With respect to a payroll period or other period, any part of which is included in a payroll period or other period with respect to which wages are also paid to the employee by the employer.

(2) Without regard to any payroll period or other period, but on or prior to the expiration of a payroll period or other period with respect to which wages are also paid to the employee by the employer.

(3) With respect to a period beginning in one and ending in another calendar year.

(4) Through an agent, fiduciary, or other person who also has the control, receipt, custody, or disposal of, or pays, the wages payable by another employer to the employee.

(b) For purposes of this section, an employee's remuneration may consist of wages paid for a payroll period and supplemental wages. Supplemental wages include, but are not limited to, bonus payments, overtime payments, commissions, sales awards, back pay including retroactive wage increases, and reimbursements for nondeductible moving expenses that are paid for the same or different period, or without regard to a particular period.

(c) When any supplemental wages are paid subsequent to the payment of regular wages, the employer may determine the personal income tax to be withheld from supplemental wages paid by (1) using a flat percentage rate pursuant to subdivision (b) of Section 18663 of the Revenue and Taxation Code without allowance for exemptions and credits and without reference to any regular payment of wages, or (2) adding the supplemental wages to the regular wages paid the employee and computing the personal income tax to be withheld on the whole amount (the computed tax minus the tax withheld from the regular wages shall be withheld from the supplemental wages). Where supplemental wages are paid at the same time as regular wages, the personal income tax to be withheld shall be computed on the total of the supplemental and regular wages and shall be determined as if the total of the supplemental wages and the regular wages constituted a single wage payment for the regular payroll period.

SEC. 98. Section 13050 of the Unemployment Insurance Code is amended to read:

13050. (a) Every employer or person required to deduct and withhold from an employee a tax under Section 986, 3260, or 13020, or who would have been required to deduct and withhold a tax under Section 13020 (determined without regard to Section 13025) if the employee had claimed no more than one withholding exemption, shall furnish to each employee in respect of the remuneration paid by the person to the employee during the calendar year, on or before January 31 of the succeeding year, or, if his or her employment is terminated before the close of the calendar year, on the day on which the last payment of remuneration is made, a written statement showing all of the following:

(1) The name of the person.

(2) The name of the employee, and his or her social security or identifying number if wages have been paid.

(3) The total amount of wages, except that in the case of tips received by an employee in the course of his or her employment, the amounts required shall include only those tips included in statements furnished to the employer pursuant to Section 13055.

(4) The total amount deducted and withheld as tax under Section 13020.

(5) The total amount of worker contributions paid by the employee pursuant to Section 986.

(6) The total amount of worker contributions paid by the employee pursuant to Section 3260.

(7) The total amount of elective deferrals (within the meaning of Section 402(g)(3) of the Internal Revenue Code) and compensation deferred pursuant to Section 457 of the Internal Revenue Code.

(b) The statement required to be furnished pursuant to this section in respect of any remuneration shall be furnished at other times, shall contain other information, and shall be in a form, as the department may by authorized regulations prescribe.

(c) A duplicate of any statement made pursuant to this section and in accordance with authorized regulations prescribed by the department shall, when required by the regulations, be filed with the department.

(d) If, during any calendar year, any person makes a payment of third-party sick pay to an employee, that person shall, on or before January 15 of the succeeding year, furnish a written statement to the employer in respect of whom the payment was made showing all of the following:

(1) The name and, if there is withholding under this division, the social security number of that employee.

(2) The total amount of the third-party sick pay paid to that employee during the calendar year.

(3) The total amount, if any, deducted and withheld from that sick pay under this division. For purposes of the preceding sentence, the term "third-party sick pay" means any sick pay, as defined in

subdivision (b) of Section 13028.6, which does not constitute wages for purposes of this division, determined without regard to subdivision (a) of Section 13028.6.

(A) The reporting requirements of subdivision (a) with respect to any payments shall, with respect to those payments, be in lieu of the requirements of subdivision (a) and of Section 18637 of the Revenue and Taxation Code.

(B) For purposes of Chapter 10 (commencing with Section 2101) of Part 1 of Division 1, the statements required to be furnished by this subdivision shall be treated as statements required under this section to be furnished to employees.

(C) Every employer who receives a statement under this subdivision with respect to sick pay paid to any employee during any calendar year shall, on or before January 31 of the succeeding year, furnish a written statement to that employee showing all of the following:

(i) The information shown on the statement furnished under this subdivision.

(ii) If any portion of the sick pay is excludable from gross income pursuant to Article 3 (commencing with Section 17131) of Chapter 3 of Part 10 of Division 2 of the Revenue and Taxation Code, the portion which is not so excludable and the portion which is so excludable. To the extent practicable, the information required under the preceding sentence shall be furnished on or with the statement, if any, required under subdivision (a).

(e) The Franchise Tax Board shall be allowed access to the information filed with the department pursuant to this section.

SEC. 99. Sections 37.2 and 37.5 of this act shall become operative only if Senate Bill 26 of the 1993–94 Regular Session is chaptered during 1993 and amends Section 23101.5 of the Revenue and Taxation Code.

SEC. 100. The Legislature finds and declares that the repeal, by Section 50 of this act, of Section 24371 and the addition, by Section 30 of this act, of Section 19393 to Part 10.2 of the Revenue and Taxation Code (commencing with Section 18401) as added by Chapter 31 of the Statutes of 1993, constitutes a clarification and recodification of existing law.

SEC. 101. The Legislature finds and declares that the amendments to Sections 17078 and 24905 of the Revenue and Taxation Code made by Sections 13 and 79 of this act are declaratory of existing law.

SEC. 102. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

However, Sections 7.1, 23.1, 25, 26, 26.1, 27, 28, 28.1, 28.2, 28.3, 29, 30.1, 37, 95, 96, 97, and 98 of this act shall become operative on January 1, 1994.

CHAPTER 878

An act to amend Sections 10878, 17145, 19059, 19141.5, 19271, 19272, 23058, 24343, 24344, 24414, 24440, 24871, and 24872 of, to amend and repeal Section 18645 of, to add Sections 19531 and 19566 to, and to add and repeal Sections 19279, 19292, and 26456 of, the Revenue and Taxation Code, and to amend Section 11478.51 of the Welfare and Institutions Code, relating to the Franchise Tax Board, making an appropriation therefor.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. The Legislature finds and declares the following:

(a) (1) The changes made by this act to Chapter 1223 of the Statutes of 1992 clarify that the authority for the Franchise Tax Board to collect the referred child support delinquencies as though they were personal income tax delinquencies is not an exclusive authority. This authority was not intended to limit the collection authority or information sources available for child support enforcement but rather to provide a cumulative authority.

(2) As provided by law, the Franchise Tax Board is also authorized to use any enforcement remedies, information, or services available to the district attorney.

(3) Chapter 1223 of the Statutes of 1992 was enacted to determine and develop the most effective and efficient child support collection program.

(b) The changes made by this act to Chapter 60 of the Statutes of 1993 clarify that the authority transferred to the Franchise Tax Board to collect delinquent Department of Motor Vehicle amounts is cumulative. Specifically, in collecting the described Department of Motor Vehicle amounts, the Franchise Tax Board has the authority to use all the enforcement remedies, information, and services transferred to it either in conjunction with or independent of the enforcement remedies, information, or services that are available to the Franchise Tax Board to collect delinquent personal income taxes.

SEC. 2. Section 10878 of the Revenue and Taxation Code, as added by Chapter 60 of the Statutes of 1993, is amended to read:

10878. (a) Notwithstanding Sections 10877 and 10951, on and after July 1, 1993, the responsibility and authority for the collection of delinquent fees, taxes, and penalties described in subdivision (a) of Section 9800 of the Vehicle Code shall be transferred from the department to the Franchise Tax Board, and any reference in this part to the department in connection with the duty to collect these amounts shall be deemed a reference to the Franchise Tax Board.

(b) The amounts collected under subdivision (a) may be collected in any manner authorized under the law as though they

were a tax imposed under Part 10 (commencing with Section 17001) that is final, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding order for taxes. Part 10 (commencing with Section 17001), 10.2 (commencing with Section 18401), or 10.7 (commencing with Section 21001), or any other applicable law shall apply for this purpose in the same manner and with the same force and effect as if the language of Part 10, 10.2, or 10.7, or the other applicable law is incorporated in full into this authority to collect these amounts, except to the extent that the provision is either inconsistent with the collection of these amounts or is not relevant to the collection of these amounts.

(c) Even though the amounts authorized by this section are collected as though they are taxes, amounts so received by the Franchise Tax Board shall be deposited into an appropriate fund or account upon agreement between the Franchise Tax Board and the department. The amounts shall be distributed by the department from the appropriate fund or account in accordance with the laws providing for the deposits and distributions as though the moneys were received by the department.

(d) For any collection action under this section, the Franchise Tax Board may utilize the contract authorization, procedures, and mechanisms available either with respect to the collection of taxes, interest, additions to tax, and penalties pursuant to Section 18837 or 19376, or with respect to the collection of the delinquencies by the department immediately prior to the time this section takes effect.

(e) The Legislature finds that it is essential for fiscal purposes that the program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any standard, criteria, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board in implementing and administering the program required by this section.

(f) Any standard, criteria, procedure, determination, rule, notice, or guideline, that is not subject to the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code pursuant to subdivision (e), shall be approved by the Franchise Tax Board, itself.

(g) The Franchise Tax Board may enter into any agreements or contracts necessary to implement and administer the provisions of this section. The Franchise Tax Board in administering this section may delegate collection activities to the department. Any contracts may provide for payment of the contract on the basis of a percentage of the amount of revenue realized as a result of the contractor's services under that contract. However, the Franchise Tax Board, in administering this part, may not enter into contracts with private collection agencies as authorized under Section 19377.

SEC. 3. Section 17145 of the Revenue and Taxation Code is amended to read:

17145. (a) A management company, or series thereof, is qualified to pay exempt-interest dividends to its shareholders if, at the close of each quarter of its taxable year, at least 50 percent of the value of its total assets consists of obligations which, when held by an individual, the interest therefrom is exempt from taxation by this state.

(b) For purposes of this section:

(1) "Exempt-interest dividend" means any dividend or part thereof paid by a management company or series thereof in an amount not exceeding the interest received by it during its taxable year on obligations which, when held by an individual, the interest therefrom is exempt from taxation by this state, and designated by it as an exempt-interest dividend in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company (including exempt-interest dividends paid after the close of the taxable year as described in Section 855 of the Internal Revenue Code) is greater than the excess of:

(i) The amount of interest received by it during its taxable year on obligations, interest on which, if held by an individual, is exempt from taxation by this state, over

(ii) The amounts that, if it were treated as an individual, would be disallowed as deductions under Section 17280 of this part or Section 171(a)(2) of the Internal Revenue Code, the portion of that distribution which shall constitute an exempt-interest dividend shall be only that proportion of the amount so designated as the amount of that excess for that taxable year bears to the amount so designated.

(2) "Management company" means a regulated investment company as defined by Section 851 of the Internal Revenue Code.

(3) "Series" means a segregated portfolio of assets, the beneficial interest in which is owned by the holders of a class or series of stock of the management company that is preferred over all other classes or series with respect to that portfolio of assets.

(4) "Value" means, with respect to securities (other than those of majority-owned subsidiaries) for which market quotations are readily available, the market value of those securities; and with respect to other securities and assets, fair market value as determined in good faith by the board of directors or trustees, except that in the case of securities of majority-owned subsidiaries which are investment companies, as defined in the Investment Company Act of 1940, that fair value shall not exceed market value or asset value, whichever is higher.

(c) An exempt-interest dividend shall be treated by recipients thereof as an item of interest excludable from income.

SEC. 4. Section 18645 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

18645. (a) The Franchise Tax Board may require a copy of the

federal information return to be filed with the Franchise Tax Board if a federal information return was required under any of the following:

(1) Section 6039C of the Internal Revenue Code, relating to returns with respect to foreign persons holding direct investments in United States real property interests, if that person holds a direct investment in a California real property interest as defined in Section 18662.

(2) Section 6050H of the Internal Revenue Code, relating to mortgage interest received in trade or business from individuals.

(3) Section 6050J of the Internal Revenue Code, relating to foreclosures and abandonments of security.

(4) Section 6050K of the Internal Revenue Code, relating to exchanges of certain partnership interests.

(5) Section 6050L of the Internal Revenue Code, relating to certain dispositions of donated property.

(6) Section 6050N of the Internal Revenue Code, relating to returns regarding payments of royalties.

(b) Every person required to make a return under subdivision (a) shall also furnish a statement to each person whose name is required to be set forth in the return, as required to do so by the Internal Revenue Code.

(c) A transferor of a partnership interest shall be required to notify the partnership of that exchange in accordance with Section 6050K(c) of the Internal Revenue Code.

(d) The Franchise Tax Board shall require a copy of the federal information return to be filed with the Franchise Tax Board if a federal information return was required under Section 6050I of the Internal Revenue Code, relating to cash received in trade or business.

(e) (1) The Attorney General shall, upon court order following a showing ex parte to a magistrate of an articulable suspicion that an individual or entity has committed a felony offense to which a federal information return is related, be provided a copy of a federal information return filed with the Franchise Tax Board under subdivision (d). The Attorney General may make a return or information therefrom available to a district attorney subject to regulations promulgated by the Attorney General. The regulations shall require the district attorney seeking the return or information to specify in writing the specific reasons for believing that a felony offense has been committed to which the return or information is related.

(2) Any information or return obtained by the Attorney General or a district attorney pursuant to this section shall be confidential and used only for investigative or prosecutorial purposes.

SEC. 5. Section 18645 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is repealed.

SEC. 6. Section 19059 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

19059. (a) If a taxpayer is required by subdivision (a) of Section 18622 to report a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other competent authority and does report the change or correction within six months after the final federal determination, a notice of proposed deficiency assessment resulting from those adjustments may be mailed to the taxpayer within two years from the date when the notice is filed with the Franchise Tax Board by the taxpayer, or within the periods provided in Section 19057, 19058, or 19065, whichever period expires later.

(b) If a taxpayer is required by subdivision (b) of Section 18622 to file an amended return and does file the return within six months of filing an amended return with the Commissioner of Internal Revenue, a notice of proposed deficiency assessment in excess of the self-assessed tax on the amended return, and resulting from the adjustments may be mailed to the taxpayer within two years from the date when the amended return is filed with the Franchise Tax Board by the taxpayer, or within the periods provided in Section 19057, 19058, or 19065, whichever period expires later.

SEC. 7. Section 19141.5 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

19141.5. (a) (1) Section 6038A of the Internal Revenue Code, relating to information with respect to certain foreign-owned corporations, shall apply.

(2) A penalty shall be imposed under this part for failure to furnish information or maintain records and that penalty shall be determined in accordance with Section 6038A of the Internal Revenue Code.

(3) Section 11314 of Public Law 101-508, relating to application of amendments made by Section 7403 of the Revenue Reconciliation Act of 1989 to taxable years beginning on or before July 10, 1989, shall apply.

(4) Section 6038A(e) of the Internal Revenue Code, relating to enforcement of requests for certain records, is modified as follows:

(A) Each reference to Section 7602, 7603, or 7604 of the Internal Revenue Code shall instead refer to Section 19504.

(B) Each reference to "summons" shall instead refer to "subpoena duces tecum."

(C) Section 6038A(e)(4)(C) of the Internal Revenue Code shall refer to "superior courts of the State of California for the Counties of Los Angeles, Sacramento, and San Diego, and for the City and County of San Francisco," instead of "United States district court for the district in which the person (to whom the summons is issued) resides or is found."

(b) In the case of a bank or corporation, each of the following shall apply:

(1) Section 6038B of the Internal Revenue Code, relating to notice of certain transfers to foreign persons, shall apply.

(2) A penalty shall be imposed under this part for failure to

furnish information or maintain records and that penalty shall be determined in accordance with Section 6038B of the Internal Revenue Code.

(c) (1) Section 6038C of the Internal Revenue Code, relating to information with respect to foreign corporations engaged in United States business, shall apply.

(2) A penalty shall be imposed under this part for failure to furnish information or maintain records and that penalty shall be determined in accordance with Section 6038C of the Internal Revenue Code.

(3) Section 6038C(d) of the Internal Revenue Code, relating to enforcement of requests for certain records, is modified as follows:

(A) Each reference to Section 7602, 7603, or 7604 of the Internal Revenue Code shall instead refer to Section 19504.

(B) Each reference to "summons" shall instead refer to "subpoena duces tecum."

(d) For purposes of this part, the information required to be filed with the Franchise Tax Board pursuant to this section shall be a copy of the information filed with the Internal Revenue Service.

SEC. 8. Section 19271 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

19271. (a) When a child support delinquency is reported to the State Department of Social Services pursuant to Chapter 4 (commencing with Section 4700) of Part 5 of Division 9 of the Family Code, the county district attorney reporting that delinquency may, pursuant to the guidelines prescribed by the State Department of Social Services and the Franchise Tax Board for purposes of implementing this article, refer the delinquency, which may include or be limited to interest, fees, or penalties, to the Franchise Tax Board for collection. For the period from January 1, 1993, to December 31, 1995, inclusive, for purposes of the manageable implementation and evaluation of the program authorized by this article, requests for referral shall only be made from district attorneys representing six counties, selected upon application, which may include two rural counties, two suburban counties, and two urban counties. These counties shall be selected by the State Department of Social Services and the Franchise Tax Board in consultation with county representatives.

(b) (1) When a delinquency is referred to the Franchise Tax Board pursuant to subdivision (a), the amount of the child support delinquency shall be collected from obligated parents by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent personal income tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes. Any law providing for the collection of a delinquent personal income tax liability shall apply to delinquencies referred under this article in the

same manner and with the same force and effect and to the full extent as if the language of such laws had been incorporated in full into this article, except to the extent that any provision is either inconsistent with a provision of this article or is not relevant to this article.

(2) Any compensation, fee, commission, expense, or any other fee for service incurred by the Franchise Tax Board in the collection of a child support delinquency authorized under this article shall not be an obligation of, or collected from, the obligated parent. A referred child support delinquency shall be final and due and payable to the State of California upon written notice to the obligated parent by the Franchise Tax Board.

(3) For purposes of administering this article:

(A) This chapter and Chapter 7 (commencing with Section 19501) shall apply, except as otherwise provided by this article.

(B) Any services, information, or enforcement remedies available to a district attorney or the Title IV-D agency in collecting support delinquencies or locating absent or noncustodial parents shall be available to the Franchise Tax Board for purposes of collecting child support delinquencies under this article, including, but not limited to, any information that may be disclosed by the Franchise Tax Board to the California Parent Locator Service under Section 19285.1.

(C) A request by the Franchise Tax Board for information from a financial institution shall be treated in the same manner and to the same extent as a request for information from a district attorney referring to a support order pursuant to Section 11475.1 of the Welfare and Institutions Code for purposes of Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code (relating to governmental access to financial records), notwithstanding any other provision of law which is inconsistent or contrary to this paragraph.

(D) "Earnings" may include the items described in Section 5206 of the Family Code.

(E) The amount to be withheld in an order and levy to collect child support delinquencies under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure is the amount required to be withheld pursuant to an earnings withholding order for support under Section 706.052 of the Code of Civil Procedure.

(c) Interest on the delinquency shall be computed pursuant to Section 685.010 of the Code of Civil Procedure.

(d) In the event the collection action would cause undue financial hardship to the obligated parent, would threaten the health or welfare of the obligated parent or his or her family, or would cause undue irreparable loss to the obligated parent, the obligated parent may notify the Franchise Tax Board, which shall upon being notified refer the obligated parent to the referring county district attorney, unless the Franchise Tax Board is directed otherwise by the county district attorney for purposes of more effectively administering this

article.

(e) (1) In no event shall a collection under this article be construed to be a payment of income taxes imposed under this part.

(2) In the event an obligated parent overpays a liability imposed under this part, the overpayment shall not be credited against any delinquency collected pursuant to this article. In the event an overpayment of a liability imposed under this part is offset and distributed to a referring county district attorney pursuant to Sections 12419.3 and 12419.5 of the Government Code or Section 708.740 of the Code of Civil Procedure, and thereby reduces the amount of the referred delinquency, the referring county district attorney shall immediately notify the Franchise Tax Board of that reduction, unless otherwise directed for purposes of more effectively administering this article.

(f) Except as otherwise provided in this article, any child support delinquency referred to the Franchise Tax Board pursuant to this article shall be treated as a child support delinquency for all other purposes, and any collection action by the county district attorney or the Franchise Tax Board with respect to any delinquency referred pursuant to this article shall have the same priority against attachment, execution, assignment, or other collection action as is provided by any other provision of state law.

(g) For purposes of this article, "child support" means support of a child, spouse, or family as provided in Section 150 of the Family Code.

(h) Nothing in this article shall be construed to modify the tax intercept provisions of Article 8 (commencing with Section 708.710) of Chapter 6 of Division 2 of Part 2 of the Code of Civil Procedure.

(i) The child support collection activities authorized by this article shall not interfere with the primary mission of the Franchise Tax Board to fairly and efficiently administer the Revenue and Taxation Code for which it is responsible.

(j) Information disclosed to the Franchise Tax Board shall be considered information disclosed by the Franchise Tax Board under the authority of Section 19285.1 and may be disseminated by the Franchise Tax Board accordingly for the purposes specified in Sections 11478 and 11478.5 of the Welfare and Institutions Code (in accordance with, and to the extent permitted by, Section 11478.1 of the Welfare and Institutions Code and any other state or federal law).

SEC. 9. Section 19272 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

19272. (a) Any child support delinquency collected by the Franchise Tax Board, including those amounts that result in overpayment of a child support delinquency, shall be deposited in the State Treasury, after clearance of the remittance, to the credit of the Special Deposit Fund and distributed as specified by interagency agreement executed by the Franchise Tax Board and the State Department of Social Services, with the concurrence of the

Controller. Notwithstanding Section 13340 of the Government Code, all moneys deposited in the Special Deposit Fund pursuant to this article are hereby continuously appropriated, without regard to fiscal years, for purposes of making distributions.

(b) When a child support delinquency, or any portion thereof, has been collected by the Franchise Tax Board pursuant to this article, the district attorney shall be notified that the delinquency or some portion thereof has been collected and shall be provided any other necessary relevant information requested.

(c) The referring county district attorney shall receive credit for no less than 50 percent of the amount of collections made pursuant to the referral, and shall receive no less than 50 percent of the applicable child support enforcement incentives pursuant to Section 15200.85 of the Welfare and Institutions Code. Pursuant to guidelines prescribed by the State Department of Social Services and the Franchise Tax Board, the referring county district attorney's percentage of the incentive credit may exceed 50 percent, depending upon the type of case referred to the Franchise Tax Board for collection, provided that state operations costs are recovered from incentive payments or other federal reimbursement. The remainder of the child support enforcement incentives, if any, shall be received by the Franchise Tax Board for reimbursement of the board's collection costs.

SEC. 10. Section 19279 is added to the Revenue and Taxation Code, to read:

19279. (a) In the event the debtor has more than one debt being collected by the Franchise Tax Board and the amount collected by the Franchise Tax Board is insufficient to satisfy the total amount owing, the amount collected shall be applied by the Franchise Tax Board in the following priority:

(1) Payment of any taxes, additions to tax, penalties, interest, fees, or other amounts due and payable under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(2) Payment of any debts referred for collection under Article 7 (commencing with Section 19001) of Chapter 19 of Part 10.

(3) Payment of delinquencies collected under Section 10878.

(b) This section shall remain in effect until January 1, 1994, and as of that date is repealed.

SEC. 11. Section 19292 is added to the Revenue and Taxation Code, to read:

19292. (a) Any information provided to or obtained by the Franchise Tax Board for purposes of administering this part may be used by Franchise Tax Board for purposes of administering Section 10878.

(b) This section shall remain in effect until January 1, 1994, and as of that date is repealed.

SEC. 12. Section 19531 is added to the Revenue and Taxation Code, to read:

19531. In the event the debtor has more than one debt being

collected by the Franchise Tax Board and the amount collected by the Franchise Tax Board is insufficient to satisfy the total amount owing, the amount collected shall be applied in the following priority:

(a) Payment of any taxes, additions to tax, penalties, interest, fees, or other amounts due and payable under Part 10 or 11 or this part.

(b) Payment of any debts referred for collection under Article 5 (commencing with Section 19271) of Chapter 5.

(c) Payment of delinquencies collected under Section 10878.

SEC. 13. Section 19566 is added to the Revenue and Taxation Code, to read:

19566. Any information provided to or secured by the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) may be used by Franchise Tax Board for purposes of administering Section 10878.

SEC. 14. Section 23058 of the Revenue and Taxation Code is amended to read:

23058. Unless otherwise specifically provided therein, the provisions of any act:

(a) That affect the imposition or computation of tax, penalties, or the allowance of credits against the tax, shall be applied to income years beginning on or after January 1 of the year in which the act takes effect.

(b) That otherwise affect the provisions of this part shall be applied on and after the date the act takes effect.

SEC. 15. Section 24343 of the Revenue and Taxation Code is amended to read:

24343. (a) Section 162 of the Internal Revenue Code, relating to trade or business expenses, shall apply, except as otherwise provided.

(b) For purposes of applying Section 162 of the Internal Revenue Code, any references to Section 170 of the Internal Revenue Code shall be modified to refer to Sections 24357 to 24359.1, inclusive, of this part.

SEC. 16. Section 24344 of the Revenue and Taxation Code is amended to read:

24344. (a) Section 163 of the Internal Revenue Code, relating to interest, shall apply, except as otherwise provided.

(b) If income of the taxpayer which is derived from or attributable to sources within this state is determined pursuant to Section 25101 or 25110, the interest deductible shall be an amount equal to interest income subject to apportionment by formula, plus the amount, if any, by which the balance of interest expense exceeds interest and dividend income (except dividends deductible under Section 24402 and dividends subject to the deductions provided for in Section 24411 to the extent of those deductions) not subject to apportionment by formula. Interest expense not included in the preceding sentence shall be directly offset against interest and dividend income (except dividends deductible under Section 24402

and dividends subject to the deductions provided for in Section 24411 to the extent of those deductions) not subject to apportionment by formula.

(c) Notwithstanding subdivision (b), interest expense allowable under Section 163 of the Internal Revenue Code that is incurred for purposes of foreign investments may be offset against dividends deductible under Section 24411.

(d) Section 7210(b) of Public Law 101-239, relating to the effective date for limitation on deduction for certain interest paid to a related person, shall apply.

(e) Section 163(j)(6)(C) of the Internal Revenue Code, relating to treatment of an affiliated group, is modified to apply to all members of a combined report filed under Section 25101.

SEC. 17. Section 24414 of the Revenue and Taxation Code is amended to read:

24414. (a) Section 195 of the Internal Revenue Code, relating to startup expenditures, shall apply, except as otherwise provided.

(b) References to Sections 163(a), 164, 165, and 174 of the Internal Revenue Code, relating to interest, taxes, losses, and research and experimental expenditures, are modified to refer to Sections 24344, 24345, 24347, and 24365, respectively.

SEC. 18. Section 24440 of the Revenue and Taxation Code is amended to read:

24440. (a) Section 280C(b) of the Internal Revenue Code, relating to credit for qualified clinical testing expenses for certain drugs, shall apply, except as otherwise provided.

(b) (1) Section 280C(c) of the Internal Revenue Code, relating to credit for increasing research activities, shall apply, except as otherwise provided.

(2) Section 280C(c)(3)(B) of the Internal Revenue Code is modified to refer to Section 23151, 23186, or 23802 in lieu of Section 11(b)(1) of the Internal Revenue Code.

SEC. 19. Section 24871 of the Revenue and Taxation Code is amended to read:

24871. (a) (1) Section 852(b)(1) of the Internal Revenue Code, relating to imposition of tax on regulated investment companies, shall not apply.

(2) Every regulated investment company shall be subject to the taxes imposed under Chapter 2 (commencing with Section 23101) and Chapter 3 (commencing with Section 23501), except that its "net income" shall be equal to its "investment company income," as defined in subdivision (b).

(b) "Investment company income" means investment company taxable income, as defined in Section 852(b)(2) of the Internal Revenue Code, modified as follows:

(1) Section 852(b)(2)(A) of the Internal Revenue Code, relating to an exclusion for net capital gain, shall not apply.

(2) Section 852(b)(2)(B) of the Internal Revenue Code, relating to net operating losses, is modified to deny the deduction allowed

under Sections 24416 and 24416.1, in lieu of denying the deduction allowed by Section 172 of the Internal Revenue Code.

(3) In lieu of the provision of Section 852(b)(2)(C) of the Internal Revenue Code, relating to special deductions for corporations, no deduction shall be allowed under Section 24402.

(4) The deduction for dividends paid, under Section 852(b)(2)(D) of the Internal Revenue Code, is modified to allow capital gain dividends and exempt interest dividends (to the extent that interest is included in gross income under this part) to be included in the computation of the deduction.

(c) Section 852(b)(3)(A) of the Internal Revenue Code, relating to capital gains, shall not apply.

(d) Section 852(b)(5)(B) of the Internal Revenue Code, relating to treatment of exempt interest dividends by shareholders, shall not apply.

(e) Section 854 of the Internal Revenue Code, relating to limitations applicable to dividends received from regulated investment companies, is modified to refer to Section 24402, in lieu of Section 243 of the Internal Revenue Code.

(f) The amendments made to this section by the act adding this subdivision shall be operative for income years beginning on or after January 1, 1993.

SEC. 20. Section 24872 of the Revenue and Taxation Code is amended to read:

24872. (a) A real estate investment trust shall be deemed to have satisfied the distribution requirements of Section 857(a)(1) of the Internal Revenue Code for purposes of this part if it satisfies the distribution requirements of Section 857(a)(1) of the Internal Revenue Code for federal purposes.

(b) (1) Section 857(b)(1) of the Internal Revenue Code, relating to imposition of tax on real estate investment trusts, shall not apply.

(2) Every real estate investment trust shall be subject to the taxes imposed under Chapter 2 (commencing with Section 23101) and Chapter 3 (commencing with Section 23501), except that its "net income" shall be equal to its "real estate investment trust income," as defined in subdivision (c).

(c) "Real estate investment trust income" means real estate investment company taxable income, as defined in Section 857(b)(2) of the Internal Revenue Code, modified as follows:

(1) In lieu of Section 857(b)(2)(A) of the Internal Revenue Code, relating to special deductions for corporations, no deduction shall be allowed under Section 24402.

(2) Section 857(b)(2)(D) of the Internal Revenue Code, relating to an exclusion for an amount equal to the net income from foreclosure property, shall not apply.

(3) Section 857(b)(2)(E) of the Internal Revenue Code, relating to a deduction for an amount equal to the tax imposed in the case of failure to meet certain requirements for the taxable year, shall not apply.

(4) Section 857(b)(2)(F) of the Internal Revenue Code, relating to an exclusion for an amount equal to any net income derived from prohibited transactions, shall not apply.

(d) Section 857(b)(3) of the Internal Revenue Code, relating to an alternative tax in case of capital gains, shall not apply.

(e) Section 857(b)(4)(A) of the Internal Revenue Code, relating to the imposition of tax on income from foreclosure property, shall not apply.

(f) Section 857(b)(5) of the Internal Revenue Code, relating to the imposition of tax in case of failure to meet certain requirements, shall not apply.

(g) Section 857(b)(6)(A) of the Internal Revenue Code, relating to the imposition of tax on income from prohibited transactions, shall not apply.

(h) Section 857(c) of the Internal Revenue Code, relating to restrictions applicable to dividends received from real estate investment trusts, is modified to refer to Sections 24402, 24406, 24410, and 25106, in lieu of Section 243 of the Internal Revenue Code.

(i) The amendments to this section by the act adding this subdivision are clarifications of legislative intent and shall apply to taxable and income years beginning on or after January 1, 1987.

SEC. 21. Section 26456 is added to the Revenue and Taxation Code, to read:

26456. (a) Any information provided to or obtained by the Franchise Tax Board for purposes of administering this part may be used by the Franchise Tax Board for the purposes of administering Section 10878.

(b) This section shall remain in effect until January 1, 1994, and as of that date is repealed.

SEC. 22. Section 11478.51 of the Welfare and Institutions Code is amended to read:

11478.51. (a) The Employment Development Department shall, when requested by the State Department of Social Services, the Franchise Tax Board for purposes of administering Article 5 (commencing with Section 19271) of Chapter 5 of Part 10.2 of Division 2 of the Revenue and Taxation Code, or the Parent Locator Service, compare information collected pursuant to Section 1088.5 of the Unemployment Insurance Code to information provided by the State Department of Social Services or the Franchise Tax Board. When the information collected pursuant to that section concerns any individual about whom information has been provided to the Employment Development Department by the State Department of Social Services, the Franchise Tax Board, or the Parent Locator Service, the Employment Development Department shall transmit the information on that individual to the requesting department for purposes of locating delinquent payors of child support payments, or any other person having an obligation to provide support.

(b) This section shall become operative April 1, 1993, or when regulations are adopted pursuant to subdivision (d) of Section 1088.5

of the Unemployment Insurance Code, whichever is sooner.

SEC. 23. California law with respect to the exclusion from gross income of employer-provided educational assistance conforms to Section 127 of the Internal Revenue Code in Section 17131 of the Revenue and Taxation Code, as modified by Section 17151 of the Revenue and Taxation Code. The Legislature finds and declares that in order to ease compliance burdens on taxpayers, and to avoid unnecessary administrative costs, the Franchise Tax Board shall administer the California provisions in substantially the same manner as the Secretary of the Treasury and the Internal Revenue Service administer Section 127 of the Internal Revenue Code to reflect the amendments made by Section 13101 of the federal Revenue Reconciliation Act of 1993. Consistent with this purpose and policy, the Legislature further declares its intent that affected taxpayers shall make an adjustment for the exclusion from gross income of employer-provided educational assistance for California purposes in the same taxable year as the adjustment is made for federal purposes.

SEC. 24. California law with respect to the health insurance deduction for self-employed individuals conforms to Section 162(*l*) of the Internal Revenue Code in Section 17201 of the Revenue and Taxation Code, as modified by Section 17273 of the Revenue and Taxation Code. The Legislature finds and declares that in order to ease compliance burdens on taxpayers and to avoid unnecessary administrative costs, the Franchise Tax Board shall administer the California provisions in substantially the same manner as the Secretary of the Treasury and the Internal Revenue Service administer Section 162(*l*) of the Internal Revenue Code to reflect the amendments made by Section 13174 of the federal Revenue Reconciliation Act of 1993. Consistent with this purpose and policy, the Legislature further declares its intent that affected taxpayers shall make an adjustment for the health insurance deduction for self-employed individuals for California purposes in the same taxable year as the adjustment is made for federal purposes.

CHAPTER 879

An act to amend, repeal, and amend Sections 17039 and 23036 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 17039 of the Revenue and Taxation Code is amended to read:

17039. (a) Notwithstanding any provision in this part to the contrary, for the purposes of computing tax credits, the term "net tax" means the tax imposed under either Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to lump-sum distributions) less the credits allowed by Section 17054 (relating to personal exemption credits) and any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560. Notwithstanding the preceding sentence, the "net tax" shall not be less than the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions), if any. Credits shall be allowed against "net tax" in the following order:

(1) Credits which do not contain carryover or refundable provisions, except those described in paragraphs (4), (5), and (6), and the credit allowed by Section 17053.14 (relating to the credit for political contributions).

(2) Credits which contain carryover provisions but do not contain refundable provisions.

(3) Credits which contain both carryover and refundable provisions.

(4) The minimum tax credit allowed by Section 17063 (relating to the alternative minimum tax).

(5) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(6) The low-income tax credit allowed by Section 17069.

(7) Credits which contain refundable provisions but do not contain carryover provisions.

The order within each paragraph shall be determined by the Franchise Tax Board.

(b) Notwithstanding the provisions of Sections 17053.5 (relating to the renter's credit), 17061 (relating to refunds pursuant to the Unemployment Insurance Code), and 18551.1 (relating to tax withholding), the credits provided in those sections shall be allowed in the order provided in paragraph (7) of subdivision (a).

(c) (1) Notwithstanding any other provision of this part, no tax credit shall reduce the tax imposed under Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions) below the tentative minimum tax, as defined by Section 17062, except the following credits, but only after allowance of the credit allowed by Section 17063—

(A) The credit allowed by former Section 17052.4 (relating to solar energy).

(B) The credit allowed by former Section 17052.5 (relating to solar energy).

(C) The credit allowed by Section 17052.5 (relating to solar energy).

(D) The credit allowed by Section 17052.12 (relating to research expenses).

(E) The credit allowed by Section 17053.5 (relating to the renter's credit).

(F) The credit allowed by Section 17057 (relating to clinical testing expenses).

(G) The credit allowed by Section 17058 (relating to low-income housing).

(H) The credit allowed by Section 17061 (relating to refunds pursuant to the Unemployment Insurance Code).

(I) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(J) The credit allowed by Section 18551.1 (relating to tax withholding).

(K) The credit allowed by Section 17052.13 (relating to sales and use tax credit).

(L) The credit allowed by Section 17053.8 (relating to enterprise zone hiring credit).

(M) The credit allowed by Section 17053.11 (relating to program area hiring credit).

(N) The credit allowed by Section 17052.15 (relating to Los Angeles Revitalization Zone sales tax credit).

(O) The credit allowed by Section 17053.10 (relating to Los Angeles Revitalization Zone hiring credit).

(2) Any credit which is partially or totally denied under paragraph (1) shall be allowed to be carried over and applied to the net tax in succeeding taxable years, if the provisions relating to that credit include a provision to allow a carryover when that credit exceeds the net tax.

(d) Unless otherwise provided, any remaining carryover of a credit allowed by a section which has been repealed or made inoperative shall continue to be allowed to be carried over and applied against the "net tax" until the credit has been exhausted.

(e) (1) Unless otherwise provided, if two or more taxpayers (other than husband and wife) share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to his or her respective share of the costs paid or incurred.

(2) In the case of a partnership, the credit may be divided among the partners pursuant to a written partnership agreement in accordance with Section 704 of the Internal Revenue Code, relating to partner's distributive share.

(3) In the case of a husband and wife who file separate returns, the credit may be taken by either or equally divided between them.

(f) This section shall remain in effect only until January 1, 1994, and as of that date is repealed.

SEC. 2. Section 17039 of the Revenue and Taxation Code, as amended by Chapter 31 of the Statutes of 1993, is amended to read:

17039. (a) Notwithstanding any provision in this part to the contrary, for the purposes of computing tax credits, the term "net tax" means the tax imposed under either Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to lump-sum distributions) less the credits allowed by Section 17054 (relating to

personal exemption credits) and any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560. Notwithstanding the preceding sentence, the "net tax" shall not be less than the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions), if any. Credits shall be allowed against "net tax" in the following order:

(1) Credits that do not contain carryover or refundable provisions, except those described in paragraphs (4) and (5).

(2) Credits that contain carryover provisions but do not contain refundable provisions.

(3) Credits that contain both carryover and refundable provisions.

(4) The minimum tax credit allowed by Section 17063 (relating to the alternative minimum tax).

(5) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(6) Credits that contain refundable provisions but do not contain carryover provisions.

The order within each paragraph shall be determined by the Franchise Tax Board.

(b) Notwithstanding the provisions of Sections 17053.5 (relating to the renter's credit), 17061 (relating to refunds pursuant to the Unemployment Insurance Code), and 19002 (relating to tax withholding), the credits provided in those sections shall be allowed in the order provided in paragraph (6) of subdivision (a).

(c) (1) Notwithstanding any other provision of this part, no tax credit shall reduce the tax imposed under Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions) below the tentative minimum tax, as defined by Section 17062, except the following credits, but only after allowance of the credit allowed by Section 17063—

(A) The credit allowed by former Section 17052.4 (relating to solar energy).

(B) The credit allowed by former Section 17052.5 (relating to solar energy).

(C) The credit allowed by Section 17052.5 (relating to solar energy).

(D) The credit allowed by Section 17052.12 (relating to research expenses).

(E) The credit allowed by Section 17052.13 (relating to sales and use tax credit).

(F) The credit allowed by Section 17052.15 (relating to Los Angeles Revitalization Zone sales tax credit).

(G) The credit allowed by Section 17053.5 (relating to the renter's credit).

(H) The credit allowed by Section 17053.8 (relating to enterprise zone hiring credit).

(I) The credit allowed by Section 17053.10 (relating to Los Angeles Revitalization Zone hiring credit).

(J) The credit allowed by Section 17053.11 (relating to program area hiring credit).

(K) The credit allowed by Section 17057 (relating to clinical testing expenses).

(L) The credit allowed by Section 17058 (relating to low-income housing).

(M) The credit allowed by Section 17061 (relating to refunds pursuant to the Unemployment Insurance Code).

(N) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(O) The credit allowed by Section 19002 (relating to tax withholding).

(2) Any credit which is partially or totally denied under paragraph (1) shall be allowed to be carried over and applied to the net tax in succeeding taxable years, if the provisions relating to that credit include a provision to allow a carryover when that credit exceeds the net tax.

(d) Unless otherwise provided, any remaining carryover of a credit allowed by a section which has been repealed or made inoperative shall continue to be allowed to be carried over and applied against the "net tax" until the credit has been exhausted.

(e) (1) Unless otherwise provided, if two or more taxpayers (other than husband and wife) share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to his or her respective share of the costs paid or incurred.

(2) In the case of a partnership, the credit may be divided among the partners pursuant to a written partnership agreement in accordance with Section 704 of the Internal Revenue Code, relating to partner's distributive share.

(3) In the case of a husband and wife who file separate returns, the credit may be taken by either or equally divided between them.

SEC. 3. Section 23036 of the Revenue and Taxation Code is amended to read:

23036. (a) (1) The term "tax" includes any of the following:

(A) The tax imposed under Chapter 2 (commencing with Section 23101).

(B) The tax imposed under Chapter 3 (commencing with Section 23501).

(C) The tax on unrelated business taxable income, imposed under Section 23731.

(D) The tax on S corporations imposed under Section 23802.

(2) The term "tax" does not include any amount imposed under paragraph (1) of subdivision (e) of Section 24667 or paragraph (2) of subdivision (f) of Section 24667.

(b) For purposes of Chapter 20 (commencing with Section 25661), Chapter 21 (commencing with Section 25901), Chapter 23 (commencing with Section 26131), and Chapter 24 (commencing with Section 26422), and for purposes of Sections 25401, 25551, and

25555, "tax" shall also include all of the following:

(1) The tax on limited partnerships, imposed under Section 23081.

(2) The alternative minimum tax imposed under Chapter 2.5 (commencing with Section 23400).

(3) The tax on built-in gains of S corporations, imposed under Section 23809.

(4) The tax on excess passive investment income of S corporations, imposed under Section 23811.

(c) Notwithstanding any other provision of this part, credits shall be allowed against the "tax" in the following order:

(1) Credits which do not contain carryover provisions.

(2) Credits which, when the credit exceeds the "tax," allow the excess to be carried over to offset the "tax" in succeeding taxable years. The order of credits within this paragraph shall be determined by the Franchise Tax Board.

(3) The minimum tax credit allowed by Section 23453.

(4) Credits for taxes withheld under Section 26131.

(d) Notwithstanding any other provision of this part, each of the following shall be applicable:

(1) No credit shall reduce the "tax" below the tentative minimum tax (as defined by paragraph (1) of subdivision (a) of Section 23455), except the following credits, but only after allowance of the credit allowed by Section 23453—

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by former Section 23601.4 (relating to solar energy).

(C) The credit allowed by Section 23601.5 (relating to solar energy).

(D) The credit allowed by Section 23609 (relating to research expenditures).

(E) The credit allowed by Section 23609.5 (relating to clinical testing expenses).

(F) The credit allowed by Section 23610.5 (relating to low-income housing).

(G) Credits for taxes withheld under Section 26131.

(H) The credit allowed by Section 23612 (relating to sales and use tax credit).

(I) The credit allowed by Section 23622 (relating to enterprise zone hiring credit).

(J) The credit allowed by Section 23623 (relating to program area hiring credit).

(K) The credit allowed by Section 23612.6 (relating to Los Angeles Revitalization Zone sales tax credit).

(L) The credit allowed by Section 23625 (relating to Los Angeles Revitalization Zone hiring credit).

(2) No credit against the tax shall reduce the minimum franchise tax imposed under Chapter 2 (commencing with Section 23101).

(e) Any credit which is partially or totally denied under

subdivision (d) shall be allowed to be carried over to reduce the "tax" in the following year, and succeeding years if necessary, if the provisions relating to that credit include a provision to allow a carryover of the unused portion of that credit.

(f) Unless otherwise provided, any remaining carryover from a credit which has been repealed or made inoperative shall continue to be allowed to be carried over and applied against the "tax" until the credit has been exhausted.

(g) Unless otherwise provided, if two or more taxpayers share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to each taxpayer's respective share of the costs paid or incurred.

(h) This section shall remain in effect only until January 1, 1994, and as of that date is repealed.

SEC. 4. Section 23036 of the Revenue and Taxation Code, as amended by Chapter 31 of the Statutes of 1993, is amended to read:

23036. (a) (1) The term "tax" includes any of the following:

(A) The tax imposed under Chapter 2 (commencing with Section 23101).

(B) The tax imposed under Chapter 3 (commencing with Section 23501).

(C) The tax on unrelated business taxable income, imposed under Section 23731.

(D) The tax on S corporations imposed under Section 23802.

(2) The term "tax" does not include any amount imposed under paragraph (1) of subdivision (e) of Section 24667 or paragraph (2) of subdivision (f) of Section 24667.

(b) For purposes of Article 5 (commencing with Section 18661) of Chapter 2, Article 3 (commencing with Section 19031) of Chapter 4, Article 6 (commencing with Section 19101) of Chapter 4, and Chapter 7 (commencing with Section 19501) of Part 10.2, and for purposes of Sections 18601, 19001, and 19005, the term "tax" shall also include all of the following:

(1) The tax on limited partnerships, imposed under Section 23081.

(2) The alternative minimum tax imposed under Chapter 2.5 (commencing with Section 23400).

(3) The tax on built-in gains of S corporations, imposed under Section 23809.

(4) The tax on excess passive investment income of S corporations, imposed under Section 23811.

(c) Notwithstanding any other provision of this part, credits shall be allowed against the "tax" in the following order:

(1) Credits which do not contain carryover provisions.

(2) Credits which, when the credit exceeds the "tax," allow the excess to be carried over to offset the "tax" in succeeding taxable years. The order of credits within this paragraph shall be determined by the Franchise Tax Board.

(3) The minimum tax credit allowed by Section 23453.

(4) Credits for taxes withheld under Section 18662.

(d) Notwithstanding any other provision of this part, each of the following shall be applicable:

(1) No credit shall reduce the "tax" below the tentative minimum tax (as defined by paragraph (1) of subdivision (a) of Section 23455), except the following credits, but only after allowance of the credit allowed by Section 23453—

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by former Section 23601.4 (relating to solar energy).

(C) The credit allowed by Section 23601.5 (relating to solar energy).

(D) The credit allowed by Section 23609 (relating to research expenditures).

(E) The credit allowed by Section 23609.5 (relating to clinical testing expenses).

(F) The credit allowed by Section 23610.5 (relating to low-income housing).

(G) The credit allowed by Section 23612 (relating to sales and use tax credit).

(H) The credit allowed by Section 23612.6 (relating to Los Angeles Revitalization Zone sales tax credit).

(I) The credit allowed by Section 23622 (relating to enterprise zone hiring credit).

(J) The credit allowed by Section 23623 (relating to program area hiring credit).

(K) The credit allowed by Section 23625 (relating to Los Angeles Revitalization Zone hiring credit).

(L) Credits for taxes withheld under Section 18662.

(2) No credit against the tax shall reduce the minimum franchise tax imposed under Chapter 2 (commencing with Section 23101).

(e) Any credit which is partially or totally denied under subdivision (d) shall be allowed to be carried over to reduce the "tax" in the following year, and succeeding years if necessary, if the provisions relating to that credit include a provision to allow a carryover of the unused portion of that credit.

(f) Unless otherwise provided, any remaining carryover from a credit which has been repealed or made inoperative shall continue to be allowed to be carried over and applied against the "tax" until the credit has been exhausted.

(g) Unless otherwise provided, if two or more taxpayers share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to its respective share of the costs paid or incurred.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 880

An act to amend Sections 17276 and 24416 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 17276 of the Revenue and Taxation Code is amended to read:

17276. Except as provided in Sections 17276.1 and 17276.2, the deduction provided by Section 172 of the Internal Revenue Code, relating to a net operating loss deduction, shall be modified as follows:

(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, shall not be allowed.

(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that 50 percent of the entire amount of the net operating loss for any taxable year shall not be eligible for carryover to any subsequent taxable year.

(2) For each taxable year beginning on or after January 1, 1994, 100 percent of a net operating loss of a new business incurred during the first three years of operation may be carried forward as provided in paragraph (2) of subdivision (d).

(3) For each taxable year beginning on or after January 1, 1994, 100 percent of a net operating loss of an eligible taxpayer may be carried forward to the taxable years specified in paragraph (1) of subdivision (d).

(c) Net operating loss carrybacks shall not be allowed.

(d) (1) Except as provided in paragraphs (2) and (3), for each taxable year beginning on or after January 1, 1987, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute "five taxable years" in lieu of "15 taxable years."

(2) In the case of a "new business," the "five taxable years" in paragraph (1) shall be modified to read as follows:

(A) "Eight taxable years" for a net operating loss attributable to the first taxable year of that new business.

(B) "Seven taxable years" for a net operating loss attributable to the second taxable year of that new business.

(C) "Six taxable years" for a net operating loss attributable to the third taxable year of that new business.

(3) For any carryover of a net operating loss for which a deduction is denied by Section 17276.3, the carryover period specified in this subdivision shall be extended as follows:

(A) By one year for a net operating loss attributable to taxable years beginning in 1991.

(B) By two years for a net operating loss attributable to taxable years beginning prior to January 1, 1991.

(4) The net operating loss attributable to taxable years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 taxable years following the year of the loss if it is incurred by a taxpayer that was under the jurisdiction of the court in a Title 11 or similar case at any time prior to January 1, 1994. The loss carryover provided in the preceding sentence shall not apply to any loss incurred in a taxable year after the taxable year during which the taxpayer is no longer under the jurisdiction of the court in a Title 11 or similar case.

(e) For purposes of this section:

(1) "Eligible taxpayer" means a taxpayer that has total receipts of less than one million dollars ($1,000,000) during the taxable year.

(2) "New business" means any trade or business that is organized or formed and first commences business activity in this state on or after January 1, 1994. Notwithstanding the preceding sentence, the term "new business" does not include any trade or business that was used in any predecessor trade or business conducted by the taxpayer or any other taxpayer related to the taxpayer (within the meaning of Sections 267 and 318 of the Internal Revenue Code).

(3) "Total receipts" means gross income, as defined in Section 17071, plus the cost of goods sold that are paid or incurred in connection with a trade or business of the taxpayer.

(f) The amendments to this section by the act adding this subdivision shall apply only in the computation of taxes for each taxable year beginning on or after January 1, 1993.

(g) Notwithstanding any provisions of this section, a deduction shall be allowed to a "qualified taxpayer" as provided in Sections 17276.1 and 17276.2.

SEC. 2. Section 24416 of the Revenue and Taxation Code is amended to read:

24416. Except as provided in Sections 24416.1 and 24416.2, a net operating loss deduction shall be allowed in computing net income under Section 24341 and shall be determined in accordance with Section 172 of the Internal Revenue Code, except as otherwise provided.

(a) (1) Net operating losses attributable to income years beginning before January 1, 1987, shall not be allowed, except for losses allowed by this section (as amended by Chapter 159 of the Statutes of 1985) and former Section 24417 (as amended by Chapter 158 of the Statutes of 1986).

(2) A net operating loss shall not be carried forward to any income year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that 50 percent of the entire amount of the net operating loss for any income year shall not be eligible for carryover to any subsequent income year.

(2) For each income year beginning on or after January 1, 1994, 100 percent of a net operating loss of a new business incurred during the first three years of operation may be carried forward as provided in paragraph (2) of subdivision (e).

(3) For each income year beginning on or after January 1, 1994, 100 percent of a net operating loss of an eligible taxpayer may be carried forward to the income years specified in paragraph (1) of subdivision (e).

(c) For any income year in which the taxpayer has in effect a water's edge election under Section 25110, the deduction of a net operating loss carryover shall be denied to the extent that the net operating loss carryover was determined by taking into account the income and factors of an affiliated bank or corporation in a combined report whose income and apportionment factors would not have been taken into account if a water's edge election under Section 25110 had been in effect for the income year in which the loss was incurred.

(d) Net operating loss carrybacks shall not be allowed.

(e) (1) Except as provided in paragraphs (2), (3), and (4), for each income year beginning on or after January 1, 1987, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute "five income years" in lieu of "15 taxable years."

(2) In the case of a "new business," the "five income years" referred to in paragraph (1) shall be modified to read as follows:

(A) "Eight income years" for a net operating loss attributable to the first income year of that new business.

(B) "Seven income years" for a net operating loss attributable to the second income year of that new business.

(C) "Six income years" for a net operating loss attributable to the third income year of that new business.

(3) For any carryover of a net operating loss for which a deduction is denied by Section 24416.3, the carryover period specified in this subdivision shall be extended as follows:

(A) By one year for a net operating loss attributable to income years beginning in 1991.

(B) By two years for a net operating loss attributable to income years beginning prior to January 1, 1991.

(4) The net operating loss attributable to income years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 income years following the year of the loss if it is incurred by a bank or corporation that was either of the following:

(A) Under the jurisdiction of the court in a Title 11 or similar case at any time prior to January 1, 1994. The loss carryover provided in the preceding sentence shall not apply to any loss incurred in an income year after the income year during which the bank or corporation is no longer under the jurisdiction of the court in a Title 11 or similar case.

(B) In receipt of assets acquired in a transaction that qualifies as a tax-free reorganization under Section 368(a) (1) (G) of the Internal Revenue Code.

(f) For purposes of this section:

(1) "Eligible taxpayer" means a taxpayer that has total receipts of less than one million dollars ($1,000,000) during the income year.

(2) "New business" means any trade or business that is organized or formed and first commences business activity in this state on or after January 1, 1994. Notwithstanding the preceding sentence, the term "new business" does not include any trade or business that was used in any predecessor trade or business conducted by the taxpayer or any other taxpayer related to the taxpayer (within the meaning of Sections 267 and 318 of the Internal Revenue Code).

(3) "Title 11 or similar case" shall have the meaning as defined in Section 368(a) (3) of the Internal Revenue Code.

(4) "Total receipts" means gross income, as defined in Section 24271, plus the cost of goods sold that are paid or incurred in connection with a trade or business of the taxpayer.

(g) The amendments to this section by the act adding this subdivision shall apply only in the computation of taxes for each income year beginning on or after January 1, 1993.

(h) For purposes of corporations whose net income is determined under Chapter 17 (commencing with Section 25101), Section 25108 shall apply to each of the following:

(1) The amount of net operating loss incurred in any income year which may be carried forward to another income year.

(2) The amount of any loss carryforward which may be deducted in any income year.

(i) The provisions of Section 172(b) (1) (K) of the Internal Revenue Code, relating to bad debt losses of commercial banks, shall not be applicable.

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 881

An act to amend Sections 17039, 17052.12, 17062, 17063, 17251, 17276, 17736, 17750, 18634, 23036, 23609, 23802, 24443, 25110, 25111, and 25112 of, to add Sections 18152.5, 19141.6, and 25111.1 to, to amend and repeal Section 25115 of, and to add and repeal Sections 6377, 6380, 17053.49, 18683.5, 19133.5, and 23649 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 6, 1993.]

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

SECTION 1. Section 6377 is added to the Revenue and Taxation Code, to read:

6377. (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of, or the storage, use, or other consumption in this state of, all of the following:

(1) Tangible personal property purchased for use by a qualified person to be used primarily in any stage of the manufacturing, processing, refining, fabricating, or recycling of property, beginning at the point any raw materials are received by the qualified person and introduced into the process and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling has altered property to its completed form, including packaging, if required.

(2) Tangible personal property purchased for use by a qualified person to be used primarily in research and development.

(3) Tangible personal property purchased for use by a qualified person to be used primarily to maintain, repair, measure, or test any property described in paragraph (1) or (2).

(4) Tangible personal property purchased for use by a contractor purchasing that property either as an agent of a qualified person or for the contractor's own account and subsequent resale to a qualified person for use in the performance of a construction contract for the qualified person who will use the tangible personal property as an integral part of the manufacturing, processing, refining, fabricating, or recycling process, or as a research or storage facility for use in connection with the manufacturing process.

This exemption shall not apply to any tangible personal property that is used primarily in administration, general management, or marketing.

(b) For purposes of this section:

(1) "Fabricating" means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(2) "Manufacturing" means the activity of converting or

conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(3) "Primarily" means tangible personal property used 50 percent or more of the time in an activity described in subdivision (a).

(4) "Processing" means the physical application of the materials and labor necessary to modify or change the characteristics of property.

(5) "Qualified person" means any person that is both of the following:

(A) A new trade or business that is organized or formed and first commences business activity in this state on or after January 1, 1994. Notwithstanding the preceding sentence, the term "qualified person" does not include any trade or business after it has been in existence for three years or any trade or business that was used in any predecessor trade or business conducted by the taxpayer or any other taxpayer related to the taxpayer (within the meaning of Sections 267 and 318 of the Internal Revenue Code).

(B) That is engaged in those lines of business described in Codes 2000 to 3999, inclusive, of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition.

(6) "Refining" means the process of converting a natural resource to an intermediate or finished product.

(7) "Research and development" means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations thereunder.

(8) "Tangible personal property" does not include any of the following:

(A) Consumables with a normal useful life of less than one year, except as provided in subparagraph (E) of paragraph (9).

(B) Furniture, inventory, equipment used in the extraction process, or equipment used to store finished products that have completed the manufacturing process.

(C) Any property for which a credit is claimed under either Section 17053.49 or 23649.

(9) "Tangible personal property" includes, but is not limited to, all of the following:

(A) Machinery and equipment, including component parts and contrivances such as belts, shafts, moving parts, and operating structures.

(B) All equipment or devices used or required to operate, control, regulate, or maintain the machinery, including, without limitation, computers, data processing equipment, and computer software, together with all repair and replacement parts with a useful life of one or more years therefor, whether purchased separately or in

conjunction with a complete machine and regardless of whether the machine or component parts are assembled by the taxpayer or another party.

(C) Property used in pollution control that meets or exceed standards established by the State Air Resources Board of the Water Resources Control Board.

(D) Special purpose buildings and foundations used as an integral part of the manufacturing, processing, refining, or fabricating process, or that constitute a research or storage facility used during the manufacturing process. Buildings used solely for warehousing purposes after completion of the manufacturing process are not included.

(E) Fuels used or consumed in the manufacturing process.

(F) Property used in recycling.

(c) No exemption shall be allowed under this section unless the purchaser furnishes the retailer with an exemption certificate, completed in accordance with any instructions or regulations as the board may prescribe, and the retailer subsequently furnishes the board with a copy of the exemption certificate. The exemption certificate shall contain the sales price of the machinery or equipment that is exempt pursuant to subdivision (a).

(d) Notwithstanding any provision of the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), the exemption established by this section shall not apply with respect to any tax levied by a county, city, or district pursuant to, or in accordance with, either of those laws.

(e) Notwithstanding subdivision (a), the exemption provided by this section shall not apply to any sale or use of property which, within one year from the date of purchase, is (1) removed from California, or (2) converted from an exempt use under subdivision (a) to some other use not qualifying for the exemption.

(f) If a purchaser certifies in writing to the seller that the property purchased without payment of the tax will be used in a manner entitling the seller to regard the gross receipts from the sale as exempt from the sales tax, and within one year from the date of purchase, the purchaser (1) removes that property outside California, (2) converts that property for use in a manner not qualifying for the exemption, or (3) uses that property in a manner not qualifying for the exemption, the purchaser shall be liable for payment of sales tax, with applicable interest, as if the purchaser were a retailer making a retail sale of the property at the time the property is so removed, converted, or used, and the sales price of the property to the purchaser shall be deemed the gross receipts from that retail sale.

(g) (1) This section shall remain in effect until the date specified in paragraph (2), on which date this section shall cease to be operative, and as of that date is repealed.

(2) (A) This section shall cease to be operative on January 1, 2001,

or on January 1 of the earliest year thereafter, if the total employment in this state, as determined by the Employment Development Department on the preceding January 1, does not exceed by 100,000 jobs the total employment in this state on January 1, 1994.

(B) For purposes of this paragraph, "total employment" means the total employment in the manufacturing sector, excluding employment in the aerospace sector.

SEC. 2. Section 6380 is added to the Revenue and Taxation Code, to read:

6380. (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of, qualified property for use in space flight.

(b) For purposes of this section:

(1) "Qualified property" means any of the following:

(A) Tangible personal property that has space flight capability, including, but not limited to, an orbital space facility, space propulsion system, space vehicle, satellite, or space station of any kind, and any component thereof.

(B) Tangible personal property to be placed or used aboard any facility, system, vehicle, satellite, or station described in subparagraph (A), regardless of whether that property is to be ultimately returned to this state for subsequent use, storage, or other consumption.

(C) Fuel of a quality that is not adaptable for use in ordinary motor vehicles, but is produced, sold, and used exclusively for space flight.

(2) "Space flight" means any flight designed for suborbital, orbital, or interplanetary travel by a space vehicle, satellite, space facility, or space station of any kind, and originating at Vandenberg Air Force Base.

(c) The exemption established by this section shall not be denied by reason of a failure, postponement, or cancellation of a launch of a space vehicle, satellite, space facility, or space station of any kind, or the destruction of any launch vehicle or any component thereof, but the exemption shall not apply to any material that is not intended to be launched into space.

(d) This section shall remain in effect until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

SEC. 3. Section 17039 of the Revenue and Taxation Code, as amended by Chapter 31 of the Statute of 1993, is amended to read:

17039. (a) Notwithstanding any provision in this part to the contrary, for the purposes of computing tax credits, the term "net tax" means the tax imposed under either Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to lump-sum distributions) less the credits allowed by Section 17054 (relating to personal exemption credits) and any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision

(e) of Section 17560. Notwithstanding the preceding sentence, the "net tax" shall not be less than the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions), if any. Credits shall be allowed against "net tax" in the following order:

(1) Credits that do not contain carryover or refundable provisions, except those described in paragraphs (4) and (5).

(2) Credits that contain carryover provisions but do not contain refundable provisions.

(3) Credits that contain both carryover and refundable provisions.

(4) The minimum tax credit allowed by Section 17063 (relating to the alternative minimum tax).

(5) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(6) Credits that contain refundable provisions but do not contain carryover provisions.

The order within each paragraph shall be determined by the Franchise Tax Board.

(b) Notwithstanding the provisions of Sections 17053.5 (relating to the renter's credit), 17061 (relating to refunds pursuant to the Unemployment Insurance Code), and 19002 (relating to tax withholding), the credits provided in those sections shall be allowed in the order provided in paragraph (6) of subdivision (a).

(c) (1) Notwithstanding any other provision of this part, no tax credit shall reduce the tax imposed under Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions) below the tentative minimum tax, as defined by Section 17062, except the following credits, but only after allowance of the credit allowed by Section 17063—

(A) The credit allowed by former Section 17052.4 (relating to solar energy).

(B) The credit allowed by former Section 17052.5 (relating to solar energy).

(C) The credit allowed by Section 17052.5 (relating to solar energy).

(D) The credit allowed by Section 17052.12 (relating to research expenses).

(E) The credit allowed by Section 17053.5 (relating to the renter's credit).

(F) The credit allowed by Section 17053.49 (relating to qualified property).

(G) The credit allowed by Section 17057 (relating to clinical testing expenses).

(H) The credit allowed by Section 17058 (relating to low-income housing).

(I) The credit allowed by Section 17061 (relating to refunds pursuant to the Unemployment Insurance Code).

(J) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(K) The credit allowed by Section 19002 (relating to tax withholding).

(2) Any credit which is partially or totally denied under paragraph (1) shall be allowed to be carried over and applied to the net tax in succeeding taxable years, if the provisions relating to that credit include a provision to allow a carryover when that credit exceeds the net tax.

(d) Unless otherwise provided, any remaining carryover of a credit allowed by a section which has been repealed or made inoperative shall continue to be allowed to be carried over and applied against the "net tax" until the credit has been exhausted.

(e) (1) Unless otherwise provided, if two or more taxpayers (other than husband and wife) share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to his or her respective share of the costs paid or incurred.

(2) In the case of a partnership, the credit may be divided among the partners pursuant to a written partnership agreement in accordance with Section 704 of the Internal Revenue Code, relating to partner's distributive share.

(3) In the case of a husband and wife who file separate returns, the credit may be taken by either or equally divided between them.

SEC. 3.5. Section 17039 of the Revenue and Taxation Code is amended to read:

17039. (a) Notwithstanding any provision in this part to the contrary, for the purposes of computing tax credits, the term "net tax" means the tax imposed under either Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to lump-sum distributions) less the credits allowed by Section 17054 (relating to personal exemption credits) and any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560. Notwithstanding the preceding sentence, the "net tax" shall not be less than the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions), if any. Credits shall be allowed against "net tax" in the following order:

(1) Credits that do not contain carryover or refundable provisions, except those described in paragraphs (4) and (5).

(2) Credits that contain carryover provisions but do not contain refundable provisions.

(3) Credits that contain both carryover and refundable provisions.

(4) The minimum tax credit allowed by Section 17063 (relating to the alternative minimum tax).

(5) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(6) Credits that contain refundable provisions but do not contain carryover provisions.

The order within each paragraph shall be determined by the Franchise Tax Board.

(b) Notwithstanding the provisions of Sections 17053.5 (relating to the renter's credit), 17061 (relating to refunds pursuant to the Unemployment Insurance Code), and 19002 (relating to tax withholding), the credits provided in those sections shall be allowed in the order provided in paragraph (6) of subdivision (a).

(c) (1) Notwithstanding any other provision of this part, no tax credit shall reduce the tax imposed under Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions) below the tentative minimum tax, as defined by Section 17062, except the following credits, but only after allowance of the credit allowed by Section 17063—

(A) The credit allowed by former Section 17052.4 (relating to solar energy).

(B) The credit allowed by former Section 17052.5 (relating to solar energy).

(C) The credit allowed by Section 17052.5 (relating to solar energy).

(D) The credit allowed by Section 17052.12 (relating to research expenses).

(E) The credit allowed by Section 17052.13 (relating to sales and use tax credit).

(F) The credit allowed by Section 17052.15 (relating to Los Angeles Revitalization Zone sales tax credit).

(G) The credit allowed by Section 17053.5 (relating to the renter's credit).

(H) The credit allowed by Section 17053.8 (relating to enterprise zone hiring credit).

(I) The credit allowed by Section 17053.10 (relating to Los Angeles Revitalization Zone hiring credit).

(J) The credit allowed by Section 17053.11 (relating to program area hiring credit).

(K) The credit allowed by Section 17053.49 (relating to qualified property).

(L) The credit allowed by Section 17057 (relating to clinical testing expenses).

(M) The credit allowed by Section 17058 (relating to low-income housing).

(N) The credit allowed by Section 17061 (relating to refunds pursuant to the Unemployment Insurance Code).

(O) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(P) The credit allowed by Section 19002 (relating to tax withholding).

(2) Any credit which is partially or totally denied under paragraph (1) shall be allowed to be carried over and applied to the net tax in succeeding taxable years, if the provisions relating to that credit include a provision to allow a carryover when that credit exceeds the net tax.

(d) Unless otherwise provided, any remaining carryover of a

credit allowed by a section which has been repealed or made inoperative shall continue to be allowed to be carried over and applied against the "net tax" until the credit has been exhausted.

(e) (1) Unless otherwise provided, if two or more taxpayers (other than husband and wife) share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to his or her respective share of the costs paid or incurred.

(2) In the case of a partnership, the credit may be divided among the partners pursuant to a written partnership agreement in accordance with Section 704 of the Internal Revenue Code, relating to partner's distributive share.

(3) In the case of a husband and wife who file separate returns, the credit may be taken by either or equally divided between them.

SEC. 4. Section 17052.12 of the Revenue and Taxation Code is amended to read:

17052.12. For each taxable year beginning on or after January 1, 1987, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) for the taxable year an amount determined in accordance with Section 41 of the Internal Revenue Code, except as follows:

(a) (1) The reference to "20 percent" in Section 41(a)(1) of the Internal Revenue Code is modified to read "8 percent."

(2) Section 41(a)(2) of the Internal Revenue Code, relating to basic research payments, shall not apply.

(b) "Qualified research" shall include only research conducted in California.

(c) In the case where the credit allowed under this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(d) Section 41(c)(5) of the Internal Revenue Code, relating to gross receipts, is modified to take into account only those gross receipts from the sale of property held primarily for sale to customers in the ordinary course of the taxpayer's trade or business that is delivered or shipped to a purchaser within this state, regardless of F.O.B. point or other conditions of sale.

(e) Section 41(h) of the Internal Revenue Code, relating to termination, shall not apply.

(f) Except as provided in subdivision (g), the amendments to this section by the act adding this subdivision shall apply only to taxable years beginning on or after January 1, 1993.

(g) The amendments made by Section 13112 of the Revenue Reconciliation Act of 1993 (P.L. 103-66) to Section 41 of the Internal Revenue Code, relating to the credit for increased research activities, shall apply to taxable years beginning on or after January 1, 1994.

SEC. 5. Section 17053.49 is added to the Revenue and Taxation Code, to read:

17053.49. (a) (1) For each taxable year beginning on or after January 1, 1994, and before this section ceases to be operative as specified in paragraph (2) of subdivision (f), there shall be allowed to a qualified person as a credit against the "net tax," as defined in Section 17039, an amount equal to 6 percent of the amount paid or incurred on or after January 1, 1994, for qualified property that is placed in service in this state.

(2) For the 1994 taxable year only, the credit shall not be claimed on the 1994 return, but shall be allowed, instead, in the 1995 taxable year on the 1995 return. The amount so claimed shall be in addition to the amount allowed for the 1995 taxable year.

(3) For any amount paid or incurred on or after January 1, 1994, for qualified property by fiscal year taxpayers, any amount paid or incurred before the beginning of the qualified taxpayer's 1994 fiscal year shall be deemed to be paid or incurred in the taxpayer's 1994 fiscal year.

(b) For purposes of this section:

(1) "Fabricating" means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(2) "Manufacturing" means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(3) "Primarily" means tangible personal property used 50 percent or more of the time in an activity described in subdivision (a).

(4) "Processing" means the physical application of the materials and labor necessary to modify or change the characteristics of property.

(5) "Qualified person" means any person engaged in those lines of business described in Codes 2000 to 3999, inclusive, of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition.

(6) (A) "Qualified property" means all of the following:

(i) Tangible personal property purchased for use by a qualified person to be used primarily in any stage of the manufacturing, processing, refining, fabricating, or recycling of property, beginning at the point any raw materials are received by the qualified person and introduced into the process and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling has altered property to its completed form, including packaging, if required.

(ii) Tangible personal property purchased for use by a qualified person to be used primarily in research and development.

(iii) Tangible personal property purchased for use by a qualified person to be used primarily to maintain, repair, measure, or test any

property described in paragraph (1) or (2).

(iv) Tangible personal property purchased for use by a contractor purchasing that property either as an agent of a qualified person or for the contractor's own account and subsequent resale to a qualified person for use in the performance of a construction contract for the qualified person who will use the tangible personal property as an integral part of the manufacturing, processing, refining, fabricating, or recycling process, or as a research or storage facility for use in connection with the manufacturing process.

(B) "Qualified property" does not include any property that is leased by a qualified person to another person.

(7) "Refining" means the process of converting a natural resource to an intermediate or finished product.

(8) "Research and development" means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations thereunder.

(9) "Small business" means a taxpayer that meets any of the following requirements during the taxable year for which the credit is allowed:

(A) Has gross receipts of less than fifty million dollars ($50,000,000).

(B) Has net assets of less than fifty million dollars ($50,000,000).

(C) Has a total credit of less than one million dollars ($1,000,000).

(10) "Tangible personal property" does not include consumables with a normal useful life of less than one year, except as provided in subparagraph (E) of paragraph (11), and does not include furniture, inventory, equipment used in the extraction process, or equipment used to store finished products that have completed the manufacturing process.

(11) "Tangible personal property" includes, but is not limited to, all of the following:

(A) Machinery and equipment, including component parts and contrivances such as belts, shafts, moving parts, and operating structures.

(B) All equipment or devices used or required to operate, control, regulate, or maintain the machinery, including, without limitation, computers, data processing equipment, and computer software, together with all repair and replacement parts with a useful life of one or more years therefor, whether purchased separately or in conjunction with a complete machine and regardless of whether the machine or component parts are assembled by the taxpayer or another party.

(C) Property used in pollution control that meets or exceed standards established by the State Air Resources Board of the Water Resources Control Board.

(D) Special purpose buildings and foundations used as an integral part of the manufacturing, processing, refining, or fabricating process, or that constitute a research or storage facility used during the manufacturing process. Buildings used solely for warehousing

purposes after completion of the manufacturing process are not included.

(E) Fuels used or consumed in the manufacturing process.

(F) Property used in recycling.

(c) (1) No credit, no further credit in any subsequent year, and no credit carryover shall be allowed with respect to the qualified property to any qualified person beginning in the year in which that qualified property for which a credit was allowed under this section is disposed of or removed from this state within one year of the date of purchase.

(2) No credit shall be allowed for any qualified property for which an exemption from sales and use taxes is allowed and claimed pursuant to Section 6377 within one year of the date of purchase.

(d) Notwithstanding the definition of qualified property in subdivision (b), the credit provided by this section can be claimed only with respect to property defined in Section 1245(a) of the Internal Revenue Code. Notwithstanding the preceding sentence, for qualified persons performing manufacturing activities described in Codes 357 and 367 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and those activities related to biotech described in SIC Code 8731, property for which the credit provided by this section can be claimed shall also include special purpose buildings and foundations, as further described in subparagraph (D) of paragraph (11) of subdivision (b).

(e) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years as follows:

(1) Except as provided in paragraph (2), for the seven succeeding years if necessary, until the credit is exhausted.

(2) In the case of a small business, for the nine succeeding years, if necessary, until the credit is exhausted.

(f) (1) This section shall remain in effect until the date specified in paragraph (2), on which date this section shall cease to be operative, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (e), until the credit is exhausted.

(2) (A) This section shall cease to be operative on January 1, 2001, or on January 1 of the earliest year thereafter, if the total employment in this state, as determined by the Employment Development Department on the preceding January 1, does not exceed by 100,000 jobs the total employment in this state on January 1, 1994. The department shall report to the Legislature annually with respect to the determination required by the preceding sentence.

(B) For purposes of this paragraph, "total employment" means the total employment in the manufacturing sector, excluding employment in the aerospace sector.

SEC. 6. Section 17062 of the Revenue and Taxation Code is amended to read:

17062. (a) In addition to the other taxes imposed by this part, there is hereby imposed for each taxable year, a tax equal to the excess, if any, of—

(1) The tentative minimum tax for the taxable year, over

(2) The regular tax for the taxable year.

(b) For purposes of this chapter, each of the following shall apply:

(1) The tentative minimum tax shall be computed in accordance with Sections 55 to 59, inclusive, of the Internal Revenue Code, except as otherwise provided in this part.

(2) The regular tax shall be the amount of tax imposed by Section 17041 or 17048, before reduction for any credits against the tax, less any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560.

(3) (A) The provisions of Section 55(b)(1) of the Internal Revenue Code shall be modified to provide that the tentative minimum tax for the taxable year shall be equal to the following percent of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount, before reduction for any credits against the tax:

(i) For any taxable year beginning on or after January 1, 1991, and before January 1, 1996, 8.5 percent.

(ii) For any taxable year beginning on or after January 1, 1996, 7 percent.

(B) In the case of a nonresident or part-year resident, the tentative minimum tax shall be computed as if the nonresident or part-year resident were a resident for the entire year multiplied by the ratio of California adjusted gross income (as modified for purposes of this chapter) to total adjusted gross income from all sources (as modified for purposes of this chapter). For purposes of computing the tax under subparagraph (A) and gross income from all sources, the net operating loss deduction provided in Section 56(d) of the Internal Revenue Code shall be computed as if the taxpayer were a resident for all prior years.

(C) For purposes of this section, the term "California adjusted gross income" includes each of the following:

(i) For any period during which the taxpayer was a resident of this state (as defined by Section 17014), all items of adjusted gross income (as modified for purposes of this chapter), regardless of source.

(ii) For any period during which the taxpayer was not a resident of this state, only those items of adjusted gross income (as modified for purposes of this chapter) which were derived from sources within this state, determined in accordance with Chapter 11 (commencing with Section 17951).

(c) (1) Section 56(b)(1)(E) of the Internal Revenue Code, relating to standard deduction and deduction for personal exemptions not allowed, is modified, for purposes of this part, to deny the standard deduction allowed by Section 17073.5.

(2) The provisions of Section 56(h) of the Internal Revenue Code, relating to adjustment based on energy preferences, shall not apply.

(d) The provisions of Section 57(a)(5) of the Internal Revenue Code, relating to tax-exempt interest shall not apply.

(e) The last two sentences of Section 57(a)(6)(B) of the Internal Revenue Code, relating to tangible personal property, shall not apply.

(f) Section 57(a) of the Internal Revenue Code, relating to items of tax preference, is modified to include as an item of tax preference an amount equal to one-half of the amount excluded from gross income for the taxable year under Section 18152.5.

(g) The provisions of Section 59(a) of the Internal Revenue Code, relating to the alternative minimum tax foreign tax credit, shall not apply.

SEC. 7. Section 17063 of the Revenue and Taxation Code is amended to read:

17063. (a) There shall be allowed as a credit against the net tax (as defined by Section 17039) for any taxable year an amount equal to the minimum tax credit for that taxable year.

(b) For purposes of subdivision (a), the minimum tax credit shall be determined in accordance with Section 53 of the Internal Revenue Code, except as otherwise provided in this part.

(c) For purposes of this chapter, the amount determined under Section 53(c)(1) of the Internal Revenue Code shall be the regular tax as defined by paragraph (2) of subdivision (b) of Section 17062, reduced by the sum of the credits allowable under this part, other than:

(1) The credits described in paragraph (7) of subdivision (a) of Section 17039.

(2) That portion of any credit which reduces the tax below the tentative minimum tax as provided in paragraph (1) of subdivision (c) of Section 17039.

(d) Section 53(d)(1)(B)(ii)(II) of the Internal Revenue Code, relating to credit not allowed for exclusion preferences, is modified to include subdivision (f) of Section 17062, as a specified item.

SEC. 8. Section 17271 of the Revenue and Taxation Code is amended to read:

17271. (a) The amendments made to Section 274 of the Internal Revenue Code by Section 1001 of Public Law 100-647, relating to disallowance of certain entertainment, etc., expenses, shall apply to each taxable year beginning on or after January 1, 1987.

(b) The amendments made to Section 274 of the Internal Revenue Code by Section 6003 of Public Law 100-647, relating to only 80 percent of meal and entertainment expenses allowed as a deduction, shall apply to each taxable year beginning on or after January 1, 1988, except that clauses (i) and (ii) of Section 274(n)(2)(F) of the Internal Revenue Code shall apply only to each taxable year beginning on or after January 1, 1989.

(c) For each taxable year beginning on or after January 1, 1994, Section 274(n) of the Internal Revenue Code, relating to deduction of meal and entertainment expenses, shall be applied by substituting

"50 percent" for the percentage specified in that section.

SEC. 9. Section 17276 of the Revenue and Taxation Code is amended to read:

17276. Except as provided in Sections 17276.1 and 17276.2, the deduction provided by Section 172 of the Internal Revenue Code, relating to a net operating loss deduction, shall be modified as follows:

(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, and beginning on or after January 1, 1997, shall not be allowed.

(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.

(b) The provisions of Section 172(b) (2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that 50 percent of the entire amount of the net operating loss for any taxable year shall not be eligible for carryover to any subsequent taxable year.

(c) Net operating loss carrybacks shall not be allowed.

(d) In computing the modifications under Section 172(d) (2) of the Internal Revenue, relating to capital gains and losses of taxpayers other than corporations, the exclusion provided by Section 18152.5 shall not be allowed.

(e) Notwithstanding any provisions of this section, a deduction shall be allowed to a "qualified taxpayer" as provided in Sections 17276.1 and 17276.2.

SEC. 9.5. Section 17276 of the Revenue and Taxation Code is amended to read:

17276. Except as provided in Sections 17276.1 and 17276.2, the deduction provided by Section 172 of the Internal Revenue Code, relating to a net operating loss deduction, shall be modified as follows:

(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, and beginning on or after January 1, 1997, shall not be allowed.

(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.

(b) (1) Except as provided in paragraph (2) and (3), the provisions of Section 172(b) (2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that 50 percent of the entire amount of the net operating loss for any taxable year shall not be eligible for carryover to any subsequent taxable year.

(2) For each taxable year beginning on or after January 1, 1994, 100 percent of a net operating loss of a new business incurred during the first three years of operation may be carried forward as provided in paragraph (2) of subdivision (d).

(3) For each taxable year beginning on or after January 1, 1994, 100 percent of a net operating loss of an eligible taxpayer may be carried forward to the taxable years specified in paragraph (1) of

subdivision (d).

(c) Net operating loss carrybacks shall not be allowed.

(d) (1) Except as provided in paragraphs (2) and (3), for each taxable year beginning on or after January 1, 1987, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute "five taxable years" in lieu of "15 taxable years."

(2) In the case of a "new business," the "five taxable years" in paragraph (1) shall be modified to read as follows:

(A) "Eight taxable years" for a net operating loss attributable to the first taxable year of that new business.

(B) "Seven taxable years" for a net operating loss attributable to the second taxable year of that new business.

(C) "Six taxable years" for a net operating loss attributable to the third taxable year of that new business.

(3) For any carryover of a net operating loss for which a deduction is denied by Section 17276.3, the carryover period specified in this subdivision shall be extended as follows:

(A) By one year for a net operating loss attributable to taxable years beginning in 1991.

(B) By two years for a net operating loss attributable to taxable years beginning prior to January 1, 1991.

(4) The net operating loss attributable to taxable years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 taxable years following the year of the loss if it is incurred by a taxpayer that is under the jurisdiction of the court in a Title 11 or similar case at any time during the income year. The loss carryover provided in the preceding sentence shall not apply to any loss incurred after the date the taxpayer is no longer under the jurisdiction of the court in a Title 11 or similar case.

(e) For purposes of this section:

(1) "Eligible taxpayer" means a taxpayer that has total receipts of less than one million dollars ($1,000,000) during the taxable year.

(2) "New business" means any trade or business that is organized or formed and first commences business activity in this state on or after January 1, 1994. Notwithstanding the preceding sentence, the term "new business" does not include any trade or business that was used in any predecessor trade or business conducted by the taxpayer or any other taxpayer related to the taxpayer (within the meaning of Sections 267 and 318 of the Internal Revenue Code).

(3) "Total receipts" means gross income, as defined in Section 17071, plus the cost of goods sold that are paid or incurred in connection with a trade or business of the taxpayer.

(f) In computing the modifications under Section 172(d)(2) of the Internal Revenue Code, relating to capital gains and losses of taxpayers other than corporations, the exclusion provided by Section 18152.5 shall not be allowed.

(g) The amendments to this section by the act adding this

subdivision shall apply only in the computation of taxes for each taxable year beginning on or after January 1, 1993.

(h) Notwithstanding any provisions of this section, a deduction shall be allowed to a "qualified taxpayer" as provided in Sections 17276.1 and 17276.2.

SEC. 10. Section 17736 of the Revenue and Taxation Code is amended to read:

17736. (a) Section 642(c)(2) of the Internal Revenue Code is modified for purposes of this part by substituting "December 31, 1970" for "October 9, 1969" throughout that paragraph.

(b) In lieu of Section 642(c)(4) of the Internal Revenue Code, relating to adjustments, to the extent that the amount otherwise allowable as a deduction under Section 642(c) of the Internal Revenue Code, relating to deduction for amounts paid or permanently set aside for a charitable purpose, consists of gain described in Section 18152.5, proper adjustment shall be made for any exclusion allowable to the estate or trust under Section 18152.5. In the case of a trust, the deduction allowed by Section 642(c) of the Internal Revenue Code shall be subject to Section 681 of the Internal Revenue Code, relating to limitation on charitable deduction.

SEC. 11. Section 17750 of the Revenue and Taxation Code is amended to read:

17750. (a) Section 643(a) of the Internal Revenue Code, relating to distributable net income, is modified to provide that the exclusion under Section 18152.5 shall not be taken into account.

(b) In the case of any distribution after June 1, 1984, and before January 1, 1985, the time for making an election under Section 643(d)(3) of the Internal Revenue Code, as added by Public Law 98-369, shall not expire before January 1, 1986, and the requirement that the election be made on the return of the estate or trust shall not apply.

SEC. 12. Section 18152.5 is added to the Revenue and Taxation Code, to read:

18152.5. (a) For purposes of this part, gross income shall not include 50 percent of any gain from the sale or exchange of qualified small business stock held for more than five years.

(b) (1) If the taxpayer has eligible gain for the taxable year from one or more dispositions of stock issued by any corporation, the aggregate amount of the gain from dispositions of stock issued by the corporation which may be taken into account under subdivision (a) for the taxable year shall not exceed the greater of either of the following:

(A) Ten million dollars ($10,000,000) reduced by the aggregate amount of eligible gain taken into account by the taxpayer under subdivision (a) for prior taxable years and attributable to dispositions of stock issued by the corporation.

(B) Ten times the aggregate adjusted bases of qualified small business stock issued by the corporation and disposed of by the taxpayer during the taxable year. For purposes of subparagraph (B),

the adjusted basis of any stock shall be determined without regard to any addition to basis after the date on which the stock was originally issued.

(2) For purposes of this subdivision, the term "eligible gain" means any gain from the sale or exchange of qualified small business stock held for more than five years.

(3) (A) In the case of a married individual filing a separate return, subparagraph (A) of paragraph (1) shall be applied by substituting five million dollars ($5,000,000) for ten million dollars ($10,000,000).

(B) In the case of a married taxpayer filing a joint return, the amount of gain taken into account under subdivision (a) shall be allocated equally between the spouses for purposes of applying this subdivision to subsequent taxable years.

(C) For purposes of this subdivision, marital status shall be determined under Section 7703 of the Internal Revenue Code.

(c) For purposes of this section:

(1) Except as otherwise provided in this section, the term "qualified small business stock" means any stock in a C corporation which is originally issued on or after August 10, 1993, and before January 1, 1999, if both of the following apply:

(A) As of the date of issuance, the corporation is a qualified small business.

(B) Except as provided in subdivisions (f) and (h), the stock is acquired by the taxpayer at its original issue (directly or through an underwriter) in either of the following manners:

(i) In exchange for money or other property (not including stock).

(ii) As compensation for services provided to the corporation (other than services performed as an underwriter of the stock).

(2) (A) Stock in a corporation shall not be treated as qualified small business stock unless, during substantially all of the taxpayer's holding period for the stock, the corporation meets the active business requirements of subdivision (e) and the corporation is a C corporation.

(B) (i) Notwithstanding any provision of subdivision (e), a corporation shall be treated as meeting the active business requirements of subdivision (e) for any period during which the corporation qualifies as a specialized small business investment company.

(ii) For purposes of clause (i), the term "specialized small business investment company" means any eligible corporation (as defined in paragraph (4) of subdivision (e)) that is licensed to operate under Section 301(d) of the Small Business Investment Act of 1958 (as in effect on May 13, 1993).

(3) (A) Stock acquired by the taxpayer shall not be treated as qualified small business stock if, at any time during the four-year period beginning on the date two years before the issuance of the stock, the corporation issuing the stock purchased (directly or

indirectly) any of its stock from the taxpayer or from a related person (within the meaning of Section 267(b) or 707(b)) to the taxpayer.

(B) Stock issued by a corporation shall not be treated as qualified business stock if, during the two-year period beginning on the date one year before the issuance of the stock, the corporation made one or more purchases of its stock with an aggregate value (as of the time of the respective purchases) exceeding 5 percent of the aggregate value of all of its stock as of the beginning of the two-year period.

(C) If any transaction is treated under Section 304(a) of the Internal Revenue Code as a distribution in redemption of the stock of any corporation, for purposes of subparagraphs (A) and (B), the corporation shall be treated as purchasing an amount of its stock equal to the amount treated as a distribution in redemption of the stock of the corporation under Section 304(a) of the Internal Revenue Code.

(d) For purposes of this section:

(1) The term "qualified small business" means any domestic corporation which is a C corporation if all of the following apply:

(A) The aggregate gross assets of the corporation (or any predecessor thereof) at all times on or after July 1, 1993, and before the issuance did not exceed fifty million dollars ($50,000,000).

(B) The aggregate gross assets of the corporation immediately after the issuance (determined by taking into account amounts received in the issuance) do not exceed fifty million dollars ($50,000,000).

(C) At least 80 percent of the corporation's payroll, as measured by total dollar value, is attributable to employment located within California.

(D) The corporation agrees to submit those reports to the Franchise Tax Board and to shareholders as the Franchise Tax Board may require to carry out the purposes of this section.

(2) (A) For purposes of paragraph (1), the term "aggregate gross assets" means the amount of cash and the aggregate adjusted bases of other property held by the corporation.

(B) For purposes of subparagraph (A), the adjusted basis of any property contributed to the corporation (or other property with a basis determined in whole or in part by reference to the adjusted basis of property so contributed) shall be determined as if the basis of the property contributed to the corporation immediately after the contribution was equal to its fair market value as of the time of the contribution.

(3) (A) All corporations which are members of the same parent-subsidiary controlled group shall be treated as one corporation for purposes of this subdivision.

(B) For purposes of subparagraph (A), the term "parent-subsidiary controlled group" means any controlled group of corporations as defined in Section 1563(a)(1) of the Internal Revenue Code, except that both of the following shall apply:

(i) "More than 50 percent" shall be substituted for "at least 80

percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(ii) Section 1563(a)(4) of the Internal Revenue Code shall not apply.

(e) (1) For purposes of paragraph (2) of subdivision (c), the requirements of this subdivision are met by a corporation for any period if during that period both of the following apply:

(A) At least 80 percent (by value) of the assets of the corporation are used by the corporation in the active conduct of one or more qualified trades or businesses in California.

(B) The corporation is an eligible corporation.

(2) For purposes of paragraph (1), if, in connection with any future qualified trade or business, a corporation is engaged in:

(A) Startup activities described in Section 195(c)(1)(A) of the Internal Revenue Code,

(B) Activities resulting in the payment or incurring of expenditures which may be treated as research and experimental expenditures under Section 174 of the Internal Revenue Code, or

(C) Activities with respect to in-house research expenses described in Section 41(b)(4) of the Internal Revenue Code, then assets used in those activities shall be treated as used in the active conduct of a qualified trade or business. Any determination under this paragraph shall be made without regard to whether a corporation has any gross income from those activities at the time of the determination.

(3) For purposes of this subdivision, the term "qualified trade or business" means any trade or business other than any of the following:

(A) Any trade or business involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of the trade or business is the reputation or skill of one or more of its employees.

(B) Any banking, insurance, financing, leasing, investing, or similar business.

(C) Any farming business (including the business of raising or harvesting trees).

(D) Any business involving the production or extraction of products of a character with respect to which a deduction is allowable under Section 613 or 613A of the Internal Revenue Code.

(E) Any business of operating a hotel, motel, restaurant, or similar business.

(4) For purposes of this subdivision, the term "eligible corporation" means any domestic corporation, except that the term shall not include any of the following:

(A) A DISC or former DISC.

(B) A corporation with respect to which an election under Section 936 of the Internal Revenue Code is in effect or which has a direct

or indirect subsidiary with respect to which the election is in effect.

(C) A regulated investment company, real estate investment trust (REIT), or real estate mortgage investment conduit (REMIC).

(D) A cooperative.

(5) (A) For purposes of this subdivision, stock and debt in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets, and to conduct its ratable share of the subsidiary's activities.

(B) A corporation shall be treated as failing to meet the requirements of paragraph (1) for any period during which more than 10 percent of the value of its assets (in excess of liabilities) consists of stock or securities in other corporations which are not subsidiaries of the corporation (other than assets described in paragraph (6)).

(C) For purposes of this paragraph, a corporation shall be considered a subsidiary if the parent owns more than 50 percent of the combined voting power of all classes of stock entitled to vote, or more than 50 percent in value of all outstanding stock, of the corporation.

(6) For purposes of subparagraph (A) of paragraph (1), any assets shall be treated as used in the active conduct of a qualified trade or business:

(A) Assets that are held as a part of the reasonably required working capital needs of a qualified trade or business of the corporation.

(B) Assets that are held for investment and are reasonably expected to be used within two years to finance research and experimentation in a qualified trade or business or increases in working capital needs of a qualified trade or business. For periods after the corporation has been in existence for at least two years, in no event may more than 50 percent of the assets of the corporation qualify as used in the active conduct of a qualified trade or business by reason of this paragraph.

(7) A corporation shall not be treated as meeting the requirements of paragraph (1) for any period during which more than 10 percent of the total value of its assets consists of real property that is not used in the active conduct of a qualified trade or business. For purposes of the preceding sentence, the ownership of, dealing in, or renting of, real property shall not be treated as the active conduct of a qualified trade or business.

(8) For purposes of paragraph (1), rights to computer software that produces active business computer software royalties (within the meaning of Section 543(d)(1) of the Internal Revenue Code) shall be treated as an asset used in the active conduct of a trade or business.

(9) A corporation shall not be treated as meeting the requirements of paragraph (1) for any period during which more than 20 percent of the corporation's total payroll expense is

attributable to employment located outside of California.

(f) If any stock in a corporation is acquired solely through the conversion of other stock in the corporation that is qualified small business stock in the hands of the taxpayer, both of the following shall apply:

(1) The stock so acquired shall be treated as qualified small business stock in the hands of the taxpayer.

(2) The stock so acquired shall be treated as having been held during the period during which the converted stock was held.

(g) (1) If any amount included in gross income by reason of holding an interest in a pass-through entity meets the requirements of paragraph (2), then both of the following shall apply:

(A) The amount shall be treated as gain described in subdivision (a).

(B) For purposes of applying subdivision (b), the amount shall be treated as gain from a disposition of stock in the corporation issuing the stock disposed of by the pass-through entity and the taxpayer's proportionate share of the adjusted basis of the pass-through entity in the stock shall be taken into account.

(2) An amount meets the requirements of this paragraph if both of the following apply:

(A) The amount is attributable to gain on the sale or exchange by the pass-through entity of stock that is qualified small business stock in the hands of the entity (determined by treating the entity as an individual) and that was held by that entity for more than five years.

(B) The amount is includable in the gross income of the taxpayer by reason of the holding of an interest in the entity that was held by the taxpayer on the date on which the pass-through entity acquired the stock and at all times thereafter before the disposition of the stock by the pass-through entity.

(3) Paragraph (1) shall not apply to any amount to the extent the amount exceeds the amount to which paragraph (1) would have applied if the amount was determined by reference to the interest the taxpayer held in the pass-through entity on the date the qualified small business stock was acquired.

(4) For purposes of this subdivision, the term "pass-through entity" means any of the following:

(A) Any partnership.

(B) Any S corporation.

(C) Any regulated investment company.

(D) Any common trust fund.

(h) For purposes of this section:

(1) In the case of a transfer described in paragraph (2), the transferee shall be treated as meeting both of the following:

(A) Having acquired the stock in the same manner as the transferor.

(B) Having held the stock during any continuous period immediately preceding the transfer during which it was held (or treated as held under this subdivision) by the transferor.

(2) A transfer is described in this subdivision if the transfer is any of the following:

(A) By gift.

(B) At death.

(C) From a partnership to a partner of stock with respect to which requirements similar to the requirements of subdivision (g) are met at the time of the transfer (without regard to the five-year holding period requirement).

(3) Rules similar to the rules of Section 1244(d)(2) of the Internal Revenue Code shall apply for purposes of this section.

(4) (A) In the case of a transaction described in Section 351 of the Internal Revenue Code or a reorganization described in Section 368 of the Internal Revenue Code, if qualified small business stock is exchanged for other stock that would not qualify as qualified small business stock but for this subparagraph, the other stock shall be treated as qualified small business stock acquired on the date on which the exchanged stock was acquired.

(B) This section shall apply to gain from the sale or exchange of stock treated as qualified small business stock by reason of subparagraph (A) only to the extent of the gain that would have been recognized at the time of the transfer described in subparagraph (A) if Section 351 or 368 of the Internal Revenue Code had not applied at that time. The preceding sentence shall not apply if the stock that is treated as qualified small business stock by reason of subparagraph (A) is issued by a corporation that (as of the time of the transfer described in subparagraph (A)) is a qualified small business.

(C) For purposes of this paragraph, stock treated as qualified small business stock under subparagraph (A) shall be so treated for subsequent transactions or reorganizations, except that the limitation of subparagraph (B) shall be applied as of the time of the first transfer to which the limitation applied (determined after the application of the second sentence of subparagraph (B)).

(D) In the case of a transaction described in Section 351 of the Internal Revenue Code, this paragraph shall apply only if immediately after the transaction the corporation issuing the stock owns directly or indirectly stock representing control (within the meaning of Section 368(c) of the Internal Revenue Code) of the corporation whose stock was exchanged.

(i) For purposes of this section:

(1) In the case where the taxpayer transfers property (other than money or stock) to a corporation in exchange for stock in the corporation, both of the following shall apply:

(A) The stock shall be treated as having been acquired by the taxpayer on the date of the exchange.

(B) The basis of the stock in the hands of the taxpayer shall in no event be less than the fair market value of the property exchanged.

(2) If the adjusted basis of any qualified small business stock is adjusted by reason of any contribution to capital after the date on

which the stock was originally issued, in determining the amount of the adjustment by reason of the contribution, the basis of the contributed property shall in no event be treated as less than its fair market value on the date of the contribution.

(j) (1) If the taxpayer has an offsetting short position with respect to any qualified small business stock, subdivision (a) shall not apply to any gain from the sale or exchange of the stock unless both of the following apply:

(A) The stock was held by the taxpayer for more than five years as of the first day on which there was such a short position.

(B) The taxpayer elects to recognize gain as if the stock was sold on that first day for its fair market value.

(2) For purposes of paragraph (1), the taxpayer shall be treated as having an offsetting short position with respect to any qualified small business stock if any of the following apply:

(A) The taxpayer has made a short sale of substantially identical property.

(B) The taxpayer has acquired an option to sell substantially identical property at a fixed price.

(C) To the extent provided in regulations, the taxpayer has entered into any other transaction that substantially reduces the risk of loss from holding the qualified small business stock. For purposes of the preceding sentence, any reference to the taxpayer shall be treated as including a reference to any person who is related (within the meaning of Section 267(b) or 707(b) of the Internal Revenue Code) to the taxpayer.

(k) The Franchise Tax Board may prescribe those regulations as may be appropriate to carry out the purposes of this section, including regulations to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, or otherwise.

SEC. 13. Section 18634 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

18634. (a) Any taxpayer determining its income subject to tax pursuant to Section 25101 or making the election under Section 25110 shall file with the Franchise Tax Board within six months after the due date (including extensions) of the bank's or corporation's California return required under this part an information return if it and its related banks' or corporation's total assets exceed two hundred million dollars ($200,000,000), or such higher levels as may be subsequently established by regulation.

(b) The information return shall be filed once every three years, unless there is a substantial change in the taxpayer's business activities, in which case it shall be filed for the year in which the change occurs.

(c) For purposes of this section, banks and corporations are related if more than 50 percent of the voting stock of one is directly or indirectly owned or controlled by the other or if more than 50 percent of the voting stock of both is directly or indirectly owned or

controlled by the same interest.

(d) The information return shall identify the corporate parent and those affiliates of which more than 20 percent of the voting stock is directly or indirectly owned or controlled by the parent. The information return shall identify the percentage of ownership and the type of corporation (foreign organized, United States organized, Foreign Sales Corporation, or other relevant descriptions).

(e) If the taxpayer willfully fails to substantially comply with this section, the taxpayer shall be subject to the penalty described in subdivision (d) of Section 19141.6.

(f) This section shall not apply to any bank or corporation with regard to any year if that bank's or corporation's payroll, property, and sales within the United States are each less than five hundred thousand dollars ($500,000).

SEC. 14. Section 18683.5 is added to the Revenue and Taxation Code, to read:

18683.5. (a) In the case of a failure to make a report required under Section 18152.5 that contains the information required by that section on the date prescribed therefor (determined with regard to any extension of time for filing), there shall be paid (on notice and demand by the Franchise Tax Board and in the same manner as tax) by the person failing to make the report, an amount equal to fifty dollars ($50) for each report with respect to which there was such a failure. In the case of any failure due to negligence or intentional disregard, the preceding sentence shall be applied by substituting one hundred dollars ($100) for fifty dollars ($50). In the case of a report covering periods in two or more years, the penalty determined under preceding provisions of this section shall be multiplied by the number of those years.

(b) This section shall remain in effect only until January 1, 1994, and as of that date is repealed.

SEC. 15. Section 19133.5 is added to the Revenue and Taxation Code, to read:

19133.5. (a) In the case of a failure to make a report required under Section 18152.5 that contains the information required by that section on the date prescribed therefor (determined with regard to any extension of time for filing), there shall be paid (on notice and demand by the Franchise Tax Board and in the same manner as tax) by the person failing to make the report, an amount equal to fifty dollars ($50) for each report with respect to which there was such a failure. In the case of any failure due to negligence or intentional disregard, the preceding sentence shall be applied by substituting one hundred dollars ($100) for fifty dollars ($50). In the case of a report covering periods in two or more years, the penalty determined under preceding provisions of this section shall be multiplied by the number of those years.

(b) This section shall become operative on January 1, 1994.

SEC. 16. Section 19141.6 is added to the Revenue and Taxation Code, to read:

19141.6. (a) Each taxpayer determining its income subject to tax pursuant to Section 25101 or electing to file pursuant to Section 25110 shall, for income years beginning on or after January 1, 1994, maintain (in the location, in the manner, and to the extent prescribed in regulations which shall be promulgated by the Franchise Tax Board on or before December 31, 1995) and make available upon request all of the following:

(1) Any records as may be appropriate to determine the correct treatment of the components that are a part of one or more unitary businesses for purposes of determining the income derived from or attributable to this state pursuant to Section 25101 or 25110.

(2) Any records as may be appropriate to determine the correct treatment of amounts that are attributable to the classification of an item as business or nonbusiness income for purposes of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(3) Any records as may be appropriate to determine the correct treatment of the apportionment factors for purposes of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(4) Documents and information, including any questionnaires completed and submitted to the Internal Revenue Service that are necessary to audit issues involving attribution of income to the United States or foreign jurisdictions under Section 882 and Subpart F of Part III of Subchapter N, or similar sections, of the Internal Revenue Code.

(b) For purposes of this section:

(1) Information for any year shall be retained for that period of time in which the taxpayers' income or franchise tax liability to this state may be subject to adjustment, including all periods in which additional income or franchise taxes may be assessed, not to exceed eight years from the due date or extended due date of the return, or during which a protest is pending before the Franchise Tax Board, or an appeal is pending before the State Board of Equalization or a lawsuit is pending in the courts of this state or the United States with respect to California franchise or income tax.

(2) "Related party" means banks and corporations that are related because one owns or controls directly of indirectly more than 50 percent of the stock of the other or because more than 50 percent of the voting stock of each is owned or controlled, directly or indirectly, by the same interests.

(3) "Records" includes any books, papers, or other data.

(c) (1) If a bank or corporation subject to this section fails to maintain or fails to cause another to maintain records as required by subdivision (a), or willfully fails to comply substantially with Section 18634 requiring the filing of an information return, that bank or corporation shall pay a penalty of ten thousand dollars ($10,000) for each income year with respect to which the failure occurs.

(2) If any failure described in paragraph (1) continues for more than 90 days after the day on which the Franchise Tax Board mails notice of the failure to the bank or corporation, that bank or

corporation shall pay a penalty (in addition to the amount required under paragraph (1)) of ten thousand dollars ($10,000) for each 30-day period (or fraction thereof) during which the failure continues after the expiration of the 90-day period. The additional penalty imposed by this subdivision shall not exceed a maximum of fifty thousand dollars ($50,000) if the failure to maintain or the failure to cause another to maintain is not willful. This maximum shall apply with respect to income years beginning on or after January 1, 1994, and before the earlier of the first day of the month following the month in which regulations are adopted pursuant to this section or December 31, 1995.

(3) For purposes of this section, the time prescribed by regulations to maintain records (and the beginning of the 90-day period after notice by the Franchise Tax Board) shall be treated as not earlier than the last day on which (as shown to the satisfaction of the Franchise Tax Board) reasonable cause existed for failure to maintain the records.

(d) (1) The Franchise Tax Board may apply the rules of paragraph (2) whether or not the board begins a proceeding to enforce a subpoena, or subpoena duces tecum, if subparagraph (A), (B), and (C) apply:

(A) For purposes of determining the correct treatment under Part 11 (commencing with Section 23001) of the items described in subdivision (a), the Franchise Tax Board issues a subpoena or subpoena duces tecum to a bank or corporation to produce (either directly or as agent for the related party) any records or testimony.

(B) The subpoena or subpoena duces tecum is not quashed in a proceeding begun under paragraph (3) and is not determined to be invalid in a proceeding begun under Section 19504 to enforce the subpoena.

(C) The bank or corporation does not substantially comply in a timely manner with the subpoena or subpoena duces tecum and the Franchise Tax Board has sent by certified or registered mail a notice to that bank or corporation that it has not substantially complied.

(D) If the bank or corporation fails to maintain or fails to cause another to maintain records as required by subdivision (a), and by reason of that failure, the subpoena, or subpoena duces tecum, is quashed in a proceeding described in subparagraph (B) or the bank or corporation is not able to provide the records requested in the subpoena or subpoena duces tecum, the Franchise Tax Board may apply the rules of paragraph (2) to any of the items described in subdivision (a) to which the records relate.

(2) (A) All of the following shall be determined by the Franchise Tax Board in the Franchise Tax Board's sole discretion from the Franchise Tax Board's own knowledge or from the information as the Franchise Tax Board may obtain through testimony or otherwise:

(i) The components that are a part of one or more unitary businesses for purposes of determining the income derived from or attributable to this state pursuant to Section 25101 or 25110.

(ii) Amounts that are attributable to the classification of an item as business or nonbusiness income for purposes of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(iii) The apportionment factors for purposes of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(iv) The correct amount of income under Section 882 of Subpart F of the Internal Revenue Code, or similar sections of the Internal Revenue Code.

(B) This paragraph shall apply to determine the correct treatment of the items described in subdivision (a) unless the bank or corporation is authorized by its related parties (in the manner and at the time as the Franchise Tax Board shall prescribe) to act as the related parties' limited agent solely for purposes of applying Section 19504 with respect to any request by the Franchise Tax Board to examine records or produce testimony related to any item described in subdivision (a) or with respect to any subpoena or subpoena duces tecum for the records or testimony. The appearance of persons or the production of records by reason of the bank or corporation being an agent shall not subject those persons or records to legal process for any purpose other than determining the correct treatment under Part 11 of the items described in subdivision (a).

(3) (A) Notwithstanding any other law or rule of law, any reporting bank or corporation to which the Franchise Tax Board issues a subpoena or subpoena duces tecum referred to in subparagraph (A) of paragraph (1) shall have the right to begin a proceeding to quash the subpoena not later than the 90th day after the subpoena was issued. In that proceeding, the Franchise Tax Board may seek to compel compliance with the subpoena.

(B) Notwithstanding any other law or rule of law, any reporting bank or corporation that has been notified by the Franchise Tax Board that it has determined that the bank or corporation has not substantially complied with a subpoena or subpoena duces tecum referred to in paragraph (1) shall have the right to begin a proceeding to review the determination not later than the 90th day after the day on which the notice referred to in subparagraph (C) of paragraph (1) was mailed. If the proceeding is not begun on or before the 90th day, the determination by the Franchise Tax Board shall be binding and shall not be reviewed by any court.

(C) The superior courts of the State of California for the Counties of Los Angeles, Sacramento, and San Diego, and for the City and County of San Francisco shall have jurisdiction to hear any proceeding brought under subparagraphs (A) and (B). Any order or other determination in the proceeding shall be treated as a final order that may be appealed.

(D) If any bank or corporation takes any action as provided in subparagraphs (A) and (B), the running of any period of limitations under Sections 19057 to 19064, inclusive (relating to the assessment and collection of tax), or under Section 19704 (relating to criminal prosecutions) with respect to that bank or corporation shall be

suspended for the period during which the proceedings, and appeals therein, are pending. In no event shall any period expire before the 90th day after the day on which there is a final determination in the proceeding.

SEC. 17. Section 23036 of the Revenue and Taxation Code, as amended by Chapter 31 of the Statutes of 1993, is amended to read:

23036. (a) (1) The term "tax" includes any of the following:

(A) The tax imposed under Chapter 2 (commencing with Section 23101).

(B) The tax imposed under Chapter 3 (commencing with Section 23501).

(C) The tax on unrelated business taxable income, imposed under Section 23731.

(D) The tax on S corporations imposed under Section 23802.

(2) The term "tax" does not include any amount imposed under paragraph (1) of subdivision (e) of Section 24667 or paragraph (2) of subdivision (f) of Section 24667.

(b) For purposes of Article 5 (commencing with Section 18661) of Chapter 2, Article 3 (commencing with Section 19031) of Chapter 4, Article 6 (commencing with Section 19101) of Chapter 4, and Chapter 7 (commencing with Section 19501) of Part 10.2, and for purposes of Sections 18601, 19001, and 19005, the term "tax" shall also include all of the following:

(1) The tax on limited partnerships, imposed under Section 23081.

(2) The alternative minimum tax imposed under Chapter 2.5 (commencing with Section 23400).

(3) The tax on built-in gains of S corporations, imposed under Section 23809.

(4) The tax on excess passive investment income of S corporations, imposed under Section 23811.

(c) Notwithstanding any other provision of this part, credits shall be allowed against the "tax" in the following order:

(1) Credits which do not contain carryover provisions.

(2) Credits which, when the credit exceeds the "tax," allow the excess to be carried over to offset the "tax" in succeeding taxable years. The order of credits within this paragraph shall be determined by the Franchise Tax Board.

(3) The minimum tax credit allowed by Section 23453.

(4) Credits for taxes withheld under Section 18662.

(d) Notwithstanding any other provision of this part, each of the following shall be applicable:

(1) No credit shall reduce the "tax" below the tentative minimum tax (as defined by paragraph (1) of subdivision (a) of Section 23455), except the following credits, but only after allowance of the credit allowed by Section 23453—

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by former Section 23601.4 (relating to solar energy).

(C) The credit allowed by Section 23601.5 (relating to solar energy).

(D) The credit allowed by Section 23609 (relating to research expenditures).

(E) The credit allowed by Section 23609.5 (relating to clinical testing expenses).

(F) The credit allowed by Section 23610.5 (relating to low-income housing).

(G) The credit allowed by Section 23649 (relating to qualified property).

(H) Credits for taxes withheld under Section 18662.

(2) No credit against the tax shall reduce the minimum franchise tax imposed under Chapter 2 (commencing with Section 23101).

(e) Any credit which is partially or totally denied under subdivision (d) shall be allowed to be carried over to reduce the "tax" in the following year, and succeeding years if necessary, if the provisions relating to that credit include a provision to allow a carryover of the unused portion of that credit.

(f) Unless otherwise provided, any remaining carryover from a credit which has been repealed or made inoperative shall continue to be allowed to be carried over and applied against the "tax" until the credit has been exhausted.

(g) Unless otherwise provided, if two or more taxpayers share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to its respective share of the costs paid or incurred.

SEC. 17.5. Section 23036 of the Revenue and Taxation Code, as amended by Chapter 31 of the Statutes of 1993, is amended to read:

23036. (a) (1) The term "tax" includes any of the following:

(A) The tax imposed under Chapter 2 (commencing with Section 23101).

(B) The tax imposed under Chapter 3 (commencing with Section 23501).

(C) The tax on unrelated business taxable income, imposed under Section 23731.

(D) The tax on S corporations imposed under Section 23802.

(2) The term "tax" does not include any amount imposed under paragraph (1) of subdivision (e) of Section 24667 or paragraph (2) of subdivision (f) of Section 24667.

(b) For purposes of Article 5 (commencing with Section 18661) of Chapter 2, Article 3 (commencing with Section 19031) of Chapter 4, Article 6 (commencing with Section 19101) of Chapter 4, and Chapter 7 (commencing with Section 19501) of Part 10.2, and for purposes of Sections 18601, 19001, and 19005, the term "tax" shall also include all of the following:

(1) The tax on limited partnerships, imposed under Section 23081.

(2) The alternative minimum tax imposed under Chapter 2.5 (commencing with Section 23400).

(3) The tax on built-in gains of S corporations, imposed under

Section 23809.

(4) The tax on excess passive investment income of S corporations, imposed under Section 23811.

(c) Notwithstanding any other provision of this part, credits shall be allowed against the "tax" in the following order:

(1) Credits which do not contain carryover provisions.

(2) Credits which, when the credit exceeds the "tax," allow the excess to be carried over to offset the "tax" in succeeding taxable years. The order of credits within this paragraph shall be determined by the Franchise Tax Board.

(3) The minimum tax credit allowed by Section 23453.

(4) Credits for taxes withheld under Section 18662.

(d) Notwithstanding any other provision of this part, each of the following shall be applicable:

(1) No credit shall reduce the "tax" below the tentative minimum tax (as defined by paragraph (1) of subdivision (a) of Section 23455), except the following credits, but only after allowance of the credit allowed by Section 23453—

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by former Section 23601.4 (relating to solar energy).

(C) The credit allowed by Section 23601.5 (relating to solar energy).

(D) The credit allowed by Section 23609 (relating to research expenditures).

(E) The credit allowed by Section 23609.5 (relating to clinical testing expenses).

(F) The credit allowed by Section 23610.5 (relating to low-income housing).

(G) The credit allowed by Section 23612 (relating to sales and use tax credit).

(H) The credit allowed by Section 23612.6 (relating to Los Angeles Revitalization Zone sales tax credit).

(I) The credit allowed by Section 23622 (relating to enterprise zone hiring credit).

(J) The credit allowed by Section 23623 (relating to program area hiring credit).

(K) The credit allowed by Section 23625 (relating to Los Angeles Revitalization Zone hiring credit).

(L) The credit allowed by Section 23649 (relating to qualified property).

(M) Credits for taxes withheld under Section 18662.

(2) No credit against the tax shall reduce the minimum franchise tax imposed under Chapter 2 (commencing with Section 23101).

(e) Any credit which is partially or totally denied under subdivision (d) shall be allowed to be carried over to reduce the "tax" in the following year, and succeeding years if necessary, if the provisions relating to that credit include a provision to allow a

carryover of the unused portion of that credit.

(f) Unless otherwise provided, any remaining carryover from a credit which has been repealed or made inoperative shall continue to be allowed to be carried over and applied against the "tax" until the credit has been exhausted.

(g) Unless otherwise provided, if two or more taxpayers share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to its respective share of the costs paid or incurred.

SEC. 18. Section 23609 of the Revenue and Taxation Code is amended to read:

23609. For each income year beginning on or after January 1, 1987, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount determined in accordance with Section 41 of the Internal Revenue Code, except as follows:

(a) (1) The reference to "20 percent" in Section 41(a)(1) of the Internal Revenue Code is modified to read "8 percent."

(2) The reference to "20 percent" in Section 41(a)(2) of the Internal Revenue Code is modified to read "12 percent."

(b) "Qualified research" and "basic research" shall include only research conducted in California.

(c) The provisions of Section 41(e)(7)(A) of the Internal Revenue Code, shall be modified so that "basic research," for purposes of this section, includes any basic or applied research including scientific inquiry or original investigation for the advancement of scientific or engineering knowledge or the improved effectiveness of commercial products, except that the term does not include any of the following:

(1) Basic research conducted outside California.

(2) Basic research in the social sciences, arts, or humanities.

(3) Basic research for the purpose of improving a commercial product if the improvements relate to style, taste, cosmetic, or seasonal design factors.

(4) Any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (including oil and gas).

(d) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(e) Section 41(c)(5) of the Internal Revenue Code, relating to gross receipts, is modified to take into account only those gross receipts from the sale of property held primarily for sales to customers in the ordinary course of the taxpayer's trade or business that is delivered or shipped to a purchaser within this state, regardless of F.O.B. point or other conditions of sale.

(f) Except as provided in subdivision (g), the amendments to this section made by the act adding this subdivision shall apply only to income years beginning on or after January 1, 1993.

(g) The amendments made by Section 13112 of the Revenue Reconciliation Act of 1993 (P.L. 103-66) to Section 41 of the Internal Revenue Code (related to the credit for increased research activities) shall apply to income years beginning on or after January 1, 1994.

SEC. 19. Section 23649 is added to the Revenue and Taxation Code, to read:

23649. (a) (1) For each income year beginning on or after January 1, 1994, and before this section ceases to be operative as specified in paragraph (2) of subdivision (f), there shall be allowed to a qualified person as a credit against the "tax,"as defined in Section 23036, an amount equal to 6 percent of the amount paid or incurred on or after January 1, 1994, for qualified property that is placed in service in this state.

(2) For the 1994 income year only, the credit shall not be claimed on the 1994 return, but shall be allowed, instead, in the 1995 income year on the 1995 return. The amount so claimed shall be in addition to the amount allowed for the 1995 income year.

(3) For any amount paid or incurred on or after January 1, 1994, for qualified property by fiscal year taxpayers, any amount paid or incurred before the beginning of the qualified taxpayer's 1994 fiscal year shall be deemed to be paid or incurred in that 1994 fiscal year.

(b) For purposes of this section:

(1) "Fabricating" means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(2) "Manufacturing" means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(3) "Primarily" means tangible personal property used 50 percent or more of the time in an activity described in subdivision (a).

(4) "Processing" means the physical application of the materials and labor necessary to modify or change the characteristics of property.

(5) "Qualified person" means any person engaged in those lines of business described in Codes 2000 to 3999, inclusive, of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition.

(6) (A) "Qualified property" means all of the following:

(i) Tangible personal property purchased for use by a qualified person to be used primarily in any stage of the manufacturing, processing, refining, fabricating, or recycling of property, beginning at the point any raw materials are received by the qualified person and introduced into the process and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling has

altered property to its completed form, including packaging, if required.

(ii) Tangible personal property purchased for use by a qualified person to be used primarily in research and development.

(iii) Tangible personal property purchased for use by a qualified person to be used primarily to maintain, repair, measure, or test any property described in paragraph (1) or (2).

(iv) Tangible personal property purchased for use by a contractor purchasing that property either as an agent of a qualified person or for the contractor's own account and subsequent resale to a qualified person for use in the performance of a construction contract for the qualified person who will use the tangible personal property as an integral part of the manufacturing, processing, refining, fabricating, or recycling process, or as a research or storage facility for use in connection with the manufacturing process.

(B) "Qualified property" does not include any property that is leased by a qualified person to another person.

(7) "Refining" means the process of converting a natural resource to an intermediate or finished product.

(8) "Research and development" means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations thereunder.

(9) "Small business" means a taxpayer that meets any of the following requirements during the income year for which the credit is allowed:

(A) Has gross receipts of less than fifty million dollars ($50,000,000).

(B) Has net assets of less than fifty million dollars ($50,000,000).

(C) Has a total credit of less than one million dollars ($1,000,000).

(10) "Tangible personal property" does not include consumables with a normal useful life of less than one year, except as provided in subparagraph (E) of paragraph (11), and does not include furniture, inventory, equipment used in the extraction process, or equipment used to store finished products that have completed the manufacturing process.

(11) "Tangible personal property" includes, but is not limited to, all of the following:

(A) Machinery and equipment, including component parts and contrivances such as belts, shafts, moving parts, and operating structures.

(B) All equipment or devices used or required to operate, control, regulate, or maintain the machinery, including, without limitation, computers, data processing equipment, and computer software, together with all repair and replacement parts with a useful life of one or more years therefor, whether purchased separately or in conjunction with a complete machine and regardless of whether the machine or component parts are assembled by the taxpayer or another party.

(C) Property used in pollution control that meets or exceed

standards established by the State Air Resources Board of the Water Resources Control Board.

(D) Special purpose buildings and foundations used as an integral part of the manufacturing, processing, refining, or fabricating process, or that constitute a research or storage facility used during the manufacturing process. Buildings used solely for warehousing purposes after completion of the manufacturing process are not included.

(E) Fuels used or consumed in the manufacturing process.

(F) Property used in recycling.

(c) (1) No credit, no further credit in any subsequent year, and no credit carryover shall be allowed with respect to the qualified property to any qualified person beginning in the year in which that qualified property for which a credit was allowed under this section is disposed of or removed from this state within one year of the date of purchase.

(2) No credit shall be allowed for any qualified property for which an exemption from sales and use taxes is allowed and claimed pursuant to Section 6377.

(d) Notwithstanding the definition of qualified property in subdivision (b), the credit provided by this section can be claimed only with respect to property defined in Section 1245(a) of the Internal Revenue Code. Notwithstanding the preceding sentence, for qualified persons performing manufacturing activities described in Codes 357 and 367 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and those activities related to biotech described in SIC Code 8731, property for which the credit provided by this section can be claimed shall also include special purpose buildings and foundations, as further described in subparagraph (D) of paragraph (11) of subdivision (b).

(e) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years as follows:

(1) Except as provided in paragraph (2), for the seven succeeding years if necessary, until the credit is exhausted.

(2) In the case of a small business, for the nine succeeding years, if necessary, until the credit is exhausted.

(f) (1) This section shall remain in effect until the date specified in paragraph (2) on which date this section shall cease to be operative, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (e), until the credit is exhausted.

(2) (A) This section shall cease to be operative on January 1, 2001, or on January 1 of the earliest year thereafter, if the total employment in this state, as determined by the Employment Development Department on the preceding January 1, does not exceed by 100,000 jobs the total employment in this state on January 1, 1994. The department shall report to the Legislature annually with

respect to the determination required by the preceding sentence.

(B) For purposes of this paragraph, "total employment" means the total employment in the manufacturing sector, excluding employment in the aerospace sector.

SEC. 20. Section 23802 of the Revenue and Taxation Code, as amended by Chapter 31 of the Statutes of 1993, is amended to read:

23802. (a) Section 1363(a) of the Internal Revenue Code, relating to the taxability of an S corporation, shall not be applicable.

(b) Corporations qualifying under this chapter shall continue to be subject to the taxes imposed under Chapter 2 (commencing with Section 23101) and Chapter 3 (commencing with Section 23501), except as follows:

(1) The tax imposed under Section 23151 or 23501 shall be imposed at a rate of 1½ percent rather than the rate specified in those sections.

(2) In the case of an "S corporation" which is also a financial corporation, the rate of tax specified in paragraph (1) shall be increased by the excess of the rate imposed under Section 23183 over the rate imposed under Section 23151 and Section 23184 shall be applicable.

(c) An "S corporation" shall be subject to the minimum franchise tax imposed under Section 23153.

(d) (1) For purposes of subdivision (b), an "S corporation" shall be allowed a deduction under Section 24416 or 24416.1 (relating to net operating loss deductions), but only with respect to losses incurred during periods in which the corporation had in effect a valid election to be treated as an "S corporation" for purposes of this part.

(2) Section 1371(b) of the Internal Revenue Code, relating to denial of carryovers between "C years" and "S years," shall apply for purposes of the tax imposed under subdivision (b), except as provided in paragraph (1).

(3) The provisions of this subdivision shall not affect the amount of any item of income or loss computed in accordance with the provisions of Section 1366 of the Internal Revenue Code, relating to pass-thru items to shareholders.

(4) For purposes of subdivision (b) of Section 17276, relating to limitations on loss carryovers, losses passed through to shareholders of an "S corporation," to the extent otherwise allowable without application of that subdivision, shall be fully included in the net operating loss of that shareholder and then that subdivision shall be applied to the entire net operating loss.

(e) For purposes of computing the taxes specified in subdivision (b), an "S corporation" shall be allowed a deduction from income for built-in gains and passive investment income for which a tax has been imposed under this part in accordance with the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, or Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income.

(f) For purposes of computing taxes imposed under this part, as

provided in subdivision (b)—

(1) An "S corporation" shall compute its deductions for amortization and depreciation in accordance with the provisions of Part 10 (commencing with Section 17001) of Division 2.

(2) The provisions of Section 465 of the Internal Revenue Code, relating to limitation of deductions to the amount at risk, shall be applied in the same manner as in the case of an individual.

(3) (A) The provisions of Section 469 of the Internal Revenue Code, relating to limitations on passive activity losses and credits, shall be applied in the same manner as in the case of an individual. For purposes of the tax imposed under Section 23151 or 23501, as modified by this section, material participation shall be determined in accordance with Section 469(h) of the Internal Revenue Code, relating to certain closely held "C corporations" and personal service corporations.

(B) For purposes of this paragraph, the "adjusted gross income" of the "S corporation" shall be equal to its "net income," as determined under Section 24341 with the modifications required by this subdivision, except that no deduction shall be allowed for contributions allowed by Section 24357.

(4) The exclusion provided under Section 18152.5 shall not be allowed to an "S corporation."

(g) The provisions of Section 1363(d) of the Internal Revenue Code, relating to recapture of LIFO benefits, shall be modified for purposes of this part to refer to Section 19102 in lieu of Section 6601 of the Internal Revenue Code.

SEC. 21. Section 24443 of the Revenue and Taxation Code is amended to read:

24443. (a) Section 274 of the Internal Revenue Code, relating to the disallowance of certain entertainment, gift, travel, etc., expenses, shall apply, except as otherwise provided.

(b) For each income year beginning in 1987 or 1988, Section 274(n) of the Internal Revenue Code shall not apply to any expense if the expense is for food or beverage provided under either of the following conditions:

(1) It is required by federal law to be provided to crew members of a vessel at sea.

(2) It is provided on an oil or gas platform or drilling rig located offshore in Alaska.

(c) For each income year beginning on or after January 1, 1989, the amendments made to Section 274 of the Internal Revenue Code by Section 6003 of Public Law 100-647, relating to only 80 percent of meal and entertainment expenses allowed as a deduction, shall apply.

(d) For each income year beginning on or after January 1, 1994, Section 274(n) of the Internal Revenue Code, relating to deduction of meal and entertainment expenses, shall be applied by substituting "50 percent" for the percentage specified in that section.

SEC. 22. Section 25110 of the Revenue and Taxation Code, as

amended by Chapter 31 of the Statutes of 1993, is amended to read:

25110. (a) Notwithstanding Section 25101, a qualified taxpayer, as defined in paragraph (2) of subdivision (b) which is subject to the tax imposed under this part, may elect, subject to the provisions of Section 25111, to account for and determine its income derived from or attributable to sources within this state pursuant to a water's-edge election in accordance with the provisions of this part, as modified by this article. A taxpayer which makes that water's-edge election shall take into account the income and apportionment factors of the following affiliated entities only:

(1) Affiliated banks or corporations which are eligible to be included in a federal consolidated return as described in Sections 1501 to 1505, inclusive, of the Internal Revenue Code, other than corporations making an election under Section 936 of the Internal Revenue Code.

(2) Domestic international sales corporations, as described in Sections 991 to 994, inclusive, of the Internal Revenue Code and foreign sales corporations as described in Sections 921 to 927, inclusive, of the Internal Revenue Code.

(3) Any corporation, regardless of the place where it is incorporated if the average of its property, payroll, and sales factors within the United States is 20 percent or more.

(4) Banks and corporations which are incorporated in the United States, excluding corporations making an election pursuant to Sections 931 to 936, inclusive, of the Internal Revenue Code, of which more than 50 percent of their stock is controlled directly or indirectly by the same interests, which are not included in paragraph (1).

(5) A bank or corporation which is not described in paragraphs (1) to (4), inclusive, or paragraph (6), but only to the extent of its income derived from or attributable to sources within the United States and its factors assignable to a location within the United States in accordance with paragraph (3) of subdivision (b). Income of such a bank or corporation derived from or attributable to sources within the United States as determined by federal income tax laws shall be limited to and determined from the books of account maintained by the bank or corporation with respect to its activities conducted within the United States.

(6) Export trade corporations, as described in Sections 970 to 972, inclusive, of the Internal Revenue Code.

(7) Any affiliated bank or corporation which is a "controlled foreign corporation," as defined in Section 957 of the Internal Revenue Code, if all or part of the income of that affiliate is defined in Section 952 of Subpart F of the Internal Revenue Code ("Subpart F income"). The income and apportionment factors of any affiliate to be included under this paragraph shall be determined by multiplying the income and apportionment factors of that affiliate without application of this paragraph by a fraction (not to exceed one), the numerator of which is the "Subpart F income" of that bank or corporation for that income year and the denominator of which

is the "earnings and profits" of that bank or corporation for that income year, as defined in Section 964 of the Internal Revenue Code.

(8) (A) The income and factors of the above-enumerated banks and corporations shall be taken into account only if the income and factors would have been taken into account under Section 25101 if this section had not been enacted.

(B) The income and factors of a bank or corporation which is not described in paragraphs (1) to (4), inclusive, and (6) and which is an electing taxpayer under this subdivision shall be taken into account in determining its income only to the extent set forth in paragraph (5).

(b) For purposes of this article and Section 24411:

(1) An "affiliated bank or corporation" means a bank or corporation which is related to a bank or corporation, required to file under this part, because of any of the following:

(A) It owns directly or indirectly more than 50 percent of the voting stock of the bank or corporation required to file under this part.

(B) More than 50 percent of its voting stock is owned directly or indirectly by a bank or corporation required to file under this part.

(C) More than 50 percent of voting stock of both it and the bank or corporation required to file under this part is owned or controlled directly or indirectly by any bank or person (as defined in Section 7701(a)(1) of the Internal Revenue Code).

(2) A "qualified taxpayer" means a bank or corporation which does both of the following:

(A) Files with the state tax return on which the water's-edge election is made a consent to the taking of depositions at the time and place most reasonably convenient to all parties from key domestic corporate individuals and to the acceptance of subpoenas duces tecum requiring reasonable production of documents to the Franchise Tax Board as provided in Section 19504 or by the State Board of Equalization as provided in Title 18, California Code of Regulations, Section 5005, or by the courts of this state as provided in Chapter 2 (commencing with Section 1985) of Title 3 of Part 4 of, and Section 2025 of, the Code of Civil Procedure. The consent relates to issues of jurisdiction and service and does not waive any defenses a taxpayer may otherwise have. The consent shall remain in effect so long as the water's-edge election is in effect and shall be limited to providing that information necessary to review or to adjust income or deductions in a manner authorized under Sections 482, 861, Subpart F of Part III of Subchapter N, or similar provisions of the Internal Revenue Code, together with the regulations adopted pursuant to those provisions, and for the conduct of an investigation with respect to any unitary business in which the taxpayer may be involved.

(B) Agrees that for purposes of this article, dividends received by any bank or corporation whose income and apportionment factors are taken into account pursuant to subdivision (a) from either of the

following are functionally related dividends and shall be presumed to be business income:

(i) A bank or corporation of which more than 50 percent of the voting stock is owned, directly or indirectly, by members of the unitary group and which is engaged in the same general line of business.

(ii) Any bank or corporation which is either a significant source of supply for the unitary business or a significant purchaser of the output of the unitary business, or which sells a significant part of its output or obtains a significant part of its raw materials or input from the unitary business. "Significant," as used in this subparagraph, means an amount of 15 percent or more of either input or output.

All other dividends shall be classified as business or nonbusiness income without regard to this subparagraph.

(3) The definitions and locations of property, payroll, and sales shall be determined under the laws and regulations which set forth the apportionment formulas used by the individual states to assign net income subject to taxes on or measured by net income in that state. If a state does not impose a tax on or measured by net income or does not have laws or regulations with respect to the assignment of property, payroll, and sales, the laws and regulations provided in Article 2 (commencing with Section 25120) shall apply.

Sales shall be considered to be made to a state only if the bank or corporation making the sale may otherwise be subject to a tax on or measured by net income under the Constitution or laws of the United States, and shall not include sales made to a bank or corporation whose income and apportionment factors are taken into account pursuant to subdivision (a) in determining the amount of income of the taxpayer derived from or attributable to sources within this state.

(4) "The United States" means the 50 states of the United States and the District of Columbia.

(c) All references in this part to income determined pursuant to Section 25101 shall also mean income determined pursuant to this section.

SEC. 23. Section 25111 of the Revenue and Taxation Code, as amended by Chapter 31 of the Statutes of 1993, is amended to read:

25111. (a) The making of a water's-edge election as provided for in Section 25110 shall be made by contract with the Franchise Tax Board in the original return for a year and shall be effective only if every taxpayer which is a member of the water's-edge group and which is subject to tax under this part makes the election. A single taxpayer which is engaged in more than one business activity subject to allocation and apportionment as provided in Article 2 (commencing with Section 25120) of Chapter 17 may make a separate election for each business. The form and manner of making the water's-edge election shall be prescribed by the Franchise Tax Board. Each contract making a water's-edge election shall be for an initial term of 84 months, except as provided in subdivisions (b).

Each contract shall provide that on the anniversary date of the contract or any other annual date specified by the contract a year shall be added automatically to the initial term unless notice of nonrenewal is given as provided in subdivision (d). An affiliated bank or corporation which is a member of the water's-edge group and subsequently becomes subject to tax under this part or is a nonelecting taxpayer which is subsequently proved to be a member of the water's-edge group pursuant to Franchise Tax Board audit determination, as evidenced by a notice of deficiency proposed to be assessed or a notice of tax change, shall be deemed to have elected.

No water's-edge election shall be made for an income year beginning prior to January 1, 1988.

(b) A water's-edge election may be terminated by a taxpayer prior to the end of the 84-month period if either of the following occurs:

(1) The taxpayer is acquired directly or indirectly by a nonelecting entity which alone or together with those affiliates included in its combined report is larger than the taxpayer as measured by equity capital.

(2) With the permission of the Franchise Tax Board.

(c) In granting a change of election, the Franchise Tax Board shall impose any conditions which are necessary to prevent the avoidance of tax or clearly reflect income for the period the election was, or was purported to be, in effect. These conditions may include a requirement that income, including dividends paid from income earned while a water's-edge election was in effect, which would have been included in determining the income of the taxpayer from sources within and without this state pursuant to Section 25101 but for the water's-edge election shall be included in income in the year in which the election is changed.

(d) If the taxpayer desires in any year not to renew the election, the taxpayer shall serve written notice of nonrenewal upon the board at least 90 days in advance of the annual renewal date. Unless that written notice is provided to the board, the election shall be considered renewed as provided in subdivision (a).

(e) If the taxpayer serves notice of intent in any year not to renew the existing water's-edge election, that existing election shall remain in effect for the balance of the period remaining since the original election or the last renewal of the election, as the case may be.

SEC. 24. Section 25111.1 is added to the Revenue and Taxation Code, to read:

25111.1. For any income year beginning on or after January 1, 1994, consideration for water's-edge contracts in existence as of that date is no longer provided for by law. Those contracts are rescinded for any periods remaining on the contracts commencing on the first day of the taxpayer's income year that begins on or after January 1, 1994. Any fiscal year taxpayer whose contract is in effect as of December 31, 1993, shall continue to be bound by that contract until the close of its income year after January 1, 1994, and before

December 31, 1994.

SEC. 25. Section 25112 of the Revenue and Taxation Code, as amended by Chapter 31 of the Statutes of 1993, is amended to read:

25112. (a) If a taxpayer electing to file under Section 25110 fails to supply any information described in subdivision (b), the taxpayer shall pay a penalty of one thousand dollars ($1,000) for each income year with respect to which the failure occurs.

(b) A taxpayer electing pursuant to Section 25110 shall do all of the following:

(1) Retain and make available upon request the documents and information, including any questionnaires completed and submitted to the Internal Revenue Service or qualified states, which are necessary to audit issues involving attribution of income to the United States or foreign jurisdictions under Sections 482, 861, 863, 902, and 904, and Subpart F of Part III of Subchapter N, or similar sections of the Internal Revenue Code.

(2) Identify, upon request, principal officers or employees who have substantial knowledge of, and access to, documents and records which discuss pricing policies, profit centers, cost centers, and the methods of allocating income and expense among these centers. The information shall include the employees' titles and addresses.

(3) Retain and make available upon request all documents and correspondence ordinarily available to a bank or corporation included in the water's-edge election which are submitted to, or obtained from, the Internal Revenue Service, foreign countries or their territories or possessions, and competent authority pertaining to ruling requests, rulings, settlement resolutions, and competing claims involving jurisdictional assignment and sourcing of income that affect the assignment of income to the United States. The documents shall include all ruling requests and rulings on reorganizations involving foreign incorporation of branches, all ruling requests and rulings on changing a bank or corporation's jurisdictional incorporation, and all documents which are ordinarily available to a bank or corporation included in the water's-edge election which pertain to the determination of foreign tax liability, including examination reports issued by foreign taxing administrations. If the documents have been translated, the translations shall be furnished.

(4) Upon request, prepare and make available for each bank or corporation included in the information return referred to in Section 18634 in which the taxpayer is included, a list of each state of the United States, including the District of Columbia, territories or possessions, and each foreign country in which it has payroll, property, or sales. The sales shall be determined by destination whether or not the taxpayer is taxable in the destination jurisdiction.

(5) Retain and make available, upon request, information filed with the Internal Revenue Service to comply with Sections 6038, 6038A, 6038B, 6038C, and 6041 of the Internal Revenue Code.

(6) Upon request, prepare and make available for each bank or

corporation organized or created under the laws of the United States or a political subdivision thereof, of which 50 percent or more of its voting stock is directly or indirectly owned or controlled, the information which would be included in the forms described in paragraph (5) if those forms were required for United States corporations.

(7) Retain and make available, upon request, all state tax returns filed by each bank or corporation included under subdivision (a) in each state, including the District of Columbia.

(8) Comply with reasonable requests for information necessary to determine or verify its net income, apportionment factors, or the geographic source of that income pursuant to the Internal Revenue Code.

(9) For purposes of this subdivision, information for any year shall be retained for that period of time in which the taxpayer's income or franchise tax liability to this state may be subject to adjustment, including all periods in which additional income or franchise taxes may be assessed or during which an appeal is pending before the State Board of Equalization or a lawsuit is pending in the courts of this state or the United States with respect to California franchise or income tax.

(c) If the failure continues for more than 90 days after the date on which the Franchise Tax Board mails notice of that failure to the taxpayer, the taxpayer shall pay a penalty (in addition to the amount required under subdivision (a)) of one thousand dollars ($1,000) for each 30-day period (or fraction thereof) during which the failure continues after the expiration of the 90-day period. The increase in any penalty under this subdivision shall not exceed twenty-four thousand dollars ($24,000).

(d) If the taxpayer fails to comply substantially with any formal document request arising out of the examination of the tax treatment of any item (hereinafter in this section referred to as the "examined item") before the 90th day after the date of the mailing of the request, any court having jurisdiction of a civil proceeding in which the tax treatment of the examined item is an issue may, upon motion by the Franchise Tax Board, prohibit the introduction by the taxpayer of documentation covered by that request.

(e) For purposes of this section, the time in which information is to be furnished (and the beginning of the 90-day period after notice by the Franchise Tax Board) shall be treated as beginning not earlier than the last day on which reasonable cause existed for failure to furnish the information.

(f) This section shall not apply with respect to any requested documentation if the taxpayer establishes that the failure to provide the documentation, as requested by the Franchise Tax Board, is due to reasonable cause. For purposes of subdivision (d), the fact that a foreign jurisdiction would impose a civil or criminal penalty on the taxpayer (or any other person) for disclosing the requested documentation is not reasonable cause unless, after in-camera review

of the documentation, the court finds otherwise.

(g) For purposes of this section, the term "formal document request" means any request (made after the normal request procedures have failed to produce the requested documentation) for the production of documentation which is mailed by registered or certified mail to the taxpayer at its last known address and which sets forth all of the following:

(1) The time and place for the production of the documentation.

(2) A statement of the reason the documentation previously produced (if any) is not sufficient.

(3) A description of the documentation being sought.

(4) The consequences to the taxpayer of the failure to produce the documentation described in this section.

(h) Notwithstanding any other law or rule of law, any taxpayer to whom a formal document request is mailed may begin a proceeding to quash that request not later than the 90th day after the date the request was mailed. In any such proceeding, the Franchise Tax Board may seek to compel compliance with the request.

(i) The superior courts of the State of California for the Counties of Los Angeles, Sacramento, and San Diego, and for the City and County of San Francisco shall have jurisdiction to hear any proceeding brought under subdivision (h). An order denying the petition shall be deemed a final order which may be appealed.

The running of the 90-day period referred to in subdivision (c) shall be suspended during any period during which a proceeding brought under subdivision (h) is pending.

(j) For purposes of this section, "documentation" means any documentation which may be relevant or material to the tax treatment of the examined item.

(k) The Franchise Tax Board, and any court having jurisdiction over a proceeding under subdivision (g), may extend the 90-day period referred to in subdivision (b).

(*l*) If any bank or corporation takes any action as provided in subdivision (h), the running of any period of limitations under Sections 19057 to 19067, inclusive (relating to the assessment and collection of tax), or under Section 19704 (relating to criminal prosecutions) with respect to that bank or corporation shall be suspended for the period during which the proceedings under subdivision (h) and appeals thereto are pending.

SEC. 26. Section 25115 of the Revenue and Taxation Code is amended to read:

25115. (a) For income years beginning before January 1, 1994, each contract described in Section 25111 shall provide that a taxpayer making a water's-edge election pursuant to this article shall pay an annual amount to the Franchise Tax Board for deposit in the California Unitary Fund created pursuant to Section 16429.30 of the Government Code. One-third of the amount shall be deposited in the Local Project Account for Non-Transient Spending in the California Unitary Fund, and two-thirds of the amount shall be deposited in the

Future Infrastructure State Targeted Account in the California Unitary Fund.

(b) The amount shall be equal to thirty-thousandths of 1 percent of the sum of the taxpayer's property and payroll assigned to this state for an income year of 12 full months ending during the calendar year 1986 and its sales assigned to this state for the current income year. A single corporation which is engaged in more than one business for which it is making separate elections shall determine the amount as provided in this section for each business for which it is electing to determine its income pursuant to Section 25110.

(c) The sum of the property, payroll, and sales, as calculated pursuant to subdivision (b) shall be reduced by the cumulative amount expended since January 1, 1987, for investment in new plants or facilities in this state, as defined in subdivision (d), and shall further be reduced by the amount expended for new employees in this state as defined in subdivision (f).

(d) A new plant or facility is property described in Section 70, constructed by or for the taxpayer, or new tangible personal property, the original use of which commences with the taxpayer in this state, provided that it is not a replacement, in whole or in part, for an existing plant or facility in this state. For purposes of this subdivision, "new tangible personal property" means the current year's acquisition of personal property classified as "machinery and equipment for industry, profession, or trade," "tools, molds, dies, jigs," and "computers and related equipment," as reported to either the county assessor pursuant to Section 441 or the State Board of Equalization pursuant to Section 826. A plant or facility shall be deemed a replacement if the taxpayer, or an affiliated bank or corporation, as defined in paragraph (1) of subdivision (b) of Section 25110, closes, takes out of service, sells, or leases to an unrelated party, in either the three immediately preceding or the three immediately succeeding years from the time the new plant or facility is operational, a plant or facility with a cost basis equal to 25 percent or more of the cost basis of the new plant or facility.

(e) The number of new employees in this state for any income year shall be determined by comparing the total number of work years in this state for the income year to the greater of (1) the average of the total number of work years in this state for the income years ending in 1985, 1986, and 1987, or (2) the total number of work years in this state for the income year ending in 1987. A "work year" means, in the case of workers who are paid an hourly wage, 2,000 paid hours, and in the case of salaried employees, a total of 12 paid months.

(f) The amount expended for new employees shall be equal to the product of the number of new employees determined pursuant to subdivision (e) and the average wages paid for each work year in this state for the income year.

(g) Each contract shall provide that the amount described in this section shall not be subject to any statutory changes, for the period the contract is in effect, without the consent of the taxpayer. Any

statutory change shall be applicable for any renewal year beginning five years after that statutory change.

(h) Amounts determined pursuant to this section shall be collected and refunded in the same manner as the taxes imposed by this part and shall be subject to interest and penalties as provided in this part.

(i) In no event shall the amount determined pursuant to this section be less than ten-thousandths of 1 percent of the sum of the taxpayer's property, payroll, and sales in this state for the current year.

(j) For purposes of this section, the bank's or corporation's property, payroll, and sales in this state shall be determined pursuant to Article 2 (commencing with Section 25120) of Chapter 17, and regulations adopted pursuant thereto, except that both of the following shall apply:

(1) Property shall include only property defined in Sections 25129 to 25131, inclusive.

(2) Sales shall not include gross receipts from the sale of real property and improvements thereto and the sale of the stock of a subsidiary unless that activity occurs as a regular part of the taxpayer's business.

(k) The annual amount otherwise determined pursuant to this section and payable under a contract described in Section 25111 shall not be imposed for an income year in which a taxpayer incurs no tax liability under Sections 25101 and 25110.

(*l*) If a taxpayer is reorganized into two or more separate entities, the 1986 property and payroll factors for the new entities shall be determined by the ratio of current property and payroll factors, excluding intangible property, for each new entity subject to tax in California to the total for all entities subject to tax in California for the year in which those entities are created. This ratio shall be applied to 1986 property and payroll and each entity shall be allocated a portion of the 1986 payments and payroll based on this ratio.

(m) Notwithstanding Section 24345, the amount imposed by this section shall be allowed as a deduction in computing the taxes imposed by this part.

(n) This section shall remain in effect until January 1, 1994, and as of that date is repealed.

SEC. 27. The amendments made to Sections 17052.12 and 23609 of the Revenue and Taxation Code in Sections 4 and 18 of this act shall apply to taxable and income years beginning on or after January 1, 1993.

SEC. 28. It is the intent of the Legislature that in construing Section 12 of this act, any regulations which may be promulgated by the Secretary of the Treasury under Section 1202(k) of the Internal Revenue Code, as added by Section 13113 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), shall be applicable to the extent those treasury regulations do not conflict with any regulations

that may be promulgated by the Franchise Tax Board under the regulatory authority granted under this act.

SEC. 29. The Legislative Analyst's office, in conjunction with the Franchise Tax Board, shall conduct a study of the effectiveness of the tax incentives provided by Section 12 of this act, and shall report the results of the study to the Legislature on or before December 31, 1996. The study shall address, but is not limited to, an evaluation of all of the following:

(a) The effect of Section 12 of this act on investor decisions, the amount of additional investment that occurred, and the number of additional jobs created in California as a result.

(b) An approximate distribution by industry of the qualifying small business stock investment made.

(c) The estimated state and local fiscal effect of the act.

SEC. 30. The Legislature finds and declares that, with respect to Section 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 location, facilities, and resources of Vandenberg Air Force Base, all of which establish that Vandenberg Air Force Base is uniquely suited for commercial space activities.

SEC. 31. Sections 3.5 and 17.5 of this bill incorporate amendments to Sections 17039 and 23036, respectively, of the Revenue and Taxation Code proposed by this bill and AB 57. Those sections shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 17039 and 23036 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 57, in which case Sections 17039 and 23036 of the Revenue and Taxation Code, as amended by AB 57, shall remain operative only until the operative date of this bill, at which time Sections 3.5 and 17.5 of this bill shall become operative, and Sections 3 and 17 of this bill shall not become operative.

SEC. 32. Section 9.5 of this bill incorporates amendments to Section 17276 of the Revenue and Taxation Code proposed by both this bill and AB 34. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 17276 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 34, in which case Section 17276 of the Revenue and Taxation Code, as amended by AB 34, shall remain operative only until the operative date of this bill, at which time Section 9.5 of this bill shall become operative, and Section 9 of this bill shall not become operative.

SEC. 33. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for sales and use tax revenues lost by that agency under this act.

SEC. 34. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, except as provided in Section 27, the provisions of this act

shall become operative on January 1, 1994, and shall be applied in the computation of taxes for income years beginning on or after January 1, 1994.

CHAPTER 882

An act to amend Sections 29550, 29550.1, and 29550.2 of the Government Code, relating to booking fees.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 29550 of the Government Code is amended to read:

29550. (a) Notwithstanding any other provision of law, a county may impose a fee upon a city, special district, school district, community college district, college, or university for reimbursement of county expenses incurred with respect to the booking or other processing of persons arrested by an employee of that city, special district, school district, community college district, college, or university, where the arrested persons are brought to the county jail for booking or detention. The fee imposed by a county pursuant to this section shall not exceed the actual administrative costs, including applicable overhead costs as permitted by federal Circular A-87 standards, as defined in subdivision (d), incurred in booking or otherwise processing arrested persons. A county may submit an invoice to a city, special district, school district, community college district, college, or university for these expenses incurred by the county on and after July 1, 1990. Counties shall fully disclose the costs allocated as federal Circular A-87 overhead.

(b) (1) Notwithstanding subdivision (a), a city, special district, school district, community college district, college, or university shall not be charged fees for arrests on any bench warrant for failure to appear in court, nor on any arrest warrant issued in connection with a crime not committed within the entity's jurisdiction.

(2) Notwithstanding subdivision (a), a city, special district, school district, community college district, college, or university shall not be charged fees for a person who is ordered by a court to be remanded to the county jail except that a county may charge a fee to recover those direct costs for those functions required to book a person pursuant to subdivision (g) of Section 853.6 of the Penal Code.

(3) Notwithstanding subdivision (a), a city, special district, school district, community college district, college, or university shall not be charged fees for arrests made pursuant to arrest warrants originating outside of its jurisdiction.

(4) Notwithstanding subdivision (a), no fees shall be charged to

a city, special district, school district, community college, college, or university on parole violation arrests or probation-ordered returns to custody, unless a new charge has been filed for a crime committed in the jurisdiction of the arresting city, district, college, or university.

(5) An agency making a mutual aid request shall pay fees that result from arrests made in response to the mutual aid request except that in the event the Governor declares a state of emergency, no agency shall be charged fees for any arrest made during any riot, disturbance, or event that is subject to the declaration.

(6) Notwithstanding subdivision (a), no fees shall be charged to a city, special district, school district, community college, college, or university for the arrest of a prisoner who has escaped from a county, state, or federal detention or corrections facility.

(7) Notwithstanding subdivision (a), no fees shall be charged to a city, special district, school district, community college, college, or university for arrestees held in temporary detention at a court facility for purposes of arraignment when the arrestee has been previously booked at an entity detention facility.

(8) Notwithstanding subdivision (a), no fees shall be charged to a city, special district, school district, community college, college, or university as the result of an arrest made by its officer assigned to a formal multiagency task force in which the county is a participant. For the purposes of this section, "formal task force" means a task force that has been established by written agreement of the participating agencies.

(9) In those counties where the cities and the county participate in a consolidated booking program and where prior to arraignment an arrestee is transferred from a city detention facility to a county detention facility, the city shall not be charged for those tasks listed in subdivision (d) that are a part of the consolidated booking program which were completed by the city prior to delivering the arrestee to the county detention facility. However, the county may charge the actual administrative costs for those additional tasks listed in subdivision (d) that are performed in order to receive the arrestee into the county detention facility.

(c) Any county whose officer or agent arrests a person is entitled to recover from the arrested person a criminal justice administration fee for administrative costs it incurs in conjunction with the arrest if the person is convicted of any criminal offense related to the arrest. The fee which the county is entitled to recover pursuant to this subdivision shall not exceed the actual administrative costs, including applicable overhead costs incurred in booking or otherwise processing arrested persons. A judgment of conviction may contain an order for payment of the amount of the criminal justice administration fee by the convicted person, and execution may be issued on the order in the same manner as a judgment in a civil action, but the order shall not be enforceable by contempt. The court shall, as a condition of probation, order the convicted person, based on his or her ability to pay, to reimburse the county for the criminal

justice administration fee including applicable overhead costs.

(d) As used in this section, "actual administrative costs" include only those costs for functions that are performed in order to receive an arrestee into a county detention facility. Operating expenses of the county jail facility including capitol costs and those costs involved in the housing, feeding, and care of inmates shall not be included in calculating "actual administrative costs." "Actual administrative costs" may include any one or more of the following as related to receiving an arrestee into the county detention facility:

(1) The searching, wristbanding, bathing, clothing, fingerprinting, photographing, and medical and mental screening of an arrestee.

(2) Document preparation, retrieval, updating, filing, and court scheduling related to receiving an arrestee into the detention facility.

(3) Warrant service, processing, and detainer.

(4) Inventory of an arrestee's money and creation of cash accounts.

(5) Inventory and storage of an arrestee's property.

(6) Inventory, laundry, and storage of an arrestee's clothing.

(7) The classification of an arrestee.

(8) The direct costs of automated services utilized in paragraphs (1) to (7), inclusive.

(9) Unit management and supervision of the detention function as related to paragraphs (1) to (8), inclusive.

(e) An administrative screening fee of twenty-five dollars ($25) shall be collected from each person arrested and released on his or her own recognizance upon conviction of any criminal offense related to the arrest other than an infraction. A citation processing fee in the amount of ten dollars ($10) shall be collected from each person cited and released by any peace officer in the field or at a jail facility upon conviction of any criminal offense, other than an infraction, related to the criminal offense cited in the notice to appear. However, the court may determine a lesser fee than otherwise provided in this subdivision upon a showing that the defendant is unable to pay the full amount. All fees collected pursuant to this subdivision shall be transmitted by the county auditor monthly to the Controller for deposit in the General Fund. This subdivision applies only to convictions occurring on or after the effective date of the act adding this subdivision and prior to June 30, 1996.

SEC. 2. Section 29550.1 of the Government Code is amended to read:

29550.1. Any city, special district, school district, community college district, college, university, or other local arresting agency whose officer or agent arrests a person is entitled to recover any criminal justice administration fee imposed by a county from the arrested person if the person is convicted of any criminal offense related to the arrest. A judgment of conviction shall contain an order

for payment of the amount of the criminal justice administration fee by the convicted person, and execution may be issued on the order in the same manner as a judgment in a civil action, but the order shall not be enforceable by contempt. The court shall, as a condition of probation, order the convicted person to reimburse the city, special district, school district, community college district, college, university, or other local arresting agency for the criminal justice administration fee.

SEC. 3. Section 29550.2 of the Government Code is amended to read:

29550.2. (a) Any person booked into a county jail pursuant to any arrest by any governmental entity not specified in Section 29550 or 29550.1 is subject to a criminal justice administration fee for administration costs incurred in conjunction with the arresting and booking if the person is convicted of any criminal offense relating to the arrest and booking. The fee which the county is entitled to recover pursuant to this subdivision shall not exceed the actual administrative costs, as defined in subdivision (c), including applicable overhead costs as permitted by federal Circular A 87 standards, incurred in booking or otherwise processing arrested persons. If the person has the ability to pay, a judgment of conviction shall contain an order for payment of the amount of the criminal justice administration fee by the convicted person, and execution may be issued on the order in the same manner as a judgment in a civil action, but the order shall not be enforceable by contempt. The court shall, as a condition of probation, order the convicted person to reimburse the county for the criminal justice administration fee.

(b) All fees collected by a county as provided in this section and Section 29550, may be deposited into a special fund in that county which shall be used exclusively for the operation, maintenance, and construction of county jail facilities.

(c) As used in this section, "actual administrative costs" include only those costs for functions that are performed in order to receive an arrestee into a county detention facility. Operating expenses of the county jail facility including capital costs and those costs involved in the housing, feeding, and care of inmates shall not be included in calculating "actual administrative costs." "Actual administrative costs" may include any one or more of the following as related to receiving an arrestee into the county detention facility:

(1) The searching, wristbanding, bathing, clothing, fingerprinting, photographing, and medical and mental screening of an arrestee.

(2) Document preparation, retrieval, updating, filing, and court scheduling related to receiving an arrestee into the detention facility.

(3) Warrant service, processing, and detainer.

(4) Inventory of an arrestee's money and creation of cash accounts.

(5) Inventory and storage of an arrestee's property.

(6) Inventory, laundry, and storage of an arrestee's clothing.

(7) The classification of an arrestee.

(8) The direct costs of automated services utilized in paragraphs (1) to (7), inclusive.

(9) Unit management and supervision of the detention function as related to paragraphs (1) to (8), inclusive.

(d) It is the Legislature's intent in providing the definition of "actual administrative costs" for purposes of this section that this definition be used in determining the fees for the governmental entities referenced in subdivision (a) only. In interpreting the phrases "actual administrative costs," "criminal justice administration fee," "booking," or "otherwise processing" in Section 29550 or 29550.1, it is the further intent of the Legislature that the courts shall not look to this section for guidance on what the Legislature may have intended when it enacted those sections.

SEC. 4. It is the intent of the Legislature that the courts shall not look to Sections 29550 and 29550.1 of the Government Code for guidance in determining the criteria and basis for costs for those booking fees in effect prior to January 1, 1994.

However, the Legislature also intends that all fees in effect on or enacted after January 1, 1994, shall conform to the provisions of Sections 29550 and 29550.1 of the Government Code.

CHAPTER 883

An act to add Section 42283.1 to the Education Code, relating to school finance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. The Legislature finds and declares that both the Alum Rock Union Elementary School District and the Patterson Joint Unified School District are considered to be large school districts that serve pupils from a wide and varied geographic area. Within these districts, Mt. Hamilton Elementary School and Harney Elementary School each have an enrollment of less than 300 pupils. Pupils presently attending Mt. Hamilton Elementary School and Harney Elementary School would have to travel long distances over hazardous terrain in order to attend other schools within the Alum Rock Union Elementary School District and the Patterson Joint Unified School District.

SEC. 2. Section 42283.1 is added to the Education Code, to read:

42283.1. (a) Notwithstanding any provision of this article or any other provision of law, Mt. Hamilton Elementary School and Harney

Elementary School each shall be deemed a necessary small school, as defined in Section 42283. In lieu of the amount calculated for necessary small schools, and in addition to the amount per unit of average daily attendance received by the districts, as calculated pursuant to Article 2 (commencing with Section 42238), the Alum Rock Union Elementary School District shall receive in each fiscal year, commencing with the 1993–94 fiscal year, a twenty thousand dollar ($20,000) apportionment for Mt. Hamilton Elementary School and the Patterson Joint Unified School District shall receive a twenty thousand dollar ($20,000) apportionment for Harney Elementary School.

(b) If either Mt. Hamilton Elementary School or Harney Elementary School exceeds 20 units of average daily attendance in any fiscal year, then that school shall no longer be entitled to receive the apportionments set forth in subdivision (a).

SEC. 3. Due to the unique circumstances relating to both the Alum Rock Union Elementary School District and the Patterson Joint Unified School District as set forth in Section 1 of this act, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the 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 make the apportionments available to the Alum Rock Union Elementary School District and the Patterson Joint Unified School District prior to the 1993–94 school year, it is necessary that this act take effect immediately.

CHAPTER 884

An act to add and repeal Section 42285.2 to the Education Code, relating to school finance.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. The Legislature finds and declares that the Coachella Valley Unified School District is a large school district that serves pupils from a wide and varied geographic area. Within that district, West Shores High School and Sea View Elementary School each have a pupil population of less than 300. Pupils who presently attend those schools would have to travel long distances over hazardous terrain to attend other schools within the Coachella Valley Unified School District.

SEC. 2. Section 42285.2 is added to the Education Code, to read:

42285.2. (a) Notwithstanding any other provision of law, the Coachella Valley Unified School District is eligible to receive apportionments for the Sea View Elementary School and for the West Shores High School pursuant to the schedule for necessary small high schools set forth in Section 42284.

(b) If the amount of average daily attendance of either school exceeds 300, then that school shall no longer be entitled to receive apportionments as set forth in this section.

(c) Notwithstanding any other provision of the law, the Department of Transportation shall notify the Legislature and the Secretary of State upon completion of California Department of Transportation Project Number 11-RIV-86, P.M. R22.0, 179800. After notification to the Legislature and the Secretary of State has occurred, this section shall remain in effect only until the July 1 after the then current fiscal year has elapsed, and as of that date this section is repealed.

SEC. 3. The Legislature finds and declares that due to the unique circumstances in Section 1 of this act regarding the Coachella Valley Unified School District, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

CHAPTER 885

An act to amend Section 41851 of the Education Code, relating to schools.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 41851 of the Education Code is amended to read:

41851. (a) For the 1992–93 fiscal year, from Section A of the State School Fund, the Superintendent of Public Instruction shall apportion to each school district or county superintendent of schools, as appropriate, an amount computed pursuant to this section. School districts and county superintendents of schools that provide transportation services by means of a joint powers agreement, a cooperative pupil transportation program, or a consortium shall receive transportation allowances pursuant to this section.

(b) For the 1992–93 fiscal year, each school district or county office of education shall receive a home-to-school transportation apportionment equal to the transportation allowance received in the prior fiscal year reduced by the amount of the special education transportation allowance identified pursuant to Section 41851.5.

(c) For the 1993–94 fiscal year and each fiscal year thereafter, each school district or county office of education shall receive the same home-to-school transportation allowance received in the prior fiscal year, but in no event shall that home-to-school transportation allowance exceed the prior year's approved home-to-school transportation costs, increased by the amount provided in the Budget Act.

(d) For the 1993–94 and 1994–95 fiscal years, each county unified school district for which the county board of education serves as the governing board that meets all of the following criteria shall receive an additional apportionment of three hundred fifty thousand dollars ($350,000):

(1) Over 50 percent of the pupils enrolled in the school district require home-to-school transportation services.

(2) Total enrollment of the school district is less than 3,500.

(3) Total miles driven each fiscal year for home-to-school transportation exceeds 500,000.

(e) Each county unified school district that receives an additional apportionment pursuant to subdivision (d) shall report, by September 1, 1995, on the amount of revenues received and the funds expended for the home-to-school transportation program in the 1992–93, 1993–94, and 1994–95 fiscal years. The report shall be submitted to the fiscal committees and education policy committees of the Legislature and to the Legislative Analyst.

CHAPTER 886

An act to add Sections 42238.2 and 42238.3 to the Education Code, relating to education funding.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 42238.2 is added to the Education Code, to read:

42238.2. (a) Notwithstanding Section 42238.5, a school district that experiences a decline in the number of units of average daily attendance in excess of 10 percent of its total average daily attendance as a result of the closure of a facility operated by a branch of the United States Armed Forces in that school district's boundaries shall be entitled to an adjustment to its units of average daily attendance pursuant to this section. The year preceding a decline shall be the base year.

(b) In the second year after the base year, the district average daily attendance pursuant to Section 42238.5 shall be increased by 75 percent of the difference between the base year units of average

daily attendance and the units of average daily attendance in the first year of decline. In the third year after the base year, the district average daily attendance pursuant to Section 42238.5 shall be increased by 50 percent of the difference between the base year units of average daily attendance and the units of average daily attendance in the first year of decline. The amount of money represented by these increases shall be considered a loan to the school district.

(c) (1) The Superintendent of Public Instruction, in consultation with a school district subject to this section, shall determine a schedule for repayment of the total amount loaned pursuant to this section which may not exceed 10 years. Payments shall include interest charged at a rate based on the most current investment rate of the Pooled Money Investment Account in the General Fund as of the date of the disbursement of funds to the school district.

(2) Upon written notification by the Superintendent of Public Instruction that the school district has not made one or more of the payments required by the schedule established pursuant to paragraph (1), the Controller shall withhold from Section A of the State School Fund the defaulted payment which shall not exceed the amount of any apportionment entitlement of the district to moneys in Section A of the State School Fund. In that regard, the Controller shall withhold the amount of any payment made under this subdivision, including reimbursement of the Controller's administrative costs as determined under a schedule approved by the California Debt Advisory Commission, from subsequent apportionments to the school district from Section A of the State School Fund.

(3) Any apportionments made by the Controller pursuant to paragraph (2) shall be deemed to be an allocation to the school district for purposes of subdivision (b) of Section 8 of Article XVI of the California Constitution, and for purposes of Chapter 2 (commencing with Section 41200) of Part 24.

(d) In no event shall the adjustment provided by this section cause the apportionment to a school district to exceed the amount that would otherwise be calculated for apportionment to the district pursuant to Sections 42238 and 42238.1.

(e) This section does not apply to a school district that experiences a decline in enrollment as a result of a school district reorganization pursuant to Chapter 3 (commencing with Section 35500) of Part 21 or any other law.

SEC. 2. Section 42238.3 is added to the Education Code, to read:

42238.3. (a) Any district utilizing the adjustment pursuant to Section 42238.2 may, when subdivisions (a) and (b) of Section 42238.2 are no longer applicable, adjust its revenue limit computed pursuant to Section 42238 to the statewide average revenue limit per unit of average daily attendance for its size and type of district, effective the year following the last year in which subdivisions (a) and (b) of Section 42238.2 were effective, in proportion to the

percentage of the loan that the school district has repaid pursuant to subdivision (c) of Section 42238.2.

(b) This section does not apply to a school district that experiences a decline in enrollment as a result of a school district reorganization pursuant to Chapter 3 (commencing with Section 35500) of Part 21 or any other law.

SEC. 3. When the provisions of Chapter 1261 of the Statutes of 1992 are no longer operative, relative to the adjustment of the base revenue limit for the Adelanto Elementary School District, the Adelanto Elementary School District may adjust its revenue limit computed pursuant to Section 42238 to the statewide average revenue limit per unit of average daily attendance for its size and type of district.

CHAPTER 887

An act to amend Sections 6011 and 6012 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 6011 of the Revenue and Taxation Code is amended to read:

6011. (a) "Sales price" means the total amount for which tangible personal property is sold or leased or rented, as the case may be, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

(1) The cost of the property sold.

(2) The cost of materials used, labor or service cost, interest charged, losses, or any other expenses.

(3) The cost of transportation of the property, except as excluded by other provisions of this section.

(b) The total amount for which the property is sold or leased or rented includes all of the following:

(1) Any services that are a part of the sale.

(2) Any amount for which credit is given to the purchaser by the seller.

(3) The amount of any tax imposed by the United States upon producers and importers of gasoline and the amount of any tax imposed pursuant to Part 2 (commencing with Section 7301) of this division.

(c) "Sales price" does not include any of the following:

(1) Cash discounts allowed and taken on sales.

(2) The amount charged for property returned by customers

when that entire amount is refunded either in cash or credit, but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned. For the purpose of this section, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs are refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

(3) The amount charged for labor or services rendered in installing or applying the property sold.

(4) (A) The amount of any tax (not including, however, any manufacturers' or importers' excise tax, except as provided in subparagraph (B)) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.

(B) The amount of manufacturers' or importers' excise tax imposed pursuant to Section 4091 of the Internal Revenue Code for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid.

(5) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California upon or with respect to retail sales of tangible personal property, measured by a stated percentage of sales price or gross receipts, whether imposed upon the retailer or the consumer.

(6) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California with respect to the storage, use or other consumption in that city, county, city and county, or rapid transit district of tangible personal property measured by a stated percentage of sales price or purchase price, whether the tax is imposed upon the retailer or the consumer.

(7) Separately stated charges for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, but the exclusion shall not exceed a reasonable charge for transportation by facilities of the retailer or the cost to the retailer of transportation by other than facilities of the retailer. However, if the transportation is by facilities of the retailer, or the property is sold for a delivered price, this exclusion shall be applicable solely with respect to transportation which occurs after the purchase of the property is made.

(8) Charges for transporting landfill from an excavation site to a site specified by the purchaser, either if the charge is separately stated and does not exceed a reasonable charge or if the entire consideration consists of payment for transportation.

(9) The amount of any motor vehicle, mobilehome, or commercial coach fee or tax imposed by and paid the State of

California that has been added to or is measured by a stated percentage of the sales or purchase price of a motor vehicle, mobilehome, or commercial coach.

(10) (A) The amount charged for intangible personal property transferred with tangible personal property in any technology transfer agreement, if the technology transfer agreement separately states a reasonable price for the tangible personal property.

(B) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the price at which the tangible personal property was sold, leased, or offered to third parties shall be used to establish the retail fair market value of the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(C) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has not been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the retail fair market value shall be equal to 200 percent of the cost of materials and labor used to produce the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(D) For purposes of this paragraph, "technology transfer agreement" means any agreement under which a person who holds a patent or copyright interest assigns or licenses to another person the right to make and sell a product or to use a process that is subject to the patent or copyright interest.

SEC. 2. Section 6012 of the Revenue and Taxation Code is amended to read:

6012. (a) "Gross receipts" mean the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(1) The cost of the property sold. However, in accordance with any rules and regulations as the board may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his or her vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. If that deduction is taken by the retailer, no refund or credit will be allowed to his or her vendor with respect to the sale of the property.

(2) The cost of the materials used, labor or service cost, interest paid, losses, or any other expense.

(3) The cost of transportation of the property, except as excluded

by other provisions of this section.

(4) The amount of any tax imposed by the United States upon producers and importers of gasoline and the amount of any tax imposed pursuant to Part 2 (commencing with Section 7301) of this division.

(b) The total amount of the sale or lease or rental price includes all of the following:

(1) Any services that are a part of the sale.

(2) All receipts, cash, credits and property of any kind.

(3) Any amount for which credit is allowed by the seller to the purchaser.

(c) "Gross receipts" do not include any of the following:

(1) Cash discounts allowed and taken on sales.

(2) Sale price of property returned by customers when that entire amount is refunded either in cash or credit, but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned. For the purpose of this section, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs are refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

(3) The price received for labor or services used in installing or applying the property sold.

(4) (A) The amount of any tax (not including, however, any manufacturers' or importers' excise tax, except as provided in subparagraph (B)) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.

(B) The amount of manufacturers' or importers' excise tax imposed pursuant to Section 4091 of the Internal Revenue Code for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid.

(5) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California upon or with respect to retail sales of tangible personal property measured by a stated percentage of sales price or gross receipts whether imposed upon the retailer or the consumer.

(6) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California with respect to the storage, use or other consumption in that city, county, city and county, or rapid transit district of tangible personal property measured by a stated percentage of sales price or purchase price, whether the tax is imposed upon the retailer or the consumer.

(7) Separately stated charges for transportation from the retailer's

place of business or other point from which shipment is made directly to the purchaser, but the exclusion shall not exceed a reasonable charge for transportation by facilities of the retailer or the cost to the retailer of transportation by other than facilities of the retailer. However, if the transportation is by facilities of the retailer, or the property is sold for a delivered price, this exclusion shall be applicable solely with respect to transportation which occurs after the sale of the property is made to the purchaser.

(8) Charges for transporting landfill from an excavation site to a site specified by the purchaser, either if the charge is separately stated and does not exceed a reasonable charge or if the entire consideration consists of payment for transportation.

(9) The amount of any motor vehicle, mobilehome, or commercial coach fee or tax imposed by and paid to the State of California that has been added to or is measured by a stated percentage of the sales or purchase price of a motor vehicle, mobilehome, or commercial coach.

(10) (A) The amount charged for intangible personal property transferred with tangible personal property in any technology transfer agreement, if the technology transfer agreement separately states a reasonable price for the tangible personal property.

(B) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the price at which the tangible personal property was sold, leased, or offered to third parties shall be used to establish the retail fair market value of the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(C) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has not been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the retail fair market value shall be equal to 200 percent of the cost of materials and labor used to produce the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(D) For purposes of this paragraph, "technology transfer agreement" means any agreement under which a person who holds a patent or copyright interest assigns or licenses to another person the right to make and sell a product or to use a process that is subject to the patent or copyright interest.

For purposes of the sales tax, if the retailers establish to the satisfaction of the board that the sales tax has been added to the total amount of the sale price and has not been absorbed by them, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed. Section 1656.1 of the Civil Code shall

apply in determining whether or not the retailers have absorbed the sales tax.

SEC. 3. It is the intent of the Legislature in enacting this act to clarify the application of the Sales and Use Tax Law (Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code) to technology transfer agreements, as defined. It is also the intent of the Legislature that the amendments made by this act not create any inference regarding the application of the Sales and Use Tax Law to other transactions involving the transfer of both intangible rights and property and tangible personal property.

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 for 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 888

An act to amend Section 50078.12 of, and to repeal Section 50078.11 of, the Government Code, relating to fire suppression services.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 50078.11 of the Government Code is repealed.

SEC. 2. Section 50078.12 of the Government Code is amended to read:

50078.12. If the legislative body of a local agency finds that the protest is made by holders of property interests proposed to be assessed and who will be obligated to pay the proposed assessment for fire suppression service representing more than 10 percent but less than 50 percent of the total amount of expected revenue from the assessment, and protests are not withdrawn so as to reduce the same to less than 10 percent, the proposed assessment so protested shall either be submitted to approval by a majority of the voters of the county, city, district, zone, or area of benefit voting on the proposition or abandoned.

If the value of the protests equals 50 percent or more of the total amount of expected revenue from the assessment, and protests are not withdrawn so as to reduce the same to less than 50 percent, the proposed assessment so protested shall be abandoned.

CHAPTER 889

An act to add Section 798.25.5 to the Civil Code, relating to mobilehome parks.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 798.25.5 is added to the Civil Code, to read:

798.25.5. Any rule or regulation of a mobilehome park that (a) is unilaterally adopted by the management, (b) is implemented without the consent of the homeowners, and (c) by its terms purports to deny homeowners their right to a trial by jury or which would mandate binding arbitration of any dispute between the management and homeowners shall be void and unenforceable.

CHAPTER 890

An act to amend Sections 10207 and 10235 of, and to add Section 10232.5 to, the Government Code, relating to the Legislative Counsel.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 10207 of the Government Code is amended to read:

10207. (a) The Legislative Counsel shall maintain the attorney-client relationship with each Member of the Legislature with respect to communications between the member and the Legislative Counsel except as otherwise provided by the rules of the Legislature. All materials arising out of this relationship, including but not limited to proposed bills and amendments, analyses, opinions and memoranda prepared by the Legislative Counsel, are not public records, except as otherwise provided by the rules of the Legislature or when released by the member for whom the material was prepared. When he or she determines that the public interest so requires, the Legislative Counsel may release any material arising out of the attorney-client relationship with a former Member of the Legislature who is not available to execute a release.

(b) (1) The Legislative Counsel shall maintain the attorney-client relationship with the Governor with respect to communications between the Governor and the Legislative Counsel. All materials arising out of this relationship, including, but not

limited to, legal services concerning any bill in the Governor's hands for rejection, approval, or other action, legal services concerning any legal opinion provided to the Governor, and legal services concerning any matter as the circumstances permit and the Governor requests, prepared by the Legislative Counsel, are not public records, except when released by the Governor. When he or she determines that the public interest so requires, the Legislative Counsel may release any material arising out of the attorney-client relationship with a former Governor who is not available to execute a release.

(2) Whenever the Legislature Counsel issues an opinion to the Governor analyzing the constitutionality, operation, or effect of a bill or other legislative measure that is then pending before the Legislature, or of any amendment made or proposed to be made to that bill or measure, the Legislative Counsel shall deliver two copies of the opinion to the first-named author of the bill or measure as promptly as feasible after delivery of the original opinion, and shall also deliver a copy to any other author of the bill or measure who requests a copy.

SEC. 2. Section 10232.5 is added to the Government Code, to read:

10232.5. Upon request, the Legislative Counsel may provide legal services to the State Auditor.

SEC. 3. Section 10235 of the Government Code is amended to read:

10235. (a) The Legislative Counsel shall give such consideration to and service concerning any bill in the Governor's hands for rejection, approval, or other action, as the circumstances will permit and the Governor requests.

(b) Upon request, the Legislative Counsel may provide to the Governor an opinion, orally or in writing, upon any question of law.

(c) The Legislative Counsel may provide additional legal services to the Governor concerning any matter as the circumstances permit and the Governor requests.

CHAPTER 891

An act to amend Sections 7056 and 19551 of the Revenue and Taxation Code, and to amend Section 1095 of the Unemployment Insurance Code, relating to taxation.

[Approved by Governor October 6, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 7056 of the Revenue and Taxation Code is amended to read:

7056. (a) (1) Excepting the information set forth on permits issued under Article 2 (commencing with Section 6066) of Chapter 2, the information set forth on certificates of registration issued pursuant to Section 6226, and the terms of any settlement made pursuant to Section 7093, it is unlawful for the board, any person having an administrative duty under this part or any person who obtains access to information contained in, or derived from, sales or transactions and use tax records of the board pursuant to subdivision (b), to make known in any manner whatever the business affairs, operations, or any other information pertaining to any retailer or any other person required to report to the board or pay a tax pursuant to this part, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person.

(2) It is also unlawful for any person, other than an officer or employee of a county, city and county, city, or district, who obtains access to information contained in, or derived from, sales or transactions and use tax records of the board pursuant to subdivision (b), to retain that information after that person's contract with the county, city and county, city, or district has expired.

(3) Notwithstanding paragraphs (1) and (2), the Governor may, by general or special order, authorize examination by other state officers, by tax officers of another state, by the federal government, if a reciprocal arrangement exists, by the tax officials of Mexico, if a reciprocal agreement exists, or by any other person of the records maintained by the board under this part. The information so obtained pursuant to the order of the Governor shall not be made public except to the extent and in the manner that the order may authorize that it be made public.

(b) When requested by resolution of the legislative body of any county, city and county, city, or district, the board shall permit any duly authorized officer or employee of the county, city and county, city, or district, or other person designated by that resolution, to examine all of the sales or transactions and use tax records of the board pertaining to sales or transactions and use taxes collected for the county, city and county, city, or district by the board pursuant to contract entered into between the board and the county, city and county, city, or district under the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)).

(1) The resolution shall certify that any person designated by the resolution, other than an officer or employee, meets all of the following conditions:

(A) Has an existing contract with the county, city and county, city, or district to examine those sales and use tax records.

(B) Is required by that contract to disclose information contained

in, or derived from, those sales or transactions and use tax records only to an officer or employee of the county, city and county, city, or district who is authorized by the resolution to examine the information.

(C) Is prohibited by that contract from performing consulting services for a retailer during the term of that contract.

(D) Is prohibited by that contract from retaining the information contained in, or derived from, those sales or transactions and use tax records, after that contract has expired.

(2) Information obtained by examination of board records as permitted in this subdivision shall be used only for purposes related to the collection of local sales or transactions and use taxes by the board pursuant to the contract, or for purposes related to other governmental functions of the county, city and county, city, or district set forth in the resolution.

(c) If the board believes that any information obtained pursuant to subdivision (b) has been disclosed to any person not authorized or designated by the resolution of the legislative body of the county, city and county, city, or district, or has been used for purposes not permitted by subdivision (b), then notwithstanding subdivision (b), the board may impose conditions on access to its sales and use tax records which the board considers reasonable, in order to protect the confidentiality of those records.

(d) Predecessors, successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest, and penalties.

(e) For purposes of this section, "reciprocal agreement" means a formal agreement to exchange information between national taxing officials of Mexico and taxing authorities of the State Board of Equalization, the Franchise Tax Board, and the Employment Development Department. Furthermore, the reciprocal agreement shall be limited to the exchange of information which is essential for tax administration purposes only. Taxing authorities of the State of California shall be granted tax information only on California residents. Taxing authorities of Mexico shall be granted tax information only on Mexican nationals.

SEC. 2. Section 19551 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

19551. (a) The Franchise Tax Board may permit the Commissioner of Internal Revenue of the United States, other tax officials of this state, the Multistate Tax Commission, the proper officer of any state imposing an income tax or a tax measured by income or the authorized representative of that officer, or the tax officials of Mexico, if a reciprocal agreement exists, to inspect the income tax returns of any taxpayer or partnership, or may furnish to the commission, or the officer or the authorized representative thereof an abstract of the return or supply thereto information

concerning any item of income contained in any return or disclosed by the report of any investigation of the income or return. The information shall be furnished to the Multistate Tax Commission, the federal or state officer or his or her representative, or the officials of Mexico for tax purposes only. Except when furnished pursuant to a written agreement, information furnished pursuant to this section shall be furnished only if the request is in the form of an affidavit under penalty of perjury stating that the purpose for the request relates to an investigation of the tax specified in the request and that the information will be used in the ordinary performance of the applicant's official duties.

(b) Notwithstanding subdivision (a), tax officials of political subdivisions of this state shall request information from the Franchise Tax Board by affidavit only. At the time a tax official makes the request, he or she shall provide the affected person with a copy of the affidavit and, upon request, make the information obtained available to that person.

(c) For purposes of this section, "reciprocal agreement" means a formal agreement to exchange information between national taxing officials of Mexico and taxing authorities of the State Board of Equalization, the Franchise Tax Board, and the Employment Development Department. Furthermore, the reciprocal agreement shall be limited to the exchange of information which is essential for tax administration purposes only. Taxing authorities of the State of California shall be granted tax information only on California residents. Taxing authorities of Mexico shall be granted tax information only on Mexican nationals.

SEC. 3. Section 1095 of the Unemployment Insurance Code, as amended by Chapter 295 of the Statutes of 1993, 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. Except as provided by Section 1463.007 of the Penal Code, any officer or employee of the department who discloses information in violation of this subdivision is guilty of a misdemeanor. Except as provided by Section 1463.007 of the Penal Code, any person who obtains information in violation of this subdivision is guilty of a misdemeanor.

(s) To provide the Student Aid Commission with information concerning any individuals who are delinquent or in default on guaranteed student loans or who owe repayment of funds received through other financial assistance programs administered by the

commission. The information obtained pursuant to this subdivision shall be utilized by the commission exclusively to enable the collection of defaulted loans and other funds owed, pursuant to the authority granted in Chapter 2 (commencing with Section 69500) of Part 42 of the Education Code and Chapter 1 (commencing with Section 30000) of Title 5 of the California Code of Regulations. The information released by the director for the purposes of this subdivision shall not include any employment, wage, or other information concerning any person who is receiving unemployment insurance benefits. The information shall be released to the commission only upon written request from the director of the commission or by an employee so authorized and identified by name and title by the director. The commission shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision.

(t) To provide an authorized governmental agency with any or all relevant information that relates to any specific workers' compensation insurance fraud investigation. The information shall be provided to the extent permitted by federal law and regulations. For the purposes of this subdivision, "authorized governmental agency" means the district attorney of any county, the office of the Attorney General, the Department of Industrial Relations, and the Department of Insurance. An authorized governmental agency may disclose this information to the State Bar, the Medical Board of California, or any other licensing board or department whose licensee is the subject of a workers' compensation insurance fraud investigation. This subdivision shall not prevent any authorized governmental agency from reporting to any board or department the suspected misconduct of any licensee of that body. The Department of Insurance or Department of Industrial Relations shall reimburse the department for all reasonable administrative expenses incurred relative to a request that it submits pursuant to this subdivision. Relevant information may include, but is not limited to, all of the following:

(1) Copies of unemployment and disability insurance application and claim forms and copies of any supporting medical records, documentation, and records pertaining thereto.

(2) Copies of returns filed by an employer pursuant to Section 1088 and copies of supporting documentation.

(3) Copies of benefit payment checks issued to claimants.

(4) Copies of any documentation that specifically identifies the claimant by social security number, residence address, or telephone number.

(u) To provide employment tax information to the tax officials of Mexico, if a reciprocal agreement exists. For purposes of this subdivision, "reciprocal agreement" means a formal agreement to exchange information between national taxing officials of Mexico and taxing authorities of the State Board of Equalization, the Franchise Tax Board, and the Employment Development

Department. Furthermore, the reciprocal agreement shall be limited to the exchange of information which is essential for tax administration purposes only. Taxing authorities of the State of California shall be granted tax information only on California residents. Taxing authorities of Mexico shall be granted tax information only on Mexican nationals.

SEC. 4. Section 1095 of the Unemployment Insurance Code, as amended by Chapter 295 of the Statutes of 1993, 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 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 22242 of the Education Code, with information relating to the earnings of any person who is receiving a disability allowance, or disability retirement 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 or disability retirement 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. Except as provided by Section 1463.007 of the Penal Code, any officer or employee of the department who discloses information in violation of this subdivision is guilty of a misdemeanor. Except as provided by Section 1463.007 of the Penal Code, any person who obtains information in violation of this subdivision is guilty of a misdemeanor.

(s) To provide the Student Aid Commission with information concerning any individuals who are delinquent or in default on guaranteed student loans or who owe repayment of funds received through other financial assistance programs administered by the commission. The information obtained pursuant to this subdivision shall be utilized by the commission exclusively to enable the collection of defaulted loans and other funds owed, pursuant to the authority granted in Chapter 2 (commencing with Section 69500) of Part 42 of the Education Code and Chapter 1 (commencing with Section 30000) of Title 5 of the California Code of Regulations. The information released by the director for the purposes of this subdivision shall not include any employment, wage, or other information concerning any person who is receiving unemployment insurance benefits. The information shall be released to the commission only upon written request from the director of the commission or by an employee so authorized and identified by name and title by the director. The commission shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision.

(t) To provide an authorized governmental agency with any or all relevant information that relates to any specific workers' compensation insurance fraud investigation. The information shall be provided to the extent permitted by federal law and regulations. For the purposes of this subdivision, "authorized governmental

agency" means the district attorney of any county, the office of the Attorney General, the Department of Industrial Relations, and the Department of Insurance. An authorized governmental agency may disclose this information to the State Bar, the Medical Board of California, or any other licensing board or department whose licensee is the subject of a workers' compensation insurance fraud investigation. This subdivision shall not prevent any authorized governmental agency from reporting to any board or department the suspected misconduct of any licensee of that body. The Department of Insurance or Department of Industrial Relations shall reimburse the department for all reasonable administrative expenses incurred relative to a request that it submits pursuant to this subdivision. Relevant information may include, but is not limited to, all of the following:

(1) Copies of unemployment and disability insurance application and claim forms and copies of any supporting medical records, documentation, and records pertaining thereto.

(2) Copies of returns filed by an employer pursuant to Section 1088 and copies of supporting documentation.

(3) Copies of benefit payment checks issued to claimants.

(4) Copies of any documentation that specifically identifies the claimant by social security number, residence address, or telephone number.

(u) To provide employment tax information to the tax officials of Mexico, if a reciprocal agreement exists.

For purposes of this subdivision, "reciprocal agreement" means a formal agreement to exchange information between national taxing officials of Mexico and taxing authorities of the State Board of Equalization, the Franchise Tax Board, and the Employment Development Department. Furthermore, the reciprocal agreement shall be limited to the exchange of information which is essential for tax administration purposes only. Taxing authorities of the State of California shall be granted tax information only on California residents. Taxing authorities of Mexico shall be granted tax information only on Mexican nationals.

SEC. 5. Section 4 of this bill incorporates amendments to Section 1095 of the Unemployment Insurance Code proposed by both this bill and SB 857. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 1095 of the Unemployment Insurance Code, and (3) this bill is enacted after SB 857, in which case Section 3 of this bill shall not become operative.

CHAPTER 892

An act to amend Sections 358.1, 361.3, 361.5, 366.21, 366.22, 366.25, and 366.26 of the Welfare and Institutions Code, relating to minors.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 358.1 of the Welfare and Institutions Code is amended to read:

358.1. Each social study or evaluation made by a probation officer or child advocate appointed by the court, required to be received in evidence pursuant to Section 358 shall include, but not be limited to, a factual discussion of each of the following subjects:

(a) Whether the county welfare department or probation officer has considered child protective services, as defined in Chapter 5 (commencing with Section 16500) of Part 4 of Division 9, as a possible solution to the problems at hand, and has offered these services to qualified parents if appropriate under the circumstances.

(b) What plan, if any, for return of the child is recommended to the court by the county welfare department or probation officer.

(c) Whether the best interests of the minor will be served by granting reasonable visitation rights with the minor to his or her grandparents, in order to maintain and strengthen the minor's family relationships.

(d) Whether the subject child appears to be a person who is eligible to be considered for further court action to free the child from parental custody and control.

(e) The appropriateness of any relative placement pursuant to Section 361.3; however, this consideration shall not be cause for continuance of the dispositional hearing.

SEC. 2. Section 361.3 of the Welfare and Institutions Code is amended to read:

361.3. (a) In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative. In determining whether placement with a relative is appropriate, the county social worker and court shall consider, but shall not be limited to, consideration of the following factors:

(1) The best interests of the child, including special physical, psychological, or emotional needs.

(2) The wishes of the parent.

(3) The provisions of Part 6 (commencing with Section 7950) of Division 12 of the Family Code regarding relative placement.

(4) Placement of siblings and half-siblings in the same home, if such a placement is found to be in the best interest of each of the

children.

(5) The good moral character of the relative.

(6) The ability of the relative to do the following:

(A) Provide a secure and stable environment for the child.

(B) Exercise proper and effective care and control of the child.

(C) Provide a home and the necessities of life for the child.

(D) Protect the child from his or her parents.

(E) Facilitate court-ordered reunification efforts with the parents.

(F) Facilitate visitation with the child's other relatives.

In this regard, the Legislature declares that a physical disability, such as blindness or deafness, is no bar to the raising of children, and a county social worker's determination as to the ability of a disabled relative to exercise care and control should center upon whether the relative's disability prevents him or her from exercising care and control. The county social worker shall ask the parents if there are any relatives that should be considered for placement. This inquiry shall not be construed, however, to guarantee that the minor will be placed with any person so identified. The county social worker shall further investigate the existence of other relatives for possible placement and document these efforts in the social study prepared pursuant to Section 358.1. However, this investigation shall not be construed as good cause for continuance of the dispositional hearing conducted pursuant to Section 358.

(b) In any case in which more than one appropriate relative requests preferential consideration pursuant to this section, each relative shall be considered under the factors enumerated in subdivision (a).

(c) For purposes of this section:

(1) "Preferential consideration" means that the relative seeking placement shall be the first placement to be considered and investigated.

(2) "Relative" means an adult who is a grandparent, aunt, uncle, or sibling.

(d) Subsequent to the hearing conducted pursuant to Section 358, whenever a new placement of the minor must be made, consideration for placement shall again be given as described in this section to relatives who have not been found to be unsuitable and who will fulfill the minor's reunification or permanent plan requirements. In addition to the factors described in subdivision (a), the county social worker shall consider whether the relative has established and maintained a relationship with the minor.

SEC. 2.5. Section 361.3 of the Welfare and Institutions Code is amended to read:

361.3. (a) In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative. In determining whether placement with a relative is appropriate, the county social

worker and court shall consider, but shall not be limited to, consideration of the following factors:

(1) The best interests of the child, including special physical, psychological, or emotional needs.

(2) The wishes of the parent.

(3) The provisions of Part 6 (commencing with Section 7950) of Division 12 of the Family Code regarding relative placement.

(4) Placement of siblings and half-siblings in the same home, if such a placement is found to be in the best interest of each of the children.

(5) The good moral character of the relative.

(6) The ability of the relative to do the following:

(A) Provide a secure and stable environment for the child.

(B) Exercise proper and effective care and control of the child.

(C) Provide a home and the necessities of life for the child.

(D) Protect the child from his or her parents.

(E) Facilitate court-ordered reunification efforts with the parents.

(F) Facilitate visitation with the child's other relatives.

In this regard, the Legislature declares that a physical disability, such as blindness or deafness, is no bar to the raising of children, and a county social worker's determination as to the ability of a disabled relative to exercise care and control should center upon whether the relative's disability prevents him or her from exercising care and control. The county social worker shall ask the parents if there are any relatives that should be considered for placement. This inquiry shall not be construed, however, to guarantee that the minor will be placed with any person so identified. The county social worker shall further investigate the existence of other relatives for possible placement and document these efforts in the social study prepared pursuant to Section 358.1. However, this investigation shall not be construed as good cause for continuance of the dispositional hearing conducted pursuant to Section 358.

(b) In any case in which more than one appropriate relative requests preferential consideration pursuant to this section, each relative shall be considered under the factors enumerated in subdivision (a).

(c) For purposes of this section:

(1) "Preferential consideration" means that the relative seeking placement shall be the first placement to be considered and investigated.

(2) "Relative" means an adult who is a grandparent, aunt, uncle, or sibling.

(d) Subsequent to the hearing conducted pursuant to Section 358, whenever a new placement of the minor must be made, consideration for placement shall again be given as described in this section to relatives who have not been found to be unsuitable and who will fulfill the minor's reunification or permanent plan requirements. In addition to the factors described in subdivision (a),

the county social worker shall consider whether the relative has established and maintained a relationship with the minor.

(e) If the court does not place the child with a relative who has been considered for placement pursuant to this section, the court shall state for the record the reasons placement with that relative was denied.

SEC. 3. Section 361.5 of the Welfare and Institutions Code is amended to read:

361.5. (a) Except as provided in subdivision (b), whenever a minor is removed from a parent's or guardian's custody, the juvenile court shall order the probation officer to provide child welfare services to the minor and the minor's parents or guardians for the purpose of facilitating reunification of the family within a maximum time period not to exceed 12 months. The court also shall make findings pursuant to subdivision (a) of Section 366. When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the child. Services may be extended up to an additional six months if it can be shown that the objectives of the service plan can be achieved within the extended time period. Physical custody of the minor by the parents or guardians during the 18-month period shall not serve to interrupt the running of the period. If at the end of the 18-month period, a child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

Except in cases where, pursuant to subdivision (b), the court does not order reunification services, the court shall inform the parent or parents of Section 366.25 or 366.26 and shall specify that the parent's or parents' parental rights may be terminated.

(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following:

(1) That the whereabouts of the parent or guardian is unknown. A finding pursuant to this paragraph shall be supported by an affidavit or by proof that a reasonably diligent search has failed to locate the parent or guardian. The posting or publication of notices is not required in that search.

(2) That the parent or guardian is suffering from a mental disability that is described in Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services.

(3) That the minor had been previously adjudicated a dependent pursuant to any subdivision of Section 300 as a result of physical or sexual abuse, that following that adjudication the minor had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the minor has been returned to the custody of the

parent or parents or guardian or guardians from whom the minor had been taken originally, and that the minor is being removed pursuant to Section 361, due to additional physical or sexual abuse. However, this section is not applicable if the jurisdiction of the juvenile court has been dismissed prior to the additional abuse.

(4) That the parent or guardian of the minor has been convicted of causing the death of another child through abuse or neglect.

(5) That the minor was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian.

(6) That the minor has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse or the infliction of severe physical harm by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian.

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the child, or between the child and another person or animal with the actual or implied consent of, and for the financial gain or other advantage of, the parent or guardian; or the penetration or manipulation of the child's genital organs or rectum by any animate or inanimate object, for the sexual gratification of the parent or guardian, or for the sexual gratification of another person with the actual or implied consent of, and for the financial gain or other advantage of, the parent or guardian.

A finding of the infliction of severe physical harm, for the purposes of this subdivision, may be based on, but is not limited to, deliberate and serious injury inflicted to or on a child's body by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the child in a closed space; or any other torturous act or omission which would be reasonably understood to cause serious emotional damage.

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The probation officer shall prepare a report which discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within 12 months.

When paragraph (3), (4), or (5), inclusive, of subdivision (b) is applicable, the court shall not order reunification unless it finds that, based on competent testimony, those services are likely to prevent

reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The probation officer shall investigate the circumstances leading to the removal of the minor and advise the court whether there are circumstances which indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the minor may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the minor, the court shall order the probation officer to provide family reunification services in accordance with this subdivision. However, the time limits specified in subdivision (a) and Section 366.25 are not tolled by the parent's absence.

(e) (1) If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the minor. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of crime or illness, the degree of detriment to the child if services are not offered and, for minors 10 years of age or older, the minor's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services are subject to the 18-month limitation imposed in subdivision (a). Services may include, but shall not be limited to, all of the following:

(A) Maintaining contact between parent and child through collect phone calls.

(B) Transportation services, where appropriate.

(C) Visitation services, where appropriate.

(D) Reasonable services to extended family members or foster parents providing care for the child if the services are not detrimental to the child.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) The presiding judge of the juvenile court of each county may

convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the minor pursuant to Section 2625 of the Penal Code.

(3) Notwithstanding any other provision of law, if the incarcerated parent is a woman seeking to participate in the community treatment program operated by the Department of Corrections pursuant to Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of the Penal Code, the court shall determine whether the parent's participation in a program is in the child's best interest and whether it is suitable to meet the needs of the parent and child.

(f) If a court, pursuant to paragraph (2), (3), (4), (5), or (6) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall conduct a hearing pursuant to Section 366.25 or 366.26 within 120 days of the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to subdivision (a). The court may continue to permit the parent to visit the minor unless it finds that visitation would be detrimental to the minor.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.25 or 366.26 it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment which shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the minor and his or her parents since the time of placement.

(3) An evaluation of the minor's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the minor to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the minor concerning placement and the adoption or guardianship, unless the minor's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the minor will be adopted if

parental rights are terminated.

(h) In determining whether reunification services will benefit the child pursuant to paragraph (6) of subdivision (b), the court shall consider any information it deems relevant, including the following factors:

(1) The specific act or omission comprising the severe sexual abuse or the severe physical harm inflicted on the child.

(2) The circumstances under which the abuse or harm was inflicted on the child.

(3) The severity of the emotional trauma suffered by the child.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 18 months with no continuing supervision.

(6) Whether or not the child desires to be reunified with the offending parent or guardian.

(i) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the child.

SEC. 4. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing, of their right to be present and represented by counsel.

(b) Except as provided in Section 366.23 and subdivision (a) of Section 366.3, notice of the hearing shall be mailed by the probation officer to the same persons as in the original proceeding, to the minor's parent or guardian, to the foster parents, community care facility, or foster family agency having physical custody of the minor in the case of a minor removed from the physical custody of his or her parent or guardian, and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued. Service of a copy of the notice personally or by certified mail return receipt requested, or any other form of actual notice is equivalent to service by first-class mail.

The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the minor being recommended by the supervising agency. The notice to the foster parent shall indicate that the foster parent may attend all hearings or may submit any information he or she deems relevant to

the court in writing.

(c) At least 10 calendar days prior to the hearing the probation officer shall file a supplemental report with the court regarding the services provided or offered to the parents to enable them to assume custody, the progress made, and, where relevant, the prognosis for return of the minor to the physical custody of his or her parent or guardian, and make his or her recommendation for disposition. If the recommendation is not to return the minor to a parent, the report shall specify why the return of the minor would be detrimental to the minor. The probation officer shall provide the parent or parents with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a minor removed from the physical custody of his or her parent or guardian, the probation officer shall provide a summary of his or her recommendation for disposition to the counsel for the minor, any court appointed child advocate, foster parents, community care facility, or foster family agency having the physical custody of the minor at least 10 calendar days before the hearing.

(d) Prior to any hearing involving a minor in the physical custody of a community care facility or foster family agency that may result in the return of the minor to the physical custody of his or her parent or guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to such a hearing involving a minor in the physical custody of a foster parent, the foster parent may file with the court a report containing its recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the minor to the physical custody of his or her parents or guardians unless, by a preponderance of the evidence, it finds that the return of the child would create a substantial risk of detriment to the physical or emotional well-being of the minor. The probation department shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in any court-ordered treatment programs shall constitute prima facie evidence that return would be detrimental. In making its determination, the court shall review the probation officer's report, shall review and consider the report and recommendations of any child advocate appointed pursuant to Section 356.5, and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she cooperated and availed himself or herself of services provided; shall make appropriate findings pursuant to subdivision (a) of Section 366; and where relevant, shall order any additional services reasonably believed to facilitate the return of the minor to the custody of his or her parent or guardian. The court shall also inform the parent or guardian that if the minor cannot be returned

home by the next review hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the minor was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the minor had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (a) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or guardian, provided that the court may modify the terms and conditions of those services. If the child is not returned to his or her parent or guardian, the court shall determine whether reasonable services have been provided or offered to the parent or guardian which were designed to aid the parent or guardian in overcoming the problems which led to the initial removal and the continued custody of the minor. The court shall order that those services be initiated or continued.

(f) At the review hearing held 12 months after the initial dispositional hearing, the court shall order the return of the minor to the physical custody of his or her parent or guardian unless, by a preponderance of the evidence, it finds that return of the child would create a substantial risk of detriment to the physical or emotional well-being of the minor. The probation department shall have the burden of establishing that detriment. The court shall also determine whether reasonable services have been provided or offered to the parent or parents which were designed to aid the parent or guardian to overcome the problems which led to the initial removal and continued custody of the minor. The failure of the parent or guardian to participate regularly in any court-ordered treatment programs shall constitute prima facie evidence that the return would be detrimental. In making its determination, the court shall review the probation officer's report and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she cooperated and availed himself or herself of services provided. If the minor is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If a minor is not returned to the custody of a parent or guardian at the hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for another review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or guardian. The court shall continue the case only if it finds that there is a substantial probability that the minor will be returned to the physical custody of his or her parent or guardian within six months or that reasonable services have not been provided to the parent or guardian. The court shall inform the parent or guardian that if the minor cannot be returned home by the next review hearing, a permanent plan shall be developed at that hearing. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or guardian.

(2) Order that the minor remain in long-term foster care, if the court finds by clear and convincing evidence, based upon the evidence already presented to it, that the minor is not adoptable and has no one willing to accept legal guardianship.

(3) Order that a hearing be held within 120 days, pursuant to Section 366.26, if there is clear and convincing evidence that reasonable services have been provided or offered to the parents.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent. The court shall continue to permit the parent to visit the minor pending the hearing unless it finds that visitation would be detrimental to the minor.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment which shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the minor and his or her parents since the time of placement.

(3) An evaluation of the minor's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the minor to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship,

and a statement from the minor concerning placement and the adoption or guardianship, unless the minor's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

An analysis of the likelihood that the minor will be adopted if parental rights are terminated.

(j) This section shall apply to minors made dependents of the court pursuant to subdivision (c) of Section 360 on or after January 1, 1989.

SEC. 5. Section 366.22 of the Welfare and Institutions Code is amended to read:

366.22. (a) When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the court, at the 18-month hearing, shall order the return of the minor to the physical custody of his or her parent or guardian unless, by a preponderance of the evidence, it finds that return of the child would create a substantial risk of detriment to the physical or emotional well-being of the minor. The probation department shall have the burden of establishing the detriment. The failure of the parent or guardian to participate regularly in any court-ordered treatment programs shall constitute prima facie evidence that return would be detrimental. In making its determination, the court shall review the probation officer's report and shall review and consider the report and recommendations of any child advocate appointed pursuant to Section 356.6 and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she cooperated and availed himself or herself of services provided. If the minor is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that return would be detrimental.

If the minor is not returned to a parent or guardian at the 18-month hearing, the court shall develop a permanent plan. The court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the minor. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it that the minor is not adoptable and has no one willing to accept legal guardianship, the court may order that the minor remain in long-term foster care. The hearing shall be held no later than 120 days from the date of the 18-month hearing. The court shall also order termination of reunification services to the parent. The court shall continue to permit the parent to visit the minor unless it finds that visitation would be detrimental to the minor. The court shall determine whether reasonable services have been offered or provided to the parent or guardian.

(b) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties

which are not served by a county adoption agency, to prepare an assessment which shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the minor and his or her parents or other members of his or her extended family since the time of placement. Although the extended family of each minor shall be reviewed on a case-by-case basis, "extended family" for the purposes of this paragraph shall include, but not be limited to, the minor's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the minor's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the minor to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the minor concerning placement and the adoption or guardianship, unless the minor's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the minor will be adopted if parental rights are terminated.

SEC. 6. Section 366.25 of the Welfare and Institutions Code is amended to read:

366.25. (a) In order to provide stable, permanent homes for children, a court shall, if the minor cannot be returned home pursuant to subdivision (e) of Section 366.2, conduct a hearing to make a determination regarding the future status of the minor no later than 12 months after the original dispositional hearing in which the child was removed from the custody of his or her parent, parents, or guardians, and in no case later than 18 months from the time of the minor's original placement pursuant to Section 319 or 16507.4 and periodically, but no less frequently than once each 18 months, thereafter during the continuation of foster care. The hearing may be combined with the six months' review as provided for in Section 366. In the case of a minor who comes within subdivision (b) of Section 361.5 and for whom the court has found that reunification services should not be provided, a hearing shall be held pursuant to Section 361.5.

(b) Notice of the proceeding to conduct the review shall be mailed by the probation officer to the same persons as in an original proceeding, to the minor's present custodian, and to the counsel of record, by certified mail addressed to the last known address of the

person to be notified, or shall be personally served on those persons not earlier than 30 days, nor later than 15 days prior to the date the review is to be conducted.

(c) Except in cases where permanency planning is conducted pursuant to Section 361.5, the court shall first determine at the hearing whether the minor should be returned to his or her parent or guardian, pursuant to subdivision (e) of Section 366.2. If the minor is not returned to the custody of his or her parent or guardian the court shall determine whether there is a substantial probability that the minor will be returned to the physical custody of his or her parent or guardian within six months. If the court so determines it shall set another review hearing for not more than six months, which shall be a hearing pursuant to this section.

(d) If the court determines that the minor cannot be returned to the physical custody of his or her parent or guardian and that there is not a substantial probability that the minor will be returned within six months, the court shall develop a permanent plan for the minor. In order to enable the minor to obtain a permanent home the court shall make the following determinations and orders:

(1) If the court finds that it is likely that the minor can or will be adopted, the court shall authorize the appropriate county or state agency to proceed to free the minor from the custody and control of his or her parents or guardians pursuant to Part 4 (commencing with Section 7800) of Division 12 of the Family Code unless the court finds that any of the following conditions exist:

(A) The parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing this relationship.

(B) A minor 12 years of age or older objects to termination of parental rights.

(C) The minor's foster parents, including relative caretakers, are unable to adopt the minor because of exceptional circumstances which do not include an unwillingness to accept legal responsibility for the minor, but are willing and capable of providing the minor with a stable and permanent environment and the removal of the minor from the physical custody of his or her foster parents would be seriously detrimental to the emotional well-being of the minor.

(2) If the court finds that it is not likely that the minor can or will be adopted or that one of the conditions in subparagraph (A), (B), or (C) of paragraph (1) applies, the court shall order the appropriate county department to initiate or facilitate the placement of the minor in a home environment that can be reasonably expected to be stable and permanent. This may be accomplished by initiating legal guardianship proceedings or long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. When the minor is in a foster home and the foster parents, including relative caretakers, are willing and capable of providing a stable and permanent environment, the minor shall not be removed

from the home if the removal would be seriously detrimental to the emotional well-being of the minor because the minor has substantial psychological ties to the foster parents. The court shall also make orders for visitation with the parents or guardians unless the court finds by a preponderance of evidence that the visitation would be detrimental to the physical or emotional well-being of the minor.

(3) (A) If the court finds that it is not likely that the minor can or will be adopted, that there is no suitable adult available to become the legal guardian of the minor, and that there are no suitable foster parents except certified homes available to provide the minor with a stable and permanent environment, the court may order the care, custody, and control of the minor transferred from the county welfare department or probation department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director or chief probation officer regarding the suitability of such a transfer. The transfer shall be subject to further court orders.

(B) The licensed foster family agency shall only use a suitable licensed or other family home which has been certified by the agency as meeting licensing standards. When the care, custody, and control has been transferred to a foster family agency, it shall be responsible for supporting the minor and for providing appropriate services to the minor, including those services ordered by the court. Responsibility for support of the minor shall not in and of itself create liability on the part of the foster family agency to third persons injured by the minor. Those minors whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(C) Subsequent reviews for these minors shall be conducted every six months by the court. The licensed foster family agency shall be required to submit reports for each minor in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the minor's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the minor.

(e) The proceeding for the appointment of a guardian for a minor who is a dependent child of the juvenile court shall be in the juvenile court. The court shall receive into evidence a report and recommendation concerning the proposed guardianship. The report shall include, but not be limited to, a discussion of all of the following:

(1) A social history of the proposed guardian, including screening for criminal records and prior referrals for child abuse or neglect.

(2) A social history of the minor, including an assessment of any identified developmental, emotional, psychological, or educational needs, and the capability of the proposed guardian to meet those needs.

(3) The relationship of the minor to the proposed guardian, the duration and character of the relationship, the motivation for seeking

guardianship rather than adoption, the proposed guardian's long-term commitment to provide a stable and permanent home for the minor, and a statement from the minor concerning the proposed guardianship.

(4) The plan, if any, for the natural parents for continued involvement with the minor.

(5) The proposed guardian's understanding of the legal and financial rights and responsibilities of guardianship.

The report shall be read and considered by the court prior to ruling on the petition for guardianship, and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding.

(f) Physical custody of a minor by his or her parents or guardians for insubstantial periods during the 12-month period prior to a permanency planning hearing shall not serve to interrupt the running of those periods.

(g) Notwithstanding any other provision of law, the application of any person who, as a foster parent, including relative caretakers, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the foster parent and removal from the foster parent would be seriously detrimental to the child's well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(h) Subsequent hearings need not be held if (1) the child has been freed for adoption and placed in the adoptive home identified in the previous hearing and is awaiting finalization of the adoption or (2) the child is the ward of a guardian.

(i) This section applies to minors adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 prior to January 1, 1989.

(j) An order by the court that authorizes the filing of a petition to terminate parental rights pursuant to Part 4 (commencing with Section 7800) of Division 12 of the Family Code or that authorizes the initiation of guardianship proceedings is not an appealable order but may be the subject of review by extraordinary writ.

SEC. 7. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. For minors who are

adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the minor while the minor is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all minors who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these minors, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties present, and then shall do one of the following:

(1) Permanently sever the rights of the parent or parents and order that the child be placed for adoption.

(2) Without permanently terminating parental rights, identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 90 days.

(3) Without permanently terminating parental rights, appoint a legal guardian for the minor and issue letters of guardianship.

(4) Order that the minor be placed in long-term foster care, subject to the regular review of the juvenile court.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) At the hearing the court shall proceed pursuant to one of the following procedures:

(1) The court shall terminate parental rights only if it determines by clear and convincing evidence that it is likely that the minor will be adopted. If the court so determines, the findings pursuant to subdivision (b) or paragraph 1 of subdivision (e) of Section 361.5 that reunification services shall not be offered, or the findings pursuant to subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or pursuant to Section 366.21 or 366.22 that a minor cannot or should not be returned to his or her parent or guardian, shall then constitute a sufficient basis for termination of parental rights unless the court finds that termination would be detrimental to the minor due to one of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing the relationship.

(B) A minor 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption

is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The minor is living with a relative or foster parent who is unable or unwilling to adopt the minor because of exceptional circumstances, which do not include an unwillingness to accept legal responsibility for the minor, but who is willing and capable of providing the minor with a stable and permanent environment and the removal of the minor from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the minor.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the minor pursuant to paragraph (1) and that the minor has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 90 days. During this 90-day period, the public agency responsible for seeking adoptive parents, for each child shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 90-day period, the public agency shall conduct the search for adoptive parents pursuant to Section 8708 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (3), or (4) of subdivision (b). For purposes of this section, a minor may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the minor because of the minor's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the minor is the age of seven years or more.

(4) If the court finds that adoption of the minor or termination of parental rights is not in the interests of the minor, or that one of the conditions in subparagraph (A), (B), (C), or (D) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the minor or order that the minor remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. When the minor is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the minor shall not be removed from the home if the court finds the

removal would be seriously detrimental to the emotional well-being of the minor because the minor has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the minor.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the minor with a stable and permanent environment, the court may order the care, custody, and control of the minor transferred from the county welfare department or probation department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director or chief probation officer regarding the suitability of such a transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the minor in a suitable licensed or exclusive-use home which has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the minor and for providing appropriate services to the minor, including those services ordered by the court. Responsibility for the support of the minor shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the minor. Those minors whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a minor who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanency plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) At the beginning of any proceeding pursuant to this section, if the minor or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the minor require the appointment of counsel. If the court finds that the interests of the minor do require this protection, the court shall appoint counsel to represent the minor. If the court finds that the interests of the minor require the representation of counsel, counsel shall be appointed whether or not the minor is able to afford counsel. The minor shall not be present in court unless the minor so requests

or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the minor and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the minor, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(f) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(g) At all termination proceedings, the court shall consider the wishes of the child and shall act in the best interests of the child.

The testimony of the minor may be taken in chambers and outside the presence of the minor's parent or parents if the minor's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The minor is likely to be intimidated by a formal courtroom setting.

(3) The minor is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the minor may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a minor also may be taken in chambers and outside the presence of the guardian or guardians of a minor under the circumstances specified in this subdivision.

(h) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the minor person, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making such an order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(i) If the court, by order or judgment declares the minor free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the minor referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, no petition for adoption may be granted until the appellate rights of the natural parents have been exhausted. The

State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the minor and shall be entitled to the exclusive care and control of the minor at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the minor, who shall serve until the minor is adopted.

(j) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(k) An order by the court directing that a hearing pursuant to this section be held is not an appealable order, but may be the subject of review by extraordinary writ.

SEC. 8. Section 2.5 of this bill incorporates amendments to Section 361.3 of the Welfare and Institutions Code proposed by both this bill and SB 270. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 361.3 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 270, in which case Section 2 of this bill shall not become operative.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the 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 repeal and add Part 13 (commencing with Section 22000) of the Education Code, relating to the State Teachers' Retirement System.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Part 13 (commencing with Section 22000) of the Education Code is repealed.

SEC. 2. Part 13 (commencing with Section 22000) is added to the Education Code, to read:

PART 13. STATE TEACHERS' RETIREMENT SYSTEM

CHAPTER 1. GENERAL PROVISIONS

22000. This part shall be known and may be cited as the State Teachers' Retirement Law and may be known and cited as the E. Richard Barnes Act.

22001. In order to provide a financially sound plan for the retirement, with adequate retirement allowances, of teachers in the public schools of this state, teachers in schools supported by this state, and other persons employed in connection with the schools, the State Teachers' Retirement System is established. The system is a unit of the State and Consumer Services Agency.

22002. The Legislature recognizes that the assets of the State Teachers' Retirement System are insufficient to meet the obligations of that system already accrued or to accrue in the future in respect to service credited to members of that system prior to July 1, 1972. Therefore, the Legislature declares the following policies in respect to the financing of the State Teachers' Retirement System:

(a) Members shall be required to contribute a percentage of salaries earned.

(b) The employing agencies shall contribute a percentage of total salaries on which member contributions are based.

(c) The state shall contribute a sum certain for a given number of years for the purpose of payment of benefits.

22003. The revision of the State Teachers' Retirement Law, enacted at the 1971 and 1972 Regular Sessions of the Legislature, shall not be construed to affect benefits of persons retired prior to July 1, 1972, or their beneficiaries, except as specifically provided.

22004. If the provisions of this part 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.

22005. The right of a person to a pension, retirement allowance, return of contributions, any optional benefit, or any other right accrued or accruing to any person under this part is exempt from taxation, including any inheritance tax, whether state, county, municipal, or district.

22006. The right of a person to an annuity, a retirement salary, or a retirement allowance, to the return of contributions, the annuity, retirement salary, or retirement allowance itself, any optional benefit, any other right or benefit accrued or accruing to any person under this part, and the moneys in the fund created under this part are not subject to execution or any other process whatsoever, except to the extent permitted by Section 704.110 of the Code of Civil Procedure, and are unassignable except as specifically provided in this part.

22007. The obligations of any member of this system, or the member's beneficiaries, to this system continue throughout membership, and thereafter until all of the obligations of this system to or in respect to the member or the member's beneficiaries have been discharged.

22008. For the purposes of payments into or out of the retirement fund for adjustments of errors or omissions, the period of limitation of actions shall be applied, except as provided in Sections 23302 and 24613, as follows:

(a) No action may be commenced by or against the board or the system three years after all obligations to or on behalf of the member, former member, disabilitant, retirant, or beneficiary have been discharged.

(b) In cases where the system makes an error resulting in incorrect payment to a member, disabilitant, retirant, beneficiary, child, or dependent parent, the system's right to commence recovery shall expire three years from the date of payment.

(c) In cases where payment is erroneous due to lack of information or inaccurate information regarding the eligibility of a member, disabilitant, retirant, beneficiary, child, or dependent parent to receive benefits under this part, the period of limitation shall commence with the discovery of the erroneous payment.

(d) Notwithstanding any other provision of this section, where any erroneous payment has been made on the basis of fraud or intentional misrepresentation by a member, disabilitant, retirant, beneficiary, or other party in relation to or on behalf of a member, disabilitant, retirant, or beneficiary, the three-year period of limitation shall not be deemed to commence or to have commenced until the discovery of the error or omissions.

(e) The collection of overpayments under subdivisions (b), (c), and (d) shall be made pursuant to Section 24617.

22009. If any provision of this part or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this part that can be given effect without the invalid provision or application, and to this end the provisions of this part are severable.

CHAPTER 2. DEFINITIONS

22100. Unless the context otherwise requires, the definitions set forth in this chapter govern the construction of this part.

22101. "Accumulated annuity deposit contributions" means the sum of all the annuity deposits standing to the credit of the member's account, together with credited interest.

22102. "Accumulated retirement contributions" means the sum of all member contributions and all member contributions paid by the employer pursuant to Sections 22903 and 22904 with credited interest and does not include accumulated annuity deposit contributions and accumulated tax-sheltered annuity contributions.

22103. "Accumulated tax-sheltered annuity contributions" means the tax-sheltered contributions made by a member and standing to the credit of the member's account, together with credited interest.

22104. "Actuarial equivalent" means an allowance of equal value when computed upon the basis of such tables and interest rates that are adopted by the board.

22105. "Annuity" means payments for life derived from the "accumulated annuity deposit contributions" of a member.

22106. "Annuity deposit contributions" means additional contributions made by a member above those required for credited service for the purpose of providing additional retirement income.

22107. "Beneficiary" means any person or entity receiving or entitled to receive allowances and payments pursuant to this part because of the death of member, disabilitant, or retirant.

22108. "Benefits" means any monthly payment due a retirant, disabilitant, or other beneficiary, and includes lump-sum payments due on account of death.

22109. "Board" means the Teachers' Retirement Board.

22110. "California service" means service performed in California for which credit may be given.

22111. (a) "Child" or "children" under the disability allowance and family allowance programs means any of the following:

(1) The unmarried offspring of a member under 18 years of age, not adopted by a person other than the spouse, and dependent upon the member on the effective date of disability allowance or death. Offspring shall include a child who is born within the 10-month period commencing on the effective date of the earlier of disability allowance or death.

(2) The unmarried child, under 18 years of age, adopted by the member, and dependent upon the member on the effective date of

disability allowance or death.

(3) The unmarried stepchild of the member, under 18 years of age, and dependent upon the member on the effective date of disability allowance or death.

(4) The dependent unmarried child described in paragraph (1), (2), or (3) who is under 22 years of age and who is registered as a full-time student, as defined in Section 22138, on the effective date of disability allowance or death. A dependent unmarried child who is a full-time student in the month of attaining age 22 years, shall be deemed not to have attained that age until the first day of the month following the end of the school quarter or semester that was in progress in the month of attainment of age 22 years.

(b) For those members receiving a disability allowance and who subsequently die, the maximum number of children for family benefits shall be those who were eligible on the effective date of disability allowance.

22112. "Child" or "children," under the disability retirement and survivor benefits programs, means any of the following:

(a) The offspring of a member up to the attainment of 21 years of age, not adopted by a person other than the spouse, and dependent upon the member on the effective date of disability retirement or death. Offspring includes a child who is born within the 10-month period commencing on the effective date of disability retirement or death.

(b) The child, up to the attainment of 21 years of age, adopted by the member, and dependent upon the member on the effective date of disability retirement or death.

(c) The stepchild of the member, up to the attainment of 21 years of age, and dependent upon the member on the effective date of disability retirement or death.

22113. "Comparable level position" means any job in which the member can earn 66⅔ percent or more of indexed final compensation.

22114. (a) "Compensation" and "salary" mean any of the following:

(1) Remuneration in cash payable by the employer to the member.

(2) Any member contributions paid by the employer pursuant to Sections 22903 and 22904.

(3) Any amount deducted from the member's salary for payment to one other than the member for the purpose of purchasing an annuity contract for the member under an annuity plan that meets the requirements of Section 403(b) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 403(b)).

(4) Any amount deducted from a member's wages for participation in a deferred compensation plan established pursuant to Chapter 4 (commencing with Section 19993) of Part 2.6 of Division 5 of Title 2 of, or pursuant to Article 1.1 (commencing with Section 53212) of Chapter 2 of Part 1 of Division 2 of Title 5 of, the

Government Code.

(5) Any amount deducted from the member's salary for payment for participation in a voluntary tax-deferred retirement plan that meets the requirements of Section 401(k) of the Internal Revenue Code of 1986 (26 U.S.C.A. Sec. 401(k)).

(6) Any other payments the board may determine to be "compensation" and "salary."

(b) "Compensation" and "salary" do not mean, and shall not include, any of the following:

(1) Job-related expenses.

(2) Money paid to the employee for overtime service on and after July 1, 1956.

(3) Compensatory damages and money paid to the member in excess of regular salary as a compromise settlement of a dispute arising from termination of a member's employment contract.

(4) Lump-sum payments for accumulated sick leave or accumulated vacation leave.

(5) Money paid for summer school employment.

(6) Money paid as a bonus. For purposes of this part, a "bonus" is a payment made only to a selected employee or employees and not to the entire class of employees on a systematic basis.

(7) Tax-sheltered annuity contributions that do not result in a reduction of the earned contract salary paid to the employee.

(8) Fringe benefits paid for by the employer in lieu of salary.

(9) Money not available for payment of salaries and that is applied by an employer for the purchase of annuity contracts or for other insurance programs, including those that meet the requirements of Section 403(b) of the Internal Revenue Code of 1986.

(10) Money not available for payment of salaries and that is applied by an employer for the purchase of a tax-deferred retirement plan which meets the requirements of Section 401(k) of the Internal Revenue Code of 1986.

(11) Money paid as a stipend to mentor teachers pursuant to subdivision (a) of Section 44494.

(12) Any other payments the board may determine not to be "compensation" and "salary."

(c) Any moneys paid under paragraphs (1) to (12), inclusive, of subdivision (b), shall not be included as a part of the member's compensation subject to contributions reported to the system.

(d) The system may establish procedures to ensure that information reported by employers is in compliance with this section.

(e) The Legislature finds and declares that any person who willfully reports compensation in a manner inconsistent with the definitions set forth in this section may be subject to prosecution for fraud, theft, or embezzlement under the Penal Code.

22115. (a) "Compensation earnable" by a member means the compensation as determined by the board that would have been earned by the member if he or she were engaged in his or her duties

on a full-time basis.

(b) For part-time service, "compensation earnable" means the compensation that would be earnable if the employment were on a full-time basis and the member worked full-time.

(c) For purposes of this part, "full-time" means service that is not less than the minimum schoolday for each day the schools of the district are maintained during the school year. If persons employed in positions requiring certification qualifications are required to serve a longer period of time in each schoolday than the minimums required, the longer period is recognized provided all those employees in similar grades or levels are similarly required to serve the longer periods of time, and provided that the duties required of those persons during the extended time is directly related to and restricted to their normal assignment.

22116. (a) "Compensation earnable," for the purposes of determining final compensation for part-time employees, means the earned salary divided by the service credit.

(b) The compensation earnable shall be limited to the highest salary on the school district salary schedule for a teacher or principal, whichever is applicable, when the service credit for any year is less than one-half of one year's service credit.

(c) The compensation earnable may be determined by the board when the service credit for any year is less than one-fifth of one year's service credit.

22117. "Contribution rate for additional service credit" means the contribution rate adopted by the board to purchase service credit. This rate shall be based upon the most recent valuation of the system and increased to include any subsequently required contribution rates designated for funding subsequent allowance increases.

22118. "County" includes "city and county."

22119. "County superintendent" means the county superintendent of schools.

22120. "Credited service" means service for which the required contributions have been paid and shall be used in determining a member's eligibility for any allowance provided by this part.

22121. "Custodian" as used in Section 22359, is any bank or trust company that serves as custodian for safekeeping, delivery, securities valuation, investment performance reporting, and other services in connection with investment of the Teachers' Retirement Fund.

22122. (a) "Dependent child" means that more than one-half of the child's support was being provided by the member at the time of the member's disability or death.

(b) The system may require that income tax records and similar substantiating data be submitted by the member or the member's representative. Failure, neglect, or refusal by the member or the member's representative to provide requested tax records or data may constitute grounds for a determination by the system that the child was not dependent at the time of the member's disability or

death.

22123. "Dependent parent" means a natural parent of a member, or a parent who adopted the member prior to the earlier of the occurrence of the member's marriage or his or her attaining age 18 years, and who was receiving one-half of his or her support from the member at the time of the member's death.

22124. "Disabilitant" means a member of the system to whom a disability allowance is payable.

22125. "Disability" or "disabled" means any medically determinable physical or mental impairment that is permanent or that can be expected to last continuously for at least 12 months, measured from the onset of the disability, but no earlier than the day following the last day of on-the-job performance that prevents a member from performing the member's usual duties for the member's employer, the member's usual duties for the member's employer with reasonable modifications, or the duties of a comparable level position for which the member is qualified or can become qualified within a reasonable period of time by education, training, or experience. Any impairment from a willful self-inflicted injury shall not constitute a disability.

22126. "Disability allowance" means monthly amounts payable to a disabilitant.

22127. "Early retirement" and "early retirement age" means age 55 years and is the plan age upon attainment of which the member becomes eligible for a service retirement allowance with reduction because of age and without special qualifications.

22128. "Educational institution" is any accredited public or private institution whose primary purpose is to provide classroom teaching and includes a high school, trade or vocational school or college, community college, or other college or university.

22129. "Effective date" means the date stated in the application upon and continuously after which, should death occur, the member is considered a retirant or disabilitant.

22130. "Employer" or "employing agency" means the state or any agency or political subdivision thereof by whom a member is paid.

22131. "Employment" means employment in a position requiring membership in the system.

22132. "Family allowance" means amounts payable to eligible survivors provided pursuant to Chapter 22 (commencing with Section 23800) after June 30, 1972.

22133. (a) "Final compensation" means the highest average annual compensation earnable by a member during any period of three consecutive years during his or her membership in the system or time during which he or she was not a member but for which the member has received credit under the system, except time that was so credited for service performed outside this state prior to July 1, 1944. The last three consecutive years of employment shall be used by the system in determining final compensation unless designated

to the contrary in writing by the member.

(b) For the purposes of this section, periods of service separated by breaks in service may be aggregated to constitute a period of three consecutive years, if the periods of service are consecutive except for the breaks.

(c) The determination of final compensation of a member who is also a member of the Public Employees' Retirement System, the Legislators' Retirement System, the University of California Retirement System, or the San Francisco City and County Employees' Retirement System shall take into consideration the compensation earnable while a member of the other system, provided that all of the following exist:

(1) The member was in state service or in the employment of a local school district or of a county superintendent of schools.

(2) Service under the other system was not performed concurrently with service under this system.

(3) Retirement under this system is concurrent with the member's retirement under the other system.

(d) The compensation earnable for the first position in which California service is credited shall be used when additional compensation earnable is required to accumulate three consecutive years for the purpose of determining final compensation under Section 23804.

(e) The board may specify a different final compensation with respect to allowances based on part-time service performed prior to July 1, 1956, for which credit was given under this system under board rules in effect prior to that date.

(f) The board may specify a different final compensation with respect to disability allowances, disability retirement allowances, family allowances, and the children's increment of the survivor benefit allowances payable on and after January 1, 1978. The earnable salaries for periods of part-time service shall be adjusted by the ratio that part-time service has to full-time service.

(g) The amendment of former Section 22127 made by Chapter 782 of the Statutes of 1982 does not constitute a change in, but is declaratory of, the existing law.

22134. "Indexed final compensation" means final compensation upon which a disability allowance or disability retirement allowance was based, adjusted annually from the school year in which an allowance begins to accrue by the rate of change in the average compensation earnable as determined by the board.

22135. (a) Notwithstanding subdivisions (a) and (b) of Section 22133, "final compensation" means the highest annual compensation earnable by a member who is a classroom teacher who retires, becomes disabled, or dies, after June 30, 1990, during any period of 12 consecutive months during his or her membership in the system. The last 12 consecutive months of employment shall be used by the system in determining final compensation unless designated to the contrary in writing by the member.

(b) Section 22133, except subdivision (a) of that section, shall apply to classroom teachers who retire after June 30, 1990, and any statutory reference to Section 22133 or "final compensation" with respect to a classroom teacher who retires, becomes disabled, or dies, after June 30, 1990, shall be deemed to be a reference to this section.

(c) As used in this section, "classroom teacher" means any of the following:

(1) All teachers and substitute teachers in positions requiring certification qualifications who spend, during the last 10 years of their employment with the same employer which immediately precedes their retirement, 60 percent or more of their contract time each year providing direct instruction. For the purpose of determining continuity of employment within the meaning of this subdivision, an authorized leave of absence for sabbatical or illness, or other bargained or employer approved leaves shall not constitute a break in employment.

(2) Other certificated personnel who spend, during the last 10 years of their employment with the same employer which immediately precedes their retirement, 60 percent or more of their contract time each year providing direct services to pupils, including, but not limited to, librarians, counselors, nurses, speech therapists, resource specialists, audiologists, audiometrists, hygienists, optometrists, psychologists, driver safety instructors, and personnel on special assignment to perform school attendance and adjustment services.

(d) As used in this section, "classroom teacher" does not include any of the following:

(1) Certificated employees whose job descriptions require an administrative credential.

(2) Certificated employees whose job descriptions include responsibility for supervision of certificated staff.

(3) Certificated employees who serve as advisers, coordinators, consultants, or developers or planners of curricula, instructional materials, or programs, who spend, during the last 10 years of their employment with the same employer which immediately precedes their retirement, less than 60 percent of their contract time in direct instruction.

(4) Certificated employees whose job descriptions require provision of direct instruction or services, but who are functioning in nonteaching assignments.

(5) Classified employees.

(e) This section shall apply only to teachers employed by an employer that has, pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, entered into a written agreement with an exclusive representative, that makes this section applicable to all of its classroom teachers, as defined in subdivision (c).

(f) The written agreement shall include a mechanism to pay for all increases in benefits and allowances provided for by this section

through employer contributions or employee contributions or both, which shall be collected and retained by the employer in a trust fund to be used solely and exclusively to pay the system for all increases in benefits and allowance provided by this section and related administrative costs, a mechanism for disposition of the employee's contributions if employment is terminated before retirement, and for the establishment of a trust fund board. The trust fund board shall administer the trust fund and shall be composed of an equal number of members representing classroom teachers chosen by the bargaining agent and the employer. If the employer agrees to pay the total cost of the benefit improvement, the establishment of a trust fund and a trust fund board shall be optional to the employer. The employer, within 30 days of receiving an invoice from the system, shall reimburse the system the amount determined by the Teachers' Retirement Board to be equal to the actuarial equivalent of the difference between the allowance the member or beneficiary receives pursuant to this section and the allowance the member or beneficiary would have received if the member's final compensation had been computed under Section 22133 and the proportionate share of the cost to the system, as determined by the Teachers' Retirement Board, of administering this section. The payment shall include the cost of all increases in benefits and allowances provided for by this section for all years of service credited to the member as of the benefit effective date. Interest shall be charged at the regular interest rate for any payment not received within 30 days of the receipt of the invoice. Payments not received within 30 days after receipt of the invoice may be collected pursuant to Section 23007.

(g) Upon the execution of the agreement, the employer shall notify all certificated employees of the agreement and any certificated employee of the employer, who is in the Public Employees' Retirement System pursuant to Section 22509, that he or she may, within 90 days following the date of notification, elect to terminate his or her membership in the Public Employees' Retirement System and become a member of this system. However, only service credited under this system subsequent to the date of that election shall be subject to this section.

(h) An employer that agrees to become subject to this section, shall, on a form and within the timeframes prescribed by the system, certify the eligibility of an employee, upon retirement or eligibility for a disability or family allowance, pursuant to the criteria set forth in this section.

(i) For a nonmember spouse, final compensation shall be determined pursuant to paragraph (2) of subdivision (c) of Section 22664. The employer, within 30 days of receiving an invoice from the system, shall reimburse the system pursuant to subdivision (f). Interest shall be charged at the regular interest rate for payment not received within the prescribed timeframe. Payments not received within 30 days of invoicing may be collected pursuant to Section 23007.

22136. "Final compensation" with respect to a member whose salary has been reduced by 5 or more percent after age 58 years because of a reduction in school funds means the highest average annual compensation earnable by the member during any three years during his or her membership in the system if the member elects to be subject to this section.

22137. With respect to a state employee member who dies or retires on or after July 1, 1991, and who was a managerial or supervisory employee, as defined by subdivisions (e) and (g) of Section 3513 of the Government Code, whose monthly salary range was administratively reduced by 5 percent because of the salary range reductions administratively imposed upon managers and supervisors during the 1991–92 fiscal year, "final compensation" means the highest annual compensation the state employee member would have earned had his or her salary range not been reduced by the 5-percent reduction. This section shall only apply if the period during which the state member's salary was reduced would have otherwise been included in determining his or her final compensation for retirement purposes. The costs, if any, that may result from the use of the higher final compensation shall be paid for by the employer at the time of retirement in a manner prescribed by the system.

22138. "Full-time student" means a child in full-time attendance at an educational institution. The final determination whether a person qualifies as a full-time student shall be made by the board in light of standards and practices of the institution involved.

22139. "Improvement factor" means an increase of 2 percent in benefits for each year commencing on September 1, following the first anniversary of the effective retirement date, or the date on which monthly benefits commenced to accrue to any beneficiary other than a retirant or such other periods as specifically stated in this part. The factor shall not be compounded nor shall it be applicable to annuities payable from the accumulated annuity deposit contributions or the accumulated tax-sheltered annuity contributions. The Legislature reserves the right to adjust the amount of the improvement factor up or down as economic conditions dictate. No adjustments of the improvement factor shall reduce the monthly retirement allowance or benefit below that which would be payable to the recipient under this part had this section not been enacted.

22140. Notwithstanding Section 22139, "improvement factor" means an increase of 2 percent in benefits provided under Sections 24408 and 24409 for each year commencing on September 1, 1981. The factor shall not be compounded nor shall it be applicable to annuities payable from the accumulated annuity deposit contributions or the accumulated tax-sheltered annuity contributions. The Legislature reserves the right to adjust the amount of the improvement factor up or down as the economic conditions dictate. No adjustments of the improvement factor shall

reduce the monthly retirement allowance or benefit below that which would be payable to the recipient under this part had this section not been enacted.

22141. "Credited interest" is interest that is credited to members' accounts at a rate set annually by the board.

22142. "Regular interest" is interest that is compounded annually based upon the annual equivalent of the average rate yielded on commitments during the prior year for maturities of more than one year in length of fixed-income senior securities. For purposes of this section, "senior securities" means all investments except common stock and preferred stock investments and real estate ownership.

22143. "Investment manager" and "investment adviser" mean any person, firm, or custodian referred to in Section 22359, either appointed by or under contract with the board to engage in investment transactions or to manage or advise in the management of the assets of the Teachers' Retirement Fund.

22144. "Investment transactions" means investment services of an asset management or investment advisory nature and may include advisory services, research material, trading assistance, trading expenses, discretionary management of funds of the system upon approval by the Teachers' Retirement Board, acquisition of equipment to be used as part of the investment function, services that provide a recommended course of action or personal expertise, investment-related legal expenses, investment-related contracting expenses, or custodian services referred to in Section 22359.

22145. "Local system" means any retirement system, exclusive of this system, in which public school teachers are members, operated by a city, county, or other political subdivision of the state.

22146. "Member" means any person included in the membership of the system.

22147. (a) "Month" means 20 days or four weeks of five days each, including legal holidays, with respect to the computation and crediting of service.

(b) "Month," for all other purposes, means a period commencing on any day of a calendar month and extending through the day preceding the corresponding day of the succeeding calendar month, if there is any such corresponding day, and if not, through the last day of the succeeding calendar month.

22148. "Normal retirement" and "normal retirement age" means age 60 years and is the plan age upon attainment of which the member becomes eligible for a service retirement allowance without reduction because of age and without special qualifications.

22149. "Option beneficiary" means a person designated to receive an actuarially reduced retirement allowance upon a retirant's or a member's death.

22150. "Other public systems" means the (a) old age, survivors, disability, and health insurance program, other than the lump-sum death payment, provided by the Social Security Act (42 U.S.C.A. Sec. 300 and following); (b) the federal civil service retirement program;

(c) federal military disability; (d) railroad retirement; (e) a workers' compensation program; (f) federal railroad retirement; or (g) any other public retirement system, including any disability programs financed from public funds.

22151. "Overtime" means the aggregate service performed as a member of the system in excess of the hours of work considered normal for employees on a full-time basis.

22152. "Parent" means a natural parent of a member or a parent who adopted the member prior to his or her attainment of 18 years of age or to the member's marriage, whichever occurs earlier.

22153. "Part-time basis with respect to service" means a basis of service that is for less time than is required of persons serving on a full-time-day basis even though the employee may be subject to call at any time.

22154. "Pay period" means a pay period of not less than four weeks or more than one calendar month.

22155. "Payroll" includes registers, warrants, and any other documents upon which all persons receiving salary payments are listed.

22156. "Projected final compensation" means the final compensation used in computing the disability or family allowance increased by 2 percent, compounded annually to the earlier of normal retirement age or the date the disability allowance is terminated.

22157. "Projected service" means the credited service plus the service which would have been earned had the member or disabilitant continued to earn credited service to the earlier of normal retirement age or the date the disability allowance is terminated at the same rate as the highest of any one of the three school years immediately preceding death or the date disability allowance began to accrue.

22158. "Proof of death" means filing with the system a certified copy of the public record of death.

22159. "Public school" means any day or evening elementary school, and any day and evening secondary schools, community colleges, technical schools, kindergarten schools, and prekindergarten schools established by the Legislature, or by municipal or district authority.

22161. "Retirant" means a former member who has been retired for service or disability and is receiving a retirement allowance.

22162. "Retirement" means withdrawal from membership with a retirement allowance.

22163. "Retirement allowance" means the monthly amounts payable to a retirant or the option beneficiary.

22164. "Retirement fund" means the Teachers' Retirement Fund.

22165. "Return on investments" means income received or receivable from the system's investments.

22166. "School year" means the fiscal year or the academic year.

22167. "Service" means service performed for compensation in a position requiring membership in the system, except as otherwise specifically provided in this part.

22168. "Spouse" means a person who was married to the member at least 12 months prior to the death of the member unless a child is born to the union within the 12-month period or the surviving spouse is carrying the member's unborn child.

22169. "Survivor allowance" means the allowance provided for in Section 23804 as it read under the law in effect on June 30, 1972.

22170. "Survivor benefit allowance" means the monthly allowance that a surviving spouse may elect to receive pursuant to Chapter 23 (commencing with Section 23850).

22171. "System" means the State Teachers' Retirement System.

22172. "Final vesting" means the right of a member or a beneficiary to receive a monthly retirement allowance, disability allowance, or a family benefit when the member has completed the minimum number of years of credited service, has attained the minimum specified age, has formally terminated his or her active service, has made application for retirement, or has been formally retired in accordance with Section 22162, after which the kind and amount of the retirement allowance is fixed and cannot thereafter be changed except as provided in this part.

22173. "Plan vesting" means the rights of the member upon completion of the minimum number of required years of credited service provided in the retirement plan to entitle the member or his or her beneficiary to a monthly retirement allowance, disability allowance, survivor, family or death benefit at a future date, prior to the completion of which the member upon resignation from service is entitled only to a refund of his or her accumulated contributions as provided in this part.

22174. "Provisional vesting" means the right of the member upon the completion of the minimum number of years of credited service and attainment of the minimum specified age after which the member may retire at any time and be entitled to receive a monthly retirement allowance.

CHAPTER 3. RETIREMENT BOARD

22200. (a) The system is managed by the Teachers' Retirement Board. The members of the board are as follows:

(1) The Superintendent of Public Instruction.

(2) The Controller.

(3) The Treasurer.

(4) The Director of Finance.

(5) One member who, at the time of appointment, is a member of the governing board of a school district or a community college district.

(6) Three members of the State Teachers' Retirement System, as follows:

(A) Two members who, at time of appointment, are classroom teachers in kindergarten or grades 1 through 12.

(B) One member, who, at time of appointment, is a community college instructor with expertise in the areas of business or economics or both business and economics and who shall be appointed by the Governor for a term of four years from a list submitted by the Board of Governors of the California Community Colleges.

(7) A retirant of the system.

(8) One officer of a life insurance company appointed by the Governor for a term of four years, subject to confirmation by the Senate.

(9) One officer of a bank or a savings and loan institution who has had at least five years of broad professional investment experience handling various asset classes such as stocks, bonds, and mortgage investments and who shall be appointed by the Governor for a term of four years, subject to confirmation by the Senate.

(10) One member representing the public, appointed by the Governor for a term of four years, subject to confirmation by the Senate.

(11) The members of the board provided by paragraphs (1) and (5) and subparagraph (A) of paragraph (6) shall be appointed by the Governor for four-year terms from a list submitted by the Superintendent of Public Instruction.

(b) The members of the board shall annually elect a chairperson and vice chairperson.

22201. (a) The board shall set policy and make rules and it has the sole power and authority to hear and determine all facts pertaining to application for benefits under the system or any matters pertaining to the administration of the system.

(b) The board shall meet at least once every calendar quarter.

22202. The board has exclusive control of the administration of the funds. No transfers or disbursements of any amount from the funds shall be made except upon the authorization of the board for the purpose of carrying into effect the provisions of this part.

22203. The board has exclusive control of the investment of the Teachers' Retirement Fund. Except as otherwise restricted by the California Constitution and by law, the board may in its discretion invest the assets of the fund through the purchase, holding, or sale thereof of any investment, financial instrument, or financial transaction when the investment, financial instrument, or financial transaction is prudent in the informed opinion of the board.

22204. Each member of the board may administer oaths and affirmations to witnesses and others transacting the business of the system.

22205. The board has the authority to negotiate, and enter into agreements with other states of the United States on the subject of the transfer of members' contributions and regular interest between the retirement systems of California and other states.

22206. As often as the board determines necessary, it may audit or cause to be audited the records of any public agency.

22207. The board shall perform any other acts necessary for the administration of the system in carrying into effect the provisions of this part.

22208. The board may appoint a committee of two or more of its members to perform any act within the power of the board itself to perform. The board may also delegate authority to the chief executive officer to perform any such act. Except where the board, in delegating that authority, provides that the committee or the chief executive officer may act finally, all acts of the committee or the chief executive officer shall be reported to the board at its next regular meeting and shall be subject to review, ratification, or reversal by the board.

22209. The office of chief executive officer shall be filled by appointment by the board and the appointee shall serve at the pleasure of the board.

22210. (a) Reversal by the board of any act of the committee or the chief executive officer shall be effective on the date fixed by the board.

(b) Payment of benefits prior to the board's action of reversal may not be affected by such an action, except for the recovery of the amounts paid, from the beneficiary receiving the amounts, as the board may direct.

22211. The board shall establish an ombudsman position to serve directly under the chief executive officer.

22212. The board shall appoint such employees as are necessary to administer the system.

22213. The board shall regulate the duties of employing agencies and other public authorities, imposed upon them by this part, and shall require reports from the employing agencies and authorities as it deems advisable in connection with the performance of its duties.

22214. The board may take any action it deems necessary to ensure the continued right of retirants, disabilitants, or beneficiaries of members or retirants, to receive monthly payments.

22215. The board shall determine the service performed by members to be credited toward qualification for retirement, and shall fix retirement allowances and modify the allowances.

22216. (a) The board shall determine annually the rate of credited interest to be credited to members' accumulated retirement contributions for service performed after June 30, 1935, and the accumulated annuity deposit contributions excluding all accumulated contributions while being paid as allowances under Sections 23804, 24006, and 24007.

(b) The board shall credit interest to all other accumulated reserves at the actuarially assumed interest rate.

22217. (a) The board shall employ a certified public accountant or public accountant, who is not in public employment, to audit the financial statements of the system. The costs of the audit shall be paid

from the income of the retirement fund. The audit shall be made annually commencing with the fiscal year ending June 30, 1974. The board shall file a copy of the audit report with the Governor, the Secretary of the Senate, and the Chief Clerk of the Assembly.

(b) These audits shall not be duplicated by the Department of Finance or the Auditor General. The system shall be exempt from a pro rata general administrative charge for auditing.

22218. The board shall establish and maintain an adequate system of records and accounts following recognized accounting principles and controls.

22219. (a) The board may in its discretion hold a hearing for the purpose of determining any question presented to it involving any right, benefit, or obligation of a person under this part.

(b) When a hearing is held, 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, relating to administrative adjudication, and the board shall have all of the powers granted in that chapter. However, the provisions of Section 11508 of the Government Code relating to the location of the hearing shall not apply, and the hearing shall be held at the time and place determined by the board.

22220. The board shall subpoena witnesses and compel their attendance to testify before it.

22221. The board shall adopt, upon the recommendation of the actuary of the system, any mortality and other tables and interest rates necessary to do any of the following:

(a) Permit valuation of the assets and liabilities of the system.

(b) Make any determination or calculation necessary to carry out this part.

22222. The board may adjust the amounts of the death benefits based on changes in the All Urban California Consumer Price Index, provided that the most recent actuarial valuation report indicates that the adjustment would not increase the normal cost.

22223. The members of the board who are not members of the system and who are appointed by the Governor pursuant to Section 22200 shall receive one hundred dollars ($100) for every day of actual attendance at meetings of the board or any meeting of any committee of the board of which the person is a member, and that is conducted for the purpose of carrying out the powers and duties of the board, together with their necessary traveling expenses incurred in connection with performance of their official duties.

22224. Members of the system, who are either appointed to the board by the Governor pursuant to Section 22200, or who are appointed by the board to serve on a committee or panel of the system, shall be granted, by that member's employer, sufficient time away from regular duties, without loss of income or other benefits to which the member is entitled by reason of employment, to attend meetings of the board, or any meetings of any committee or subcommittee of the board of which the member is a member, or to

serve as a member of a panel of the system, and to attend to the duties imposed on the member.

22225. (a) The compensation of the members of the system who are appointed to the board, or by the board to a committee or subcommittee, or to a panel of the system, shall not be reduced by the employing agency by which the members are regularly employed for any absence from service occasioned by attendance upon the business of the board, pursuant to Section 22224.

(b) Each employing agency that employs a member appointed pursuant to Section 22224 and that employs a person to replace the member during attendance at meetings of the board, or meetings of committees or subcommittees of the board, or when serving as a panel member of the system, thereof, or when carrying out other duties approved by the board, shall be reimbursed from the retirement fund for the cost incurred by employing a replacement.

CHAPTER 4. FIDUCIARY DUTIES

22250. The board and its officers and employees shall discharge their duties with respect to the system solely in the interest of the members, retirants, and beneficiaries as follows:

(a) For the exclusive purpose of the following:

(1) Providing benefits to members, retirants, and their beneficiaries.

(2) Defraying reasonable expenses of administering the plan.

(b) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of a like character and with like aims.

(c) By diversifying the investments of the system so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

(d) In accordance with the documents and instruments governing the system insofar as those documents and instruments are consistent with this part.

22251. (a) Except as provided in subdivision (b), the assets of the system shall never inure to the benefit of a school district or other employing agency and shall be held for the exclusive purposes of providing benefits to members, retirants, and beneficiaries and defraying reasonable expenses of administering the system.

(b) In the case of a contribution that is made by a school district or other employing agency by a mistake of fact, subdivision (a) shall not prohibit the return of that contribution within one year after the system knows, or should know in the ordinary course of business, that the contribution was made by a mistake of fact.

22252. Except as otherwise provided by law, the board and the officers and employees shall not cause the system to engage in a transaction if they know or should know that the transaction constitutes a direct or indirect:

(a) Sale or exchange, or leasing, of any property from the system to a member, retirant, or beneficiary for less than adequate consideration, or from a member, retirant, or beneficiary to the system for more than adequate consideration.

(b) Lending of money or other extension of credit from the system to a member, retirant, or beneficiary without the receipt of adequate security and a reasonable rate of interest, or from a member, retirant, or beneficiary with the provision of excessive security or an unreasonably high rate of interest.

(c) Furnishing of goods, services, or facilities from the system to a member, retirant, or beneficiary for less than adequate consideration, or from a member, retirant, or beneficiary to the system for more than adequate consideration.

(d) Transfer to, or use by or for the benefit of, a member, retirant, or beneficiary of any assets of the system for less than adequate consideration.

(e) Acquisition, on behalf of the system, of any school district or other employing agency security, real property, or loan.

22253. The board and its officers and employees shall not do any of the following:

(a) Deal with the assets of the system in their own interest or for their own account.

(b) In their individual or in any other capacity, act in any transaction involving the system on behalf of a party, or represent a party, whose interests are adverse to the interests of the system or the interests of its members, retirants, and beneficiaries.

(c) Receive any consideration for their personal account from any party dealing with the system in connection with a transaction involving the assets of the system.

22254. (a) Any member of the board or its officers who breaches any of the responsibilities, obligations, or duties imposed upon them by Section 22251, 22252, or 22253 shall be personally liable to make good to the retirement fund any losses to it resulting from each breach, and to restore any profits that have been made through use of assets of the fund and shall be subject to any other equitable or remedial relief the court may deem appropriate, including removal of the board member or officer.

(b) No board member or officer shall be liable with respect to a breach of fiduciary duty under this part if the breach was committed before the board member or officer became one, or ceased to be one.

22255. (a) No board member or officer shall be personally liable for the breach of a fiduciary duty except as set forth in Section 22254 or 22256. This subdivision shall apply only to causes of actions arising on or after January 1, 1990.

(b) Nothing in this section shall be interpreted to lessen the scope of liability of members of the board or employees of the system for gross negligence or fraud in the investment of the retirement fund assets, nor to lessen the scope of liability of the system for breach of fiduciary duty pertaining to the administration of retirement

benefits, including the granting, denial, or withdrawal of benefits.

22256. A board member or officer shall be liable for a breach of fiduciary responsibility of another board member or officer with respect to the system in the following circumstances:

(a) If the board member or officer knowingly participates in, or knowingly undertakes to conceal an act or omission of the other board member or officer knowing that the act or omission is a breach.

(b) If the board member's or officer's failure to comply with his or her responsibilities as set forth in Section 22251, 22252, or 22253 has enabled another board member or officer to commit a breach.

(c) If the board member or officer has knowledge of a breach unless the board member or officer makes reasonable efforts under the circumstances to remedy the breach.

22257. (a) Notwithstanding Section 22203, the board may contract with or appoint one or more investment managers to manage the assets of the retirement fund. If the board has acted with care, skill, prudence, and diligence in meeting the requirements of Sections 22252 and 22253 in selecting and monitoring the investment managers, then, notwithstanding Sections 22250, 22252, 22253, 22254, and 22256, no board member shall be liable for the acts or omissions of the investment managers or be under any obligation to invest or otherwise manage any assets of the retirement fund that are subject to the management of the investment managers.

(b) Incorporation of the fiduciary duty set forth in Section 22250 into the terms of a contract between the system and an investment manager shall be admissible as evidence that the board has acted with care, skill, prudence, and diligence in the selection of the investment manager.

22258. Notwithstanding Section 13340 of the Government Code, there is hereby continuously appropriated, without regard to fiscal years, from the retirement fund to the board, the amount necessary to pay for any insurance obtained pursuant to Section 7511 of the Government Code. These payments shall be made upon warrants drawn by the Controller upon demands made by the board.

22259. (a) All members of the board and its officers and employees shall execute a fidelity bond, in an amount determined by the board to be prudent, conditioned upon the faithful performance of the duties of the member or employee.

(b) All members of the board and its officers and all staff of the investment division who are authorized to invest funds shall be covered with fiduciary liability insurance in an amount determined by the board to be prudent.

CHAPTER 5. ADMINISTRATION

22300. The chief executive officer is the chief administrative officer of the system. The chief executive officer may administer oaths.

22301. The chief executive officer has the authority and

responsibility for the administration of the system pursuant to the policies and rules adopted by the board. He or she may delegate to his or her subordinates any act or duty unless the board by motion or resolution recorded in its minutes has required him or her to act personally.

22302. (a) The duties of the ombudsman position established pursuant to Section 22211 shall include reviewing and making recommendations regarding complaints by school employees, members, retirants, employee organizations, Members of the Legislature, or members of the public regarding actions of the staff of the system.

(b) It is the intent of the Legislature that the salary of the position of ombudsman be offset, as much as possible, through savings realized in reduction in interest payments on delinquent benefits to members, and through a more efficient and improved public relations program.

22303. Due to an increase in the demand for retirement counseling services, the system, notwithstanding any other provision of law, may contract with a county superintendent or other employing agency to provide retirement counseling, employing retired public employees on a part-time basis for that purpose, unless and until the study required by subdivision (b) of Section 7 of Chapter 1532 of the Statutes of 1985 recommends against the employment of retired public employees for these purposes. This authorization is subject to the availability of funds appropriated for that purpose in the annual Budget Act.

22304. The costs of administration of the system shall be paid from the retirement fund and those costs may not exceed the amount made available by law during any fiscal period.

22305. Any rules and regulations adopted by the board for the purpose of the administration, and not inconsistent with this part, have the force and effect of law.

22306. (a) Data filed by any member or beneficiary with the board is confidential. No official or employee who has access to the individual records shall divulge any information concerning the records to any person other than the member to whom the information relates or his or her authorized representative, the governing board of the school district or agency by which he or she is employed, or any state department or agency. They shall be used by the board for the sole purpose of carrying this part into effect.

(b) The information is not open to inspection by anyone except the board and its officers and employees, and any person authorized by the Legislature to make inspections.

22307. (a) The board may authorize the transfer and disbursement of funds from the retirement fund for the purpose of carrying into effect this part upon the signature of either or both of its chairperson and vice chairperson or the chief executive officer or any employee of the system designated by the chief executive officer.

(b) Notwithstanding Section 13340 of the Government Code, the board may disburse funds for the payment of benefits to retirants, disabilitants, and beneficiaries, for the payment of refunds and for investment transactions and these funds shall not be required to be appropriated through the annual Budget Act. Funds for the payment of administrative expenses are not continuously appropriated, and shall be appropriated by the annual Budget Act.

22308. (a) Subject to subdivision (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any member, retirant, or any beneficiary of any member or retirant, provided that all of the following facts exist:

(1) The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.

(2) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part.

(b) Failure by a member, retirant, or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an "error or omission" correctable under this section.

(c) Subject to subdivision (d), the board may correct all actions taken as a result of errors or omissions of the employer or this system.

(d) The duty and power of the board to correct errors and omissions, as provided in this section, shall terminate upon the expiration of obligations of this system to the party seeking correction of the error or omission, as those obligations are defined by Section 22008.

(e) Corrections of errors or omissions pursuant to this section shall be such that the status, rights, and obligations of all parties described in subdivisions (a), (b), and (c) are adjusted to be the same that they would have been if the act that would have been taken, but for the error or omission, was taken at the proper time. However, notwithstanding any of the other provisions of this section, corrections made pursuant to this section shall adjust the status, rights, and obligations of all parties described in subdivisions (a), (b), and (c) as of the time that the correction actually takes place if the board finds any of the following:

(1) That the correction cannot be performed in a retroactive manner.

(2) That even if the correction can be performed in a retroactive manner, the status, rights, and obligations of all of the parties described in subdivisions (a), (b), and (c) cannot be adjusted to be the same as they would have been if the error or omission had not occurred.

22309. The board shall issue to each member, after the close of the school year, a statement of his or her individual account.

22310. (a) Whenever a refund cannot be made under Section 23103, or a benefit cannot be paid because the member cannot be

found, all accumulated contributions credited to the member's account shall be transferred to the retirement fund.

(b) If a member whose entire accumulated contributions were transferred to the retirement fund returns to a position requiring membership is located, or applies for a benefit or a refund of contributions, the system shall return all his or her contributions to the member's account with interest that would have been credited to the account had the accumulated contributions not been transferred.

22311. (a) The board shall keep in convenient form any data necessary for the actuarial valuation of the system.

(b) In periods not to exceed six-year intervals, the board shall make an actuarial investigation into the mortality, service, and other experience of members and beneficiaries and shall make an actuarial valuation of the assets and liabilities of the system. The actuary shall perform the actuarial valuation using actuarial assumptions adopted by the board and that are, in the aggregate, reasonably related to the past experience of the system and the best estimate by the actuary of the future experience of the system. The report of the actuary of the results of the actuarial valuation shall identify and include the components of normal cost and adequate information to determine the effects of changes in actuarial assumptions. Copies of the report on the actuarial valuation shall be transmitted to the Governor and to the Legislature. Upon the basis of any or all of the actuarial investigation and valuation, the board shall adopt for the system any rates of return on investments, rates of contribution to the retirement fund, mortality, service, and other tables it deems necessary.

22312. (a) The periodic actuarial valuation report required by Section 22311 shall contain, to the fullest extent possible, an analysis of the cost and unfunded accrued liability that results from the enactment of Chapter 23 (commencing with Section 23850) and Chapter 26 (commencing with Section 24100).

(b) This section shall apply only to the valuations scheduled for the June 30, 1993, data and the June 30, 1995, data.

(c) This section shall remain operative 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.

22313. (a) No adjustment shall be included in new rates of annuity contribution adopted by the board on the basis of an investigation, valuation, and determination or because of amendment to the Teachers' Retirement Law, for time prior to the effective date of the adoption or amendment, as the case may be.

(b) No action of the board, other than correction of errors in calculating the annuity at the time of retirement, shall change the annuity payable to a retirant retired prior to the date the action is taken.

22314. The system shall inform a member, upon retirement, that future tax liabilities may occur as the result of the pending

retirement allowance.

22315. (a) The Legislature hereby finds and declares that it is the intent of the Legislature in enacting this section and Section 22316 that members of the system not be adversely impacted, to the extent deemed reasonable, by the application of Section 415 of the Internal Revenue Code of 1986 (26 U.S.C.A. Sec. 415).

(b) The system shall work closely with teacher organizations to develop a supplemental plan that, to the extent deemed reasonable and without violating the intent and purposes of Section 415 of the Internal Revenue Code of 1986, maintains the future retirement benefits of the members and the fiscal integrity of the retirement fund. The supplemental plan should not result in any additional liability to the employer.

(c) The system shall also monitor the benefits of its members and notify affected individuals of their options, if deemed appropriate by the system.

22316. (a) Notwithstanding any other provision of this part, the benefits payable to any person who becomes a member on or after January 1, 1990, shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code of 1986 without regard to Section 415(b)(2)(F) of the Internal Revenue Code of 1986.

(b) Notwithstanding any other provision of law, the benefits payable to any person who became a member prior to January 1, 1990, shall not be less than the accrued benefit of the member under this system, determined without regard to any amendment to the system made after October 14, 1987, and as provided in Section 415(b)(10) of the Internal Revenue Code of 1986.

(c) The board shall provide to each employer a notice of the content and effect of subdivision (a) for distribution to each person who, for the first time, becomes a member on or after January 1, 1990.

22317. (a) With respect to members with membership effective dates of December 31, 1989, and earlier, benefit enhancements due to a plan amendment enacted after October 14, 1987, are subject to the limitations imposed by Section 415 of the Internal Revenue Code of 1986 (26 U.S.C.A. Sec. 415).

(b) With respect to members with membership effective dates of January 1, 1990, and later, retirement benefits, including enhancements due to a plan amendment, are subject to the limitations imposed by Section 415 of the Internal Revenue Code of 1986.

22318. (a) The initial payment to a disabilitant or a disability retirant shall be paid within 45 days following the date the disability is approved, the effective date of the disability retirement or disability allowance, or receipt of all necessary information, whichever occurs last. Monthly payments shall continue thereafter. Initial payments may be based on a good faith estimated amount pending receipt by the system of all necessary employment, dependent, and other public benefit information.

(b) The disabilitant or disability retirant shall be placed on the

final roll and issued a retroactive payment, if one is due, within 45 days of receipt by the system of all necessary information.

22319. (a) The initial payment to a retirant shall be issued within 45 days of either the effective date of retirement or receipt by the system of a completed application for retirement, whichever is later. The initial payment to an option beneficiary shall be issued within 45 days following receipt by the system of a completed application for death benefits and a certified death certificate. Monthly payments shall continue thereafter. Payments may be based on a good faith estimated amount pending receipt by the system of all necessary employment information.

(b) The retirant or option beneficiary shall be placed on the final roll and issued a retroactive payment, if one is due, within 45 days of receipt by the system of all necessary information.

22320. The death benefits provided pursuant to Chapter 22 (commencing with Section 23800), Chapter 23 (commencing with Section 23850), and Chapter 24 (commencing with Section 23880) shall be paid to the beneficiary or estate within 45 days of receipt by the system of all necessary information.

22321. The system shall pay the retirant, option beneficiary, disabilitant, beneficiary, or estate interest for delays in excess of the allowable days specified in Sections 22318 to 22320, inclusive. The interest rate for late payments shall be the regular interest rate. Interest payments shall be deemed to be interest earned in the calendar year in which paid. All interest payments under this section shall be paid in addition to any credited interest that is paid.

22322. The system shall make a report to the board of all late payments at each regularly scheduled meeting.

22323. The system shall report monthly to the board concerning outstanding death benefits that have not been paid within six months of the notification of the death of the member.

22324. (a) The board shall file annually with the Governor and with the Senate and Assembly a report on all phases of its work that could affect the need for public contributions for costs of administration of the system, including the subjects of benefits, programs, practices, procedures, and any comments on trends and developments in the field of retirement.

(b) The report shall be filed with the Governor at least 30 days prior to the first day of each year and shall be filed with the Senate and Assembly within the first five days of each year.

22325. (a) The annual report of the board required under Section 22324 shall include a description of all securities held and a comprehensive report of transactions involving the investment of the retirement fund similar to that required of a life insurance company licensed to do business in California.

(b) In the matter of stock exchange commission fees and other fees paid to persons not employed by the state for services in connection with investments under this chapter, the names of those persons to whom those fees are paid and the amounts paid shall be

clearly identified in the report.

(c) The board shall also submit by November 1 of each year to the Assembly and the Senate a report of the unaudited data compiled for the preparation of the report required by this section.

22326. The board shall include in the annual report required by Section 22324, a brief summary of the costs or savings resulting from the enactment of Chapter 1314 of the Statutes of 1982.

22327. Notwithstanding any other provision of law, the Employment Development Department shall disclose to the board information in its possession relating to the earnings of any person who is receiving a disability allowance or disability retirement allowance from the system. The earnings information shall be released to the board only upon written request from the board specifying that the person is receiving benefits for a disability allowance or disability retirement 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. The board shall notify recipients of disability allowances and disability retirement allowances that earnings information from the Employment Development Department's records will be released upon request by the board. The board shall not release any earnings information received from the Employment Development Department to any person, agency, or other entity. The system shall reimburse the Employment Development Department for all reasonable administrative expenses incurred pursuant to this section.

22328. (a) Upon termination of a retirement or disability allowance that began to accrue on or after July 1, 1972, the person's individual account shall be credited with the amount of his or her accumulated retirement contributions as they were on the effective date of retirement or disability allowance, less the sum of all payments made under paragraph (1) of subdivision (a) of Section 24202, and under Sections 24006 and 24007. The reduction shall not be greater than the total of the accumulated retirement contributions.

(b) Upon the termination of a retirement allowance, the person's accumulated annuity deposit contribution accounts shall be credited with the amounts of the contributions as they were on the date the annuity became payable because of the retirement less the sum of all payments made under paragraph (2) of subdivision (a) of Section 24202.

22329. In order to provide equitable telephone assistance to all members, beneficiaries, and retirants, regardless of their location in California, the system shall install a toll-free, "800" prefix, line.

22330. (a) The board shall provide the Legislature with an analysis of the asset and liability implications of each bill that would affect the investment strategy of the system, the funding of the system, or the benefit structure of the system. The analysis shall include an explanation of the methodology employed and the

assumptions used in its preparation. Neither fiscal committee of the Legislature shall hear any such bill until the analysis has been provided to the committee.

(b) There is hereby continuously appropriated, without regard to fiscal years, from the retirement fund, an amount sufficient to pay all costs arising from subdivision (a), but not to exceed fifty thousand dollars ($50,000) in any one fiscal year.

22331. The system may offer a tax-sheltered annuity plan to all employees of any state agency who are members of the system or any employee of a local public agency or political subdivision of this state that 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 that shall, under agreement with the system, provide custodial, investment, recordkeeping, or administrative services, or any combination 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 of 1986 and the Revenue and Taxation Code. Section 770.3 of the Insurance Code shall not be applicable to the plan.

22332. (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 immediately to the system. Money in whatever form received directly by the system dedicated to the Teacher Tax-Sheltered Annuity Fund shall be deposited immediately 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.

22333. (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 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.

22334. (a) The board shall develop an alternative retirement plan to be known as Plan II. For the purposes of this section, Plan I refers to the retirement plan set out in this part.

(b) The benefits to be included in Plan II shall provide a member, when coupled with Social Security, with an adequate retirement benefit.

(c) Plan II shall be actuarially sound and funded within the rates presently being contributed by the school employer and the employee.

(d) The Legislature reserves the right to modify the benefits contained in Plan II at any future date if the cost of the plan increases as a result of changes in actuarial assumptions.

(e) The board shall submit a recommendation to the Legislature by March 1, 1989.

CHAPTER 6. INVESTMENTS

22350. The Legislature finds and declares that changing economic conditions and increasing complexity in the investment market make it necessary and desirable that the system obtain the best possible investment expertise.

22351. It is the intent of the Legislature that the board secure investment advisors with the composite expertise necessary for the investment of the retirement fund portfolio.

22352. (a) Upon a finding by the board that necessary investment expertise is not available within existing civil service classifications, and with the approval of the State Personnel Board, the board may contract with qualified investment managers having demonstrated expertise in the management of large and diverse investment portfolios to render service in connection with the investment program of the board.

(b) The board shall report to the Governor, the Legislature, the Joint Legislative Budget Committee, and the Joint Public Pension Fund Investments Committee on the nature, duration, and the cost of investment contract services used. The report shall first be submitted in April 1987, and annually in April of every year thereafter.

22353. (a) Notwithstanding any other provision of law, the board

shall by contract retain not less than two separate individual investment advisers.

(b) Notwithstanding Section 13340 of the Government Code, there is hereby continuously appropriated without regard to fiscal years, from the retirement fund, an amount sufficient to pay all costs arising from this section.

(c) No costs arising from this section shall be paid from the General Fund.

22354. (a) The board shall, pursuant to the state civil service statutes, either contract with, or establish and fill full-time positions for, investment managers who are experienced and knowledgeable in corporate management issues to monitor each corporation any of whose shares are owned by the system and to advise the board on the voting of the shares owned by the system and on the responses of the system to merger proposals and tender offers and all other matters pertaining to corporate governance.

(b) Notwithstanding Section 13340 of the Government Code, there is hereby continuously appropriated, without regard to fiscal years, from the fund, an amount sufficient to pay all costs arising from this section.

22355. In no event shall the board employ through interagency agreement any investment personnel who would also serve during the term of the agreement as investment staff to the Board of Administration of the Public Employees' Retirement System.

22356. The board may apply to reduce the book value of securities purchased, all or part of the excess of the proceeds of the sale or redemption prior to maturity of securities over the book value of the securities sold or redeemed provided the purchase of securities is made with those proceeds and provided that the terms of both securities from the date of sale, redemption, or purchase, as the case may be, to the respective dates of maturity, do not differ by more than five years. All applications of excess of sales or redemption proceeds, even with greater difference in terms, made by the board before October 1, 1949, are hereby validated and confirmed.

22357. The board shall submit an annual report to the Legislature, which shall include all of the following:

(a) A copy of the annual audit performed pursuant to Section 22217.

(b) A review by a consultant, a summary of any changes in actuarial assumptions from the previous year, a review of the system's asset mix strategy, a market review of the economic and financial environment in which investments were made, and a summary of the system's general investment strategy.

(c) A description of the investments of the system, including the concentration of stocks and bonds, at cost and market value, including dividends and coupons, and a summary of major changes that occurred since the previous year.

(d) The following information regarding the rate of return of the system by asset type:

(1) Time-weighted return on a five-year, three-year, two-year, and one-year basis.

(2) Dollar-weighted return on a five-year, three-year, two-year, and one-year basis.

(3) Book valuation return on a five-year, three-year, two-year, and one-year basis.

(4) Portfolio return comparisons that compare investment returns with an alternative theoretical portfolio of comparable funds, universes, and indexes.

(5) Returns as credited to employer accounts.

(6) Returns as reported in annual reports.

(7) Returns as reported by the Controller.

(e) A transaction summary which shall adequately review the system's custodial relationship and daily cash management, purchases, sales, turnover, private placements, soft dollar purchases, and transaction costs such as commissions, dealer spreads, and accommodations.

(f) A report on the use of outside investment advisers and managers and any participation in corporate annual meetings and shareholder voting.

(g) A statement of actuarial gains and loses, including the components of the employer contribution rate, and the sensitivity of the statement information to changes in the economic or noneconomic actuarial assumptions.

(h) A discussion of the system portfolio of the system containing the following information:

(1) Concentration, current holdings at cost and market value, risk characteristics (R-squared, Beta, standard error), fundamentals (P/E, dividend yield, measures of growth, size, earnings quality, debt/equity) of equities.

(2) Concentration, current holdings at cost and market value, maturity, duration, quality, coupon, and current yield of fixed income instruments.

(3) Current holdings at cost and market value of real estate equities.

(4) Current holdings at cost and market value of mortgages.

(5) Securities lending activity.

(6) Options and forward commitments.

(7) Cash and cash equivalents.

(i) A performance review of asset allocation, of equities due to market timing, sector selection, stock selection, and trading, of fixed income instruments due to interest rate anticipation skills, credit analysis, sector trading and swapping, and of value added over indexing (alpha).

(j) A review of the system's custodial relationship and daily cash management and a summary of the system's investment transactions, including purchases, sales, turnover, private placements, soft dollar purchases, and transaction costs such as commissions, dealer spreads, and accommodations.

(k) A review of the role of any outside managers and advisers, stockholder voting, and changes in investment staff or reorganization.

22358. The board shall submit a review of the system's assets to the Legislature on a quarterly basis, which shall do all of the following:

(a) Discuss the system's portfolio and contain the following information:

(1) Concentration, current holdings at cost and market value, of equities.

(2) Concentration, current holdings at cost and market value, of fixed income instruments.

(3) Current holdings at cost and market value of real estate equities.

(4) Current holdings at cost and market value of mortgages.

(5) Options and forward commitments.

(6) Cash and cash equivalents.

(b) Disclose the following information on the rate of return of the fund by type of asset:

(1) Time-weighted return on a five-year, three-year, two-year, and one-year basis.

(2) Dollar-weighted return on a five-year, three-year, two-year, and one-year basis.

(3) Summary of performance of an alternative theoretical portfolio containing all investments and performance of comparable universes and other indexes.

22359. Notwithstanding any other provision of law, the board may retain a bank or trust company to serve as custodian for safekeeping, delivery, securities valuation, investment performance reporting, and other services in connection with investment of the retirement fund.

22360. (a) Notwithstanding any other provision of law, the board may, pursuant to Section 22203 and in conformance with its fiduciary duty as set forth in Section 22250, enter into correspondent agreements with private institutions in this state to utilize the retirement fund to assist system members currently employed in positions requiring or permitting membership in the system, inactive members, disabilitants, and retirants, through financing, to obtain homes in this state.

(b) The terms and conditions of the correspondent agreements shall address all of the following:

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

(2) That the private lending institution shall originate and service these home loans.

(3) That the recipients of the loans occupy the homes as their

permanent residences pursuant to rules and regulations adopted by the board or as these terms are defined in the correspondent agreements.

(4) That home loans shall be available only for the purchase of homes in this state.

(5) That the amount and length of the loans shall include terms and conditions that set a loan to value ratio of: (A) for the first loan, except for three-family dwellings and four-family dwellings, a maximum of 95 percent of the first loan; (B) for the first loan on three-family dwellings and four-family dwellings, a maximum of 90 percent of the first loan; and (C) for each additional loan, a maximum of 80 percent 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.

(6) That there may be prepayment penalties assessed on loans, the terms and conditions of which shall be set forth in the correspondent agreement.

(7) That the criteria and terms for loans shall provide the greatest benefit to eligible members, inactive members, disabilitants, and retirants consistent with the financial integrity of the program and the sound investment of the retirement fund.

(8) That loans shall not be made at a rate lower than the market rate.

(9) Any other terms and conditions as the parties to the correspondent agreement may deem appropriate.

(c) This section shall be known and may be cited as the Dave Elder State Teachers' Retirement System Member Home Loan Program Act.

22361. (a) The board may, subject to and consistent with its fiduciary duty, establish a program utilizing the retirement fund to assist currently employed members and retirants who are victims of a natural disaster to obtain loans from the retirement fund for the sole purpose of repairing or rebuilding their homes that have been damaged by a natural disaster. In order to qualify for such a loan, the home of the member or retirant shall have been damaged by a natural disaster and the home shall have been in an area that has been declared a disaster area in a proclamation of the Governor of a state of emergency affecting the area in which the member or retirant resides.

(b) The board may loan any amount of money, up to and including 100 percent of the current appraised value of a home of a member or retirant. However, 5 percent of the loan may, at the discretion of the board, be secured by the contributions of the member who requests the loan.

(c) The board may, under such conditions as it may deem

prudent, require that a member or retirant pledge other assets as collateral for a loan.

(d) The board shall establish terms for the termination of loans made pursuant to this section upon the separation of members from service, to ensure, in the case of any default, that the system shall not suffer any loss and to provide, as a condition of retirement, for alternative security. The board may impose any other terms and conditions the board may determine appropriate.

(e) The Legislature hereby reserves full power and authority to change, revise, limit, expand, or repeal the loan program authorized by this section.

22362. (a) Notwithstanding any other provision of law, the board shall give first priority to investing not less than 25 percent of all funds that become available in a fiscal year for new investments, in any of the following:

(1) Obligations secured by a lien or charge solely on residential realty, including rental housing, located in the state and on the security of which, commercial banks are permitted to make loans pursuant to Article 2 (commencing with Section 1220) of Chapter 10 of Division 1 of the Financial Code.

(2) Securities representing a beneficial interest in a pool of obligations secured by a lien or charge solely on residential realty located in the state.

(3) Certificates of deposit issued by savings and loan associations, if the savings and loan associations agree to make loans, or to fund tax-exempt notes or bonds issued by housing authorities, cities, or counties, on residential realty located in the state, including rental housing, in an amount equal to the amount of the deposit.

(b) Funds subject to investment pursuant to this section include all moneys received as employer and member contributions, investment income, and the proceeds from all net gains and losses from securities, reduced by the amount of benefit payments and withdrawals occurring during the fiscal year. In computing the amount of investment pursuant to this section, a dollar-for-dollar credit shall be given for residential realty investments described in this section that are contractually agreed to be made by a financial institution from which the board, in consideration thereof, purchases other such investments. In computing the amount of investment pursuant to this section, the board may elect to include the dollar amount of commitments to purchase mortgages from public revenue bond programs in the year the commitment is given. However, that election may not exceed one-fifth of the total guideline amount.

(c) Nothing in this section shall be construed to require the acquisition of any instrument or security at less than the market rate.

(d) If the board determines during any fiscal year that compliance with this section will result in lower overall earnings for the fund than obtainable from alternative investment opportunities that would provide equal or superior security, including guarantee of yield, the board may substitute those higher yielding investments, to

the extent actually available for acquisition, for the investments otherwise specified by this section. Additionally, if, and to the extent that, adherence to the diversification guideline specified in this section would conflict with its fiduciary obligations in violation of Section 9 of Article I of the California Constitution or Section 10 of Article I of the United States Constitution, or would conflict with the standard for prudent investment of the fund as set forth in Section 17 of Article XVI of the California Constitution, the board may substitute alternative investments. In that case, the board shall estimate the amount of funds available in substitute alternative investments and the amount of funds invested pursuant to subdivision (a) and shall submit its resolution of findings and determinations, together with a description of the type, quantity, and yield of the investments substituted, to the Governor and to the Joint Legislative Audit Committee within 20 days following the conclusion of the fiscal year. Within 30 days thereafter, the Joint Legislative Audit Committee shall transmit the Auditor General's report to the Speaker of the Assembly and to the Senate Committee on Rules for transmittal to affected policy committees.

(e) The board, upon determining the final amount of funds available for investment in substitute alternative investments and the estimated amount of funds invested pursuant to subdivision (a), shall submit that information to the Governor and the Joint Legislative Audit Committee. Thereafter, the Joint Legislative Audit Committee shall transmit the report of the Auditor General to the Speaker of the Assembly and the Senate Committee on Rules for transmittal to the affected policy committees.

CHAPTER 7. SYSTEM HEADQUARTERS

22375. Notwithstanding Section 20205.9 or Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code, the board may select, purchase, or acquire in the name of the system, the fee or any lesser interest in real property, improved or unimproved, and may remodel and equip, or construct an office building in the County of Sacramento for the purposes of establishing a permanent headquarters facility for the system.

22376. All buildings acquired or improvements constructed by the board under the provisions of this chapter may contain space in excess of immediate requirements. The board may contract with the Department of General Services to handle the rentals of any excess space over and above that required by the board and to furnish general supervision and maintenance of buildings and improvements constructed under the provisions of this chapter.

22377. The board may contract with the Department of General Services or any other state agency for assistance in the acquisition of real property and any construction thereon of buildings or improvements authorized by this chapter.

22378. In the event that condemnation of the property selected

is necessary, the board may elect to deposit with the treasurer funds it deems necessary, and that are appropriated, for purchase of the selected property subject to the Property Acquisition Law (Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code).

22379. Work on all projects shall be done under contract awarded to the lowest responsible bidder pursuant to bidding procedures set forth in the State Contract Act (Chapter 1 (commencing with Section 10100) of Division 2 of the Public Contract Code).

22380. (a) The board shall establish a building account for the transfer of money appropriated for that purpose from the retirement fund for the construction or remodeling of buildings and improvements thereon, maintenance, repair, and improvement thereof. For accounting purposes, the board shall pay rental to the building account in an amount sufficient to repay all costs of acquisition, construction, and maintenance of space used by the board plus interest to the retirement fund.

(b) The board may contract with the Department of General Services for the purchase of insurance against loss of, or damage to, the property or the loss of use or occupancy of the building, liability insurance, and other insurance that is customarily carried on state office buildings. Premiums for this insurance shall be paid from the building account.

(c) The land, building, equipment, and improvements thereon, shall constitute an investment, in lieu of facilities operations cost, in the retirement fund and shall be carried on the books thereof as such in accordance with generally accepted accounting practices.

CHAPTER 8. ESTABLISHMENT AND CONTROL OF FUNDS

22400. (a) There is in the State Treasury a special trust fund to be known as the Teachers' Retirement Fund. There shall be deposited in that fund the assets of the system and its predecessors, consisting of employee contributions, employer contributions, state contributions, appropriations made to it by the Legislature, income on investments, other interest income, income from fees and penalties, donations, legacies, bequests made to it and accepted by the board, and any other amounts provided by this part. General Fund transfers pursuant to Section 22954 shall be placed in a segregated account known as the Supplemental Benefit Maintenance Account within the retirement fund, which is continuously appropriated without regard to fiscal years, notwithstanding Section 13340 of the Government Code, for expenditure for the purposes of Section 24415 and subdivisions (a) and (b) of Section 24414.

(b) Disbursement of money from the retirement fund of whatever nature shall be made upon claims duly audited in the manner prescribed for the disbursement of other public funds except that notwithstanding the foregoing disbursements may be made to

return funds deposited in the fund in error.

22401. Return on investments shall be collected by the Treasurer, and together with any other moneys received for the retirement fund shall be immediately deposited to the credit of that fund and reported immediately to the system. Money in whatever form received directly by the system shall be deposited immediately in the State Treasury to the credit of that fund.

22402. Earned interest not credited to accounts and other income shall be used to provide the benefits under this part.

CHAPTER 9. MEMBER AND EMPLOYER DUTIES

22450. Each member and beneficiary shall furnish to the board any information affecting his or her status as a member or beneficiary of the system the board requires.

22451. (a) Each member shall file a statement with the board, at the option of, and upon the form furnished by, the board, giving the following information:

(1) His or her date of birth.

(2) All service previously performed by him or her in a position requiring membership in the system or its predecessors.

(b) Each person becoming a member on or after January 1, 1983, shall include in the health résumé required by the teacher preparation and licensing agency all information that shall verify any and all handicaps and disabling conditions at the time of application. Upon request by the system this information shall be made available when a person applies for a disability allowance.

22452. (a) All members who enter the system on or after January 1, 1975, shall submit to the system proof of their date of birth after they attain five or more years of credited service. This proof shall meet the standards of the administrative procedure to establish record of birth, except for military records, as prescribed by the State Department of Health Services.

(b) Members of the system prior to January 1, 1975, shall not be required to furnish proof of date of birth if the birth dates in their retirement records have been consistent during the period of membership unless at time of retirement they elect an optional form of retirement when proof of date of birth of both member and beneficiary is required.

(c) Persons required to furnish proof of date of birth because of a discrepancy in date in the retirement record shall not be paid any allowance from the system until that proof has been received and accepted by the system.

22453. (a) Except as provided in Section 22454, the signature of the spouse of a member or retirant shall be required on any application for, or cancellation of, an unmodified allowance, the election or cancellation of an option, request for a refund of the member's accumulated retirement contributions or accumulated annuity deposit contributions, or other requests related to the

selection of benefits by a member or retirant in which a spousal interest may be present, unless the member or retirant declares, in writing, under penalty of perjury, that one of the following conditions exists:

(1) The member or retirant does not know, and has taken all reasonable steps to determine, the whereabouts of the spouse.

(2) The spouse is incapable of executing the acknowledgement because of an incapacitating mental or physical condition.

(3) The member or retirant and spouse have executed a marriage settlement agreement pursuant to Chapter 2 (commencing with Section 1600) of Part 5 of Division 4 of the Family Code that makes the community property law inapplicable to the marriage.

(4) The member or retirant is not married.

(5) The current spouse has no identifiable community property interest in the benefit.

(b) This section is not applicable to an application for a disability allowance.

(c) The sole purpose of this section is to provide for spousal protection in the selection of specified benefits made by a member or retirant.

22454. If a spouse refuses to sign an application, as set forth in Section 22453, the member or retirant may bring an action in court to enforce the spousal signature requirement or to waive the spousal signature requirement. Either party may bring an action pursuant to Section 11101 of the Family Code to determine the rights of the party.

22455. The county superintendent and other employing agencies shall furnish any further information concerning any member or beneficiary the board may require.

22456. At any time upon the request of the system, the employing agency shall furnish a statement of the amount of contributions deducted from salary payments of any member, the services performed and the salary earned by him or her since the end of the period covered by the last report of the superintendent or employer. The system may use the information shown in the statement in determining contributions to be paid by or to the member or to a beneficiary, or use it in determining the member's status upon retirement, even though the member's and employer's contributions will not be received by the board until after the payment or determination.

22457. (a) Each county superintendent shall give immediate notice in writing to the board of the employment, death, resignation, or discharge of any person employed in a position requiring membership in the system, by the county or by a school district in the county.

(b) Every other employing agency shall give similar notice with respect to each person employed by it in a position requiring membership in the system.

22458. Each employing agency shall provide the system with

copies of documents respecting the compensation to be paid to employees in that school year. The documents shall be submitted annually as determined by the board and may include, but shall not be limited to, employment contracts, salary schedules, and local board minutes.

22459. (a) The county superintendent or other employing agency shall withhold the salary of any member who fails to file information required by the board in the administration of the system, or to pay amounts due from the members to the system.

(b) The salary shall be withheld by the county superintendent or employing agency upon his or her own knowledge, if any, of the failure or upon notice from the board of the failure of the teacher to file or pay.

(c) The salary shall be withheld and not released until notice is given by the board to the county superintendent or employing agency, or until the county superintendent or agency knows otherwise, that the information has been filed or the payment has been made.

22460. Employing school districts and other employing agencies shall notify all members who terminate employment with less than five years' credited California service that the only benefit for which they are eligible at any time is the refund of accumulated contributions, the rate of interest that will be earned, and actions that may be taken by the board if the contributions are not withdrawn. Employing school districts and other employing agents shall transmit the information to the member as part of the usual separation documents.

22461. (a) Upon retaining the services of a retirant as an employee under Section 24116, 24214, or 24215, the school district, community college district, county superintendent of schools, California State University, or other employing agency shall do both of the following:

(1) Advise the retirant of the earnings limitation set forth in Sections 24116, 24214, and 24215.

(2) Maintain accurate records of the retirant's earnings and report those earnings monthly to the system and the retirant regardless of the method of payment or the fund from which the payments were made.

(b) This section shall not be construed to make any school district, community college district, county superintendent of schools, the California State University, or other employing agency liable for any amount paid to the retirant in excess of the earnings limitation under any circumstance, including the failure to inform the retirant that continuation of service would exceed the limitations.

CHAPTER 10. MEMBERSHIP

22500. All persons who were members of the California State Teachers' Retirement System on June 30, 1944, are members of the

system.

22501. All teachers employed in the public schools of this state are members of the system unless excluded from membership under Chapter 11 (commencing with Section 22600).

22502. Certificated librarians in elementary, secondary schools, or community colleges, or persons who serve partly as librarians and partly as teachers, are members of the system.

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, 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.

22505. Persons employed in the public schools or in county superintendents' offices of this state to perform duties usually performed by counselors, coordinators, and research directors, are members of the system.

22506. Superintendents, their deputies, and certificated employees under the direction of county superintendents are members of the system.

22507. Persons who are members on account of previous school employment as provided by this chapter and who are employed by an independent data-processing center formed pursuant to former Article 2 (commencing with Section 10550) of Chapter 6 of Part 7 of Division 1 of Title 1, as it read on December 31, 1990, are members of the system.

22508. Any person who is a member who subsequently is employed by the same or a different school district or community college district or by a county superintendent, to perform duties that require membership in a different public retirement system in this state, shall continue to be a member, unless he or she elects, in writing and files in the office of this system, within 90 days after the entry, not to continue as a member in his or her new position. This section shall also apply to changes in employment effected on or after January 1, 1976, if an election is made on or before April 1, 1977.

22509. Any person who is a member of the Public Employees' Retirement System and employed by a school district or by a county superintendent, and who subsequently is employed in a position requiring membership in this system is excluded from membership in this system if he or she elects, by a writing filed in the office of the Board of Administration of the Public Employees' Retirement System, within 90 days after the entry, to continue as a member of the Public Employees' Retirement System in his or her new position. This section shall also apply to changes in employment effected on or after January 1, 1976, if an election is made on or before April 1, 1977.

22510. Members who on January 1, 1976, are in state service positions according to former Section 13948 as it read on December 31, 1975, or who are employees of the Trustees of the California State University, may elect in writing prior to July 1, 1976, not to continue as members of this system and to transfer membership to the Public Employees' Retirement System. Failure to execute and file the election, which shall be received in the office of this system by the close of business on June 30, 1976, shall be deemed a decision to remain as a member of this system.

22511. Members eligible to elect under Section 22510 and who elect to retain membership in this system shall be eligible only for those benefits available for all other members of this system, and not eligible for the benefits of the Berryhill Total Compensation Act, as amended, except for the reduced hospitalization insurance premiums. These members shall not be considered eligible for any additional benefits that may accrue to other state employees.

22512. If a member elects membership in the Public Employees' Retirement System under Section 22510, this election shall not be counted as a break in service if employment is continuous.

22513. Members who elect membership in the Public Employees' Retirement System and have achieved plan vesting according to Section 22173 shall retain the vested rights to survivor and disability benefits under this system until they qualify for the similar benefits in the Public Employees' Retirement System.

22514. Persons who have not achieved plan vesting shall qualify for eligibility for benefits under this system when total service under both systems equals the minimum required under Sections 23800 and 23804. These persons shall retain vested rights to survivor and disability benefits until they qualify for the similar benefits in the Public Employees' Retirement System.

22515. Persons excluded from membership in Sections 22602 and 22604 may elect membership in the system at any time while employed in a substitute or part-time position that does not qualify for membership in this system. The election is irrevocable, shall be in writing, and shall be filed in the office of this system prior to submission of contributions.

22516. (a) Nothing in this chapter shall be construed or applied to exclude from membership in this system any member who accepts a position requiring membership in this system in which he or she has the right to elect membership in this or another retirement system and who elects membership in the other retirement system, or who enters a position that does not require membership in this system, but in which time served is included in this part.

(b) Time served after becoming a member of the other system shall not be credited to the member under this system, nor shall contributions or benefits under this system be based upon that time or the salary received by the member during that time, except as provided in the definition of "final compensation" contained in Section 22133.

CHAPTER 11. EXCLUSIONS FROM MEMBERSHIP

22600. Persons employed in a position requiring membership in this system, but who are members of a local system or a county retirement system are excluded from membership in the system. A person so excluded shall retain the right to receive a retirement allowance for nonlocal service that is creditable in the system unless he or she withdraws his or her contributions for that allowance.

22601. Persons serving as exchange teachers or sojourn teachers from outside of this state are excluded from membership in the system.

22602. (a) Persons employed on a substitute basis, who are not already members when they become employed and who perform less than 100 complete days of service during the school year are excluded from membership in the system.

(b) Persons employed on a substitute basis who have performed 100 or more complete days of substitute service in one school district or county superintendent's office in that school year shall become members on the first day of the following pay period during which the additional service was performed.

22603. Persons not already members who are employed as instructors of adult education classes that have a duration of less than one school semester, or less than one school quarter of 12 weeks, if the district operates its adult education program on that basis, are excluded from membership in the system.

22604. (a) Persons employed on a part-time basis who are not already members when they become employed, and who perform less than 60 hours of service per pay period or less than 10 days of service in a pay period on a daily basis, are excluded from membership in the system.

(b) Persons employed on a part-time basis who have performed 60 or more hours of service in a pay period, or 10 days or more of service in a pay period on a daily basis in one school district or county superintendent's office shall become members on the first day of the following pay period during which the additional service was performed.

22605. Persons not already members who are employed as part-time teachers and who are concurrently employed in full-time positions as members of another retirement system, or a system administered and supported by the United States government, supported wholly or in part by public funds are excluded from membership in the system.

22606. (a) Persons not already members who are employed for less than full time in positions requiring health and development credentials, a standard credential in designated services for health, or a designated services credential with a specialization in health, are excluded from membership in the system.

(b) The provisions of this section shall not apply to nurses employed in schools for at least 50 percent of a pay period.

22607. A person employed as a student teacher pursuant to Section 44926 is excluded from membership in the system and the Public Employees' Retirement System.

22608. Persons in the following categories are excluded from membership in the system:

(a) A student teacher under Section 44320.

(b) A participant in the New Careers Program under Section 44523.

(c) An instructional aide under Section 45343.

(d) A teacher aide under Section 45360.

CHAPTER 12. COMMUNITY PROPERTY

22650. This chapter establishes the power of a court in a dissolution of marriage or legal separation action with respect to community property rights in accounts with the system and establishes and defines the rights of nonmember spouses in the system.

22651. For purposes of this chapter and Section 23300, "nonmember spouse" means the spouse or former spouse who is being or has been awarded a community property interest in the service credit and accumulated retirement contributions of the member or the benefits of a retirant. A nonmember spouse who is awarded a separate account of service credit and accumulated retirement contributions is not a member of the system. A nonmember spouse who receives a retirement allowance or is awarded an interest in a retirement allowance of a retirant is not a retirant of the system.

22652. (a) Upon the legal separation or dissolution of marriage of a member, the court shall include in the judgment or a court order the date on which the parties separated.

(b) The court may order in the judgment or court order that the accumulated retirement contributions and service credit attributable to periods of service during the marriage be divided into two separate and distinct accounts in the name of the member and the nonmember spouse, respectively. Any service credit or accumulated retirement contributions that are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member.

(c) The determination of the court of community property rights pursuant to this section shall be consistent with this chapter and shall address the rights of the nonmember spouse, including, but not limited to, the following:

(1) The right to a retirement allowance.

(2) The right to a refund of accumulated retirement contributions.

(3) The right to redeposit accumulated retirement contributions which are eligible for redeposit by the member under Sections 23200 to 23203, inclusive, and the shares of the member and the

nonmember spouse of the eligible redeposit amount.

(4) The right to purchase additional service credit which is eligible for purchase by the member under Sections 22800 to 22810, inclusive, and the shares of the member and the nonmember spouse of the service credit eligible for purchase.

22653. The nonmember spouse who is awarded a separate account pursuant to Section 22652 is not a member of the system. The nonmember spouse is entitled only to rights and benefits explicitly established by this chapter.

22654. The nonmember spouse is entitled to no benefits or rights from the separate account except as otherwise provided in this chapter. However, this section shall not be construed to limit any right arising from the account of a nonmember with the system which exists because the nonmember spouse is employed in a position requiring membership in the system.

22655. Upon the legal separation or dissolution of marriage of a retirant, the court may include in the judgment or court order a determination of the community property rights of the parties in the retirement allowance of the retirant consistent with this section. Upon election under subdivision (d) of Section 2610 of the Family Code, the court order awarding the nonmember spouse a community property share in the benefits of a retirant shall be consistent with this section.

(a) If the court does not award the entire retirement allowance to the retirant and the retirant is receiving a retirement allowance under any section other than Section 24300, the court shall require only that the system pay the nonmember spouse, by separate warrant, his or her community property share of the retirement allowance of the retirant.

(b) If the court does not award the entire retirement allowance to the retirant and the retirant is receiving an allowance which has been actuarially modified pursuant to Section 24300, the court shall order only one of the following:

(1) The retirant shall maintain the retirement allowance without change.

(2) The retirant shall cancel the retirement allowance pursuant to Section 24305 and select a new joint and survivor option or a new beneficiary or both, and the system shall pay the nonmember spouse, by separate warrant, his or her community property share of the retirement allowance of the retirant, the option beneficiary, or both.

(3) The retirant shall cancel the retirement allowance pursuant to Section 24305 and select an unmodified retirement benefit and the system shall pay the nonmember spouse, by separate warrant, his or her community property share of the retirement allowance of the retirant.

(c) If the option beneficiary, other than the nonmember spouse, dies before the retirant, the court shall order the retirant to select a new option beneficiary pursuant to Section 24306 and shall order the system to pay the nonmember spouse, by separate warrant, his or her

share of the community property interest in the retirement allowance of the retirant or the new option beneficiary, or both.

(d) The right of the nonmember spouse to receive his or her community property share under this section shall terminate upon the death of the nonmember spouse. However, the nonmember spouse may designate a beneficiary to receive his or her community property share of accumulated retirement contributions in the event that accumulated retirement contributions become payable.

22656. No judgment or court order issued pursuant to this chapter is binding on the system until the system has been joined as a party to the action and has been served with a certified copy of the judgment or court order.

22657. (a) The following provisions shall apply to a nonmember spouse as if he or she were a member or service retirant: Sections 22107, 22306, 22906, 23802, subdivisions (a) and (b) of Section 24600, 24601, 24602, 24603, 24605, 24606, 24607, 24608, 24611, 24612, 24613, 24616, and 24617.

(b) Notwithstanding subdivision (a), this section shall not be construed to establish any right for the nonmember spouse that is not explicitly established in Sections 22650 to 22655, inclusive, and Sections 22658 to 22665, inclusive.

22658. (a) All separate accounts of a nonmember spouse shall be administered separately. Accumulated contributions, service credit, and final compensation attributable to a separate account of a nonmember spouse shall not be combined in any way and for any purpose with the accumulated contributions, service credit, and final compensation of any other separate account of the nonmember spouse.

(b) In addition, accumulated contributions, service credit, and final compensation in the separate account of a nonmember spouse shall not be combined in any way and for any purpose with the accumulated contributions, service credit, and final compensation of an account that exists because the nonmember spouse is employed or has been employed in a position requiring membership in the system.

22659. Upon being awarded a separate account or an interest in the allowance of a retirant, a nonmember spouse shall provide the system with proof of his or her date of birth, social security number, and any other information requested by the system, in the form and manner requested by the system.

22660. (a) The nonmember spouse who is awarded a separate account shall have the right to designate, pursuant to Sections 23300 to 23304, inclusive, a beneficiary or beneficiaries to receive the accumulated retirement contributions remaining in the separate account of the nonmember spouse on his or her date of death, and any accrued allowance attributable to the separate account which is unpaid on the date of the death of the nonmember spouse.

(b) This section shall not be construed to provide the nonmember spouse with any right to elect to modify a retirement allowance

under Section 24300.

22661. The nonmember spouse who is awarded a separate account shall have the right to a refund of accumulated retirement contributions in the separate account of the nonmember.

(a) The right of the nonmember spouse to a refund of accumulated retirement contributions is subject to Section 23105.

(b) The nonmember spouse shall file an application on a form provided by the system to obtain the refund.

(c) The refund is effective when the system deposits in the United States mail an initial warrant drawn in favor of the nonmember spouse and addressed to the latest address for the nonmember spouse on file in the system.

(d) The nonmember spouse is deemed to have permanently waived all rights and benefits pertaining to the service credit and represented by the accumulated retirement contributions when the refund becomes effective.

(e) The nonmember spouse may not cancel a refund after the refund is effective.

(f) The nonmember spouse shall have no right to elect to redeposit the refunded accumulated retirement contributions after the refund is effective and shall have no right to redeposit under Section 22662 or purchase additional service credit under Section 22663 after the refund becomes effective.

(g) If the total service credit in the separate account of the nonmember spouse, including service credit purchased under Sections 22662 and 22663, is less than two and one-half years, the board shall refund the balance of the account without an application from the nonmember spouse.

22662. The nonmember spouse who is awarded a separate account may redeposit accumulated retirement contributions previously refunded to the member in accordance with the determination of the court required by Section 22652.

(a) The nonmember spouse may redeposit only those accumulated retirement contributions that were previously refunded to the member and that the court has determined to be the community property interest of the nonmember spouse in the accumulated retirement contributions.

(b) The nonmember spouse shall inform the system in writing of his or her intent to redeposit within 180 days after the judgment or court order addressing the redeposit rights of the nonmember spouse is entered. The nonmember spouse shall elect to redeposit on a form provided by the system within 30 days after the system mails the election form and the billing.

(c) If the nonmember spouse elects to redeposit, he or she shall repay the accumulated retirement contributions and shall pay regular interest from the date of the refund to the date of payment.

(d) An election to redeposit shall be considered an election to repay all accumulated retirement contributions previously refunded. All payments shall be received by the system before the

effective date of retirement of the nonmember spouse. If any payment due because of the election is not received at the Sacramento office of the system within 120 days of its due date, the election shall be canceled and any payments made under the election shall be returned to the nonmember spouse.

(e) The right of the nonmember spouse to redeposit shall be subject to Section 23203.

(f) The member shall have no right to redeposit the share of the nonmember spouse in the previously refunded accumulated retirement contributions whether or not the nonmember spouse elects to redeposit. However, any previously refunded accumulated retirement contributions not explicitly awarded to the nonmember spouse by the judgment or court order shall be deemed the exclusive property of the member.

22663. The nonmember spouse who is awarded a separate account shall have the right to purchase additional service credit in accordance with the determination of the court required by Section 22652.

(a) The nonmember spouse may purchase only the service credit that the court, pursuant to Section 22652, has determined to be the community property interest of the nonmember spouse.

(b) The nonmember spouse shall inform the system in writing of his or her intent to purchase additional service credit within 180 days after the date the judgment or court order addressing the right of the nonmember spouse to purchase additional service credit is entered. The nonmember spouse shall elect to purchase additional service credit on a form provided by the system within 30 days after the system mails the election form and the billing.

(c) If the nonmember spouse elects to purchase additional service credit, he or she shall pay, prior to retirement, all contributions with respect to the additional service at the contribution rate for additional service credit in effect at the time of election and regular interest from July 1 of the year following the year upon which contributions are based.

(1) (A) The nonmember spouse shall purchase additional service credit by paying the required contributions and interest in one lump sum, or in not more than 60 monthly installments, provided that no installment, except the final installment, shall be less than twenty-five dollars ($25). Regular interest shall be charged on the monthly unpaid balance if the nonmember spouse pays in installments.

(B) If any payment due because of the election is not received at the Sacramento office of the system within 120 days of its due date, the election shall be canceled and any payments made under the election shall be returned to the nonmember spouse.

(2) The contributions shall be based on the compensation earnable of the member in the most recent school year during which the member was employed, preceding the date of separation established by the court pursuant to Section 22652.

(3) All payments of contributions and interest shall be received by the system before the effective date of the retirement of the nonmember.

(d) The nonmember spouse shall have no right to purchase additional service credit after the effective date of a refund of the accumulated contributions in the separate account of the nonmember spouse.

(e) The member has no right to purchase the community property interest of the nonmember spouse of additional service credit whether or not the nonmember spouse elects to purchase the additional service credit. However, any additional service credit eligible for purchase that is not explicitly awarded to the nonmember spouse by the judgment or court order shall be deemed the exclusive property of the member.

22664. The nonmember spouse who is awarded a separate account shall have the right to a service retirement allowance.

(a) The nonmember spouse shall be eligible to retire for service if the following conditions are satisfied:

(1) The member had performed at least five years of creditable California service during the period of marriage, at least one year of which had been performed subsequent to the most recent refund to the member of accumulated contributions, if five of the member's six years of credited service immediately before the dissolution or legal separation had been in California. The credited service may include service credited to the account of the member as of the date of the dissolution or legal separation, previously refunded service, and permissive service credit which the member is eligible to purchase at the time of the dissolution or legal separation.

(2) The nonmember spouse has at least two and one-half years of credited service in his or her separate account.

(3) The nonmember spouse has attained the age of 55 years or more.

(b) A service retirement allowance of a nonmember spouse shall become effective upon any date designated by the nonmember spouse, provided:

(1) The requirements of subdivision (a) are satisfied.

(2) The nonmember spouse has filed an application for service retirement on a form provided by the system, which is executed no earlier than six months before the effective date of the retirement allowance.

(3) The effective date is no earlier than the first day of the month in which the application is received by the system in Sacramento and the effective date is after the date the judgment was entered.

(c) Upon service retirement, the nonmember spouse shall receive a retirement allowance that shall consist of an annual allowance payable in monthly installments upon retirement at normal retirement age or over, equal to 2 percent of final compensation for each year of credited service. If the nonmember spouse's retirement is effective at less than normal retirement age and between early

retirement age and normal retirement age, the retirement allowance shall be reduced by one-half of 1 percent for each full month, or fraction of a month, that will elapse until the nonmember spouse would have reached normal retirement age.

(1) In computing the retirement allowance of the nonmember spouse, the age of the nonmember spouse on the last day of the month in which the retirement allowance begins to accrue shall be used.

(2) Final compensation, for purposes of calculating the service retirement allowance of the nonmember spouse under this subdivision, shall be calculated according to the definition of final compensation in Section 22133 or Section 22135, whichever is applicable, and shall be based on the earnable compensation of the member up to the date the parties separated, as established in the judgment or court order pursuant to Section 22652.

The nonmember spouse shall not be entitled to use any other calculation of final compensation.

(d) If the member is or was receiving a disability allowance with an effective date before or on the date the parties separated as established in the judgment or court order pursuant to Section 22652, or at any time applies for and receives a disability allowance with an effective date that is before or coincides with the date the parties separated as established in the judgment or court order pursuant to Section 22652, the nonmember spouse shall not be eligible to retire until after the disability allowance of the member terminates.

If the member who is or was receiving a disability allowance returns to a position requiring membership or has his or her allowance terminated under Section 24015, the nonmember spouse may not be paid a retirement allowance until at least six months after termination of the disability allowance and the return of the member to a position requiring membership, or the termination of the disability allowance and the employment or self-employment of the member. If at the end of the six-month period, the member has not had a recurrence of the original disability or has not had his or her earnings fall below the amounts described in Section 24015, the nonmember spouse may be paid a retirement allowance if all other eligibility requirements are met.

(1) The retirement allowance of the nonmember spouse under this subdivision shall be calculated as follows: the disability allowance the member was receiving, exclusive of the benefits for dependent children, shall be divided between the share of the member and the share of the nonmember spouse. The share of the nonmember spouse shall be the amount obtained by multiplying the disability allowance, exclusive of the benefits for dependent children, by the years of service credited to the separate account of the nonmember spouse, including service projected to the date of separation, and dividing by the projected service of the member. The nonmember spouse's retirement allowance shall be the lesser of the share of the nonmember spouse under this subdivision or the retirement

allowance under subdivision (c).

(2) The share of the member shall be the total disability allowance reduced by the share of the nonmember spouse. The share of the member shall be considered the disability allowance of the member for purposes of Section 24213.

(e) The nonmember spouse who receives a retirement allowance is not a retirant. However, the allowance of the nonmember spouse shall be increased by application of the improvement factor and shall be eligible for the application of supplemental increases and other benefit maintenance provisions, including, but not limited to, Sections 24411, 24412, and 24415 based on the same criteria used for the application of these benefit maintenance increases to the service retirement allowances of members.

22665. The system shall include the service credit awarded to a nonmember spouse in the judgment or court order to determine the eligibility of a member for a service retirement, disability retirement, or disability allowance. That portion of awarded service credit based on previously refunded contributions or on permissive service credit may not be used by the member for eligibility requirements until the member has redeposited or purchased his or her portion of the service credit. The service retirement or disability allowance of a member shall be calculated based on the service credit in the account of the member on the effective date of disability or retirement.

22666. It is the intent of the Legislature to abolish any remaining application of the terminable interest doctrine in California relating to the division of public retirement benefits of a member in the event of dissolution of marriage or death if the division is made under this chapter.

CHAPTER 13. SERVICE CREDIT

22700. This chapter governs the computation of service to be credited to a member for the purpose of determining whether the member qualifies for retirement, the amount of contributions required of the member, and the amount of benefits paid to a retirant.

22701. (a) Service performed prior to July 1, 1972, shall be credited according to the provisions of the law in effect at the time service was performed.

(b) Service performed on or after July 1, 1972, by a member shall be credited in the proportion the compensation paid bears to the compensation the member would have received if he or she had been employed on a full-time day basis in the particular position in which he or she is employed throughout the school term, school year, or for a period of service at least the equivalent to a school term.

22702. Persons employed on a part-time basis, including persons employed in night schools and adult education programs, shall receive credit for time served in the proportion that the salary

earned bears to the salary that would have been earned if employed full-time. When a person is employed on an hourly or daily basis, full-time employment shall be considered as the number of days of service required by the district to be performed by its full-time employees in a school year and employees employed on an hourly or daily basis shall receive credit for time served in the proportion that the total hourly or daily service performed in a school year bears to the full-time employment for that school year.

22703. (a) Service shall be computed by school years and not by calendar years, portions of years served being accumulated and counted as service. All of the service performed during any one school year in a position requiring membership in this system shall not count for more than one year.

(b) In lieu of any other benefits provided by this part, any member who performed service prior to July 1, 1956, shall receive retirement benefits for that service at least equal to the benefits which he or she would have received for that service under the provisions of this part as they existed on June 30, 1956. The provisions of this paragraph do not apply to service which is credited in the San Francisco City and County Employees Retirement System.

22704. In any school district that is conducting a year-round school operation or a continuous school program, service shall be credited to the school year in which the service began.

22705. No time shall be included for which a member is entitled to receive a pension in a lump sum or installment payments, for other than naval or military service from any source other than this system, or under the American Gratuity Act No. 4151 relating to service in the Philippine Islands under which 15 or more years of creditable service has accrued, or a local retirement system. If a retirant becomes entitled to such a pension, his or her retirement allowance shall be reduced thereafter to exclude the time upon which the pension is based, without other change in his retirement status.

22706. No time shall be included during which a person is a retirant or receiving disability allowance from this system.

22707. Except as otherwise specifically provided in this part no member shall receive credit for service performed outside this state.

22708. The calculations of retirement allowances for state employees in the personal leave program shall include credit for service that would have been credited had the employee not been in the personal leave program. The costs that result from the increased service credit shall be paid for by the employer in a manner prescribed by the system.

22709. A member shall receive credit for time during which he or she is prevented from performing service in a position requiring membership, by act of God, or by reason of the closing of a school by any duly authorized officer or body. If by reason of a member's Japanese ancestry, he or she was required by the Wartime Civil Control Administration to leave his or her teaching position in California and returned prior to July 1, 1972, to a position requiring

membership in the State Teachers' Retirement System, he or she shall be given by the system four years of service credit in the system.

22710. Service shall be credited, upon payment of the contributions required under Sections 22901 and 22950, for that time during which a member is excused from performance of duties and for which the member receives workers' compensation, or compensation from an insurance carrier of the employer, due to injury or illness that arose out of and in the course of the member's employment. Service for that time shall be credited in the proportion that the compensation paid to the member bears to the compensation earnable by the member. The amount of creditable compensation paid to the member shall not exceed the compensation earnable by the member during the period of that absence.

22711. (a) A member shall receive full credit for time during which the member serves as an elected officer of an employee organization while on a compensated leave of absence pursuant to Section 44987 or 87768.5, if all of the following conditions are met:

(1) The member was employed and performed service in a position requiring membership in this system in the month prior to commencement of the leave of absence.

(2) The member contributes to the Teachers' Retirement Fund the amount that would have been contributed had the member been employed full-time.

(3) The member's employing agency contributes to the Teachers' Retirement Fund an amount based upon the salary that would have been paid to the member had the member been employed full-time and at a rate specified by the board.

(b) The maximum amount of credit earned by a member for service as an elected officer of an employee organization shall not exceed 12 calendar years.

22712. A member shall receive credit for time served as an exchange teacher in any location.

22713. (a) Notwithstanding any other provision of this chapter, the governing board of a school district or a community college district or a county superintendent of schools may establish regulations that allow an employee who is a member of this system to reduce his or her workload from full-time to part-time duties, and receive the service credit the member would receive if the member was employed on a full-time basis and have his or her retirement allowance, as well as other benefits that the member is entitled to under this part, based upon the salary that the member would have received if employed on a full-time basis.

(b) The regulations shall include, but shall not be limited to, the following:

(1) The option of part-time employment shall be exercised at the request of the member and can be revoked only with the mutual consent of the employer and the member.

(2) The member shall have been employed full-time in a position

requiring membership in this system for at least 10 years of which the immediately preceding five years were full-time employment.

(3) During the period immediately preceding a request for a reduction in workload, the employee shall have been employed full-time in a position requiring membership in this system for a total of at least five years without a break in service. For purposes of this subdivision, sabbaticals and other approved leaves of absence shall not constitute a break in service. Time spent on a sabbatical or other approved leave of absence shall not be used in computing the five-year full-time service requirement prescribed by this subdivision.

(4) The member shall have reached the age of 55 years prior to reduction in workload.

(5) The period of part-time employment shall not exceed 10 years.

(6) The minimum part-time employment shall be the equivalent of one-half of the number of days of service required by the member's contract of employment during his or her final year of service in a full-time position.

(7) The member shall be paid a salary that is the pro rata share of the salary the member would be earning had he or she not elected to exercise the option of part-time employment.

(c) Prior to the reduction of an employee's workload under this section, the district personnel responsible for the administration of this program, in conjunction with the administrative staff of the State Teachers' Retirement System and the Public Employees' Retirement System, shall verify the eligibility of the applicant for the reduced workload program.

(d) The member shall contribute to the Teachers' Retirement Fund the amount that would have been contributed had the member been employed full-time.

(e) The employer shall contribute to the Teachers' Retirement Fund an amount based upon the salary that would have been paid to the member had the member been employed full-time and at the rate specified by the board.

(f) The employer shall maintain the necessary records to separately identify each member receiving credit pursuant to this section.

22715. (a) Notwithstanding any other provisions of this part, whenever the Governor, by executive order, determines that because of an impending curtailment of, or change in the manner of performing service, the best interest of the state would be served by encouraging the retirement of state employees, and that sufficient economies could be realized to offset any cost to state agencies resulting from this section, an additional two years of service shall be credited to members, who are state employees, if the following conditions exist:

(1) The member is credited with five or more years of service and retires during a period not to exceed 120 days or less than 60 days commencing no sooner than the date of issuance of the Governor's

executive order specifying that period.

(2) The appointing power, as defined in Section 18524 of the Government Code, transmits to the retirement fund an amount determined by the board that is equal to the actuarial equivalent of the difference between the allowance the member receives after the receipt of service credit under this section and the amount the member would have received without the service credit. The transfer to the retirement fund shall be made in a manner and time period acceptable to the employer and the board.

(3) The appointing power determines that it is electing to exercise the provisions of this section, pursuant to the Governor's order, and certifies to the Department of Finance and to the Legislative Analyst, as to the specific economies that will be realized were the additional service credit towards retirement granted.

(b) As used in this section, "member" means a state employee who is employed in a job classification, department, or other organizational unit designated by the appointing power, as defined in Section 18524 of the Government Code.

(c) The amount of service credit shall be two years regardless of credited service, but shall not exceed the number of years intervening between the date of the member's retirement and the date the member would be required to be retired because of age. The appointing power shall make the payment with respect to all eligible employees who retired pursuant to this section.

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

(e) This section shall not be applicable to any member otherwise eligible if that member receives any unemployment insurance payments arising out of employment with an employer subject to this part during a period extending one year beyond the date of issuance of the executive order or if the member is not eligible to retire without the additional credit available under this section.

(f) The benefit provided by this section shall not be applicable to the employees of any appointing power until the Director of Finance approves the transmittal of funds by that appointing power or the Board of Regents or the Board of Trustees to the retirement fund pursuant to paragraph (2) of subdivision (a).

(g) The Director of Finance shall approve the transmittal of funds by the appointing power not sooner than 30 days after notification in writing of the necessity therefor to the chairperson of the committee in each house that considers appropriations and the chairperson of the Joint Legislative Budget Committee, or not sooner than any lesser time that the chairperson of the committee, or his or her designee, may in each instance determine. If there is any written communication between the Director of Finance and the Legislative Analyst, a copy of the communication shall be transmitted to the chairperson of each appropriate policy committee.

22716. Notwithstanding any other provision of law, a member upon any subsequent service under unpaid contract or any other unpaid basis with the trustees, shall not be required to forfeit the service credits acquired under former Section 22732, as it read on June 29, 1993.

22717. (a) A member shall be credited at service retirement for each day of accumulated and unused leave of absence for illness or injury for which full salary is allowed that the member was entitled to on the final day the member performed service for the school district or other employing agency by which the member was last employed in a position requiring membership in the system.

(b) The number of years of service credit to be granted shall be determined by dividing the number of days of accumulated and unused leave of absence for illness or injury by the number of days of service required by the member's contract of employment during the final year of service in a position requiring membership in the system. In no event shall the divisor be less than 175.

(c) When the member has made application for service retirement under this part, the school district or other employing agency shall certify to the board, within 30 days following the effective date of the member's service retirement, the number of days of accumulated and unused leave of absence for illness or injury that the employee is entitled to on the final day of employment. The board may assess a penalty on delinquent reports.

(d) This section shall not be applicable to any person who became a member of the system on or after July 1, 1980, whether or not the person was ever a member prior to that date.

22718. (a) The Teachers' Retirement Board shall establish rules and regulations for the purpose of billing school employers for service credit awarded for sick leave, including, but not limited to, both of the following provisions:

(1) The billing shall be authorized only if the employer grants more than one day of sick leave per pay period of at least four weeks for members of the State Teachers' Retirement System.

(2) The employer shall be billed only for the present value of sick leave greater than one day per pay period of at least four weeks that is granted to members of the State Teachers' Retirement System.

(b) If a school employer fails to pay a bill charged according to the rules and regulations established pursuant to subdivision (a), the Teachers' Retirement Board may request the Superintendent of Public Instruction or the Chancellor of the California Community Colleges, as appropriate, to reduce state apportionments to the school employer by an amount equal to the amount billed. The superintendent or chancellor shall make the reduction, and if requested by the board, direct the Controller to reduce the amount transferred from the General Fund to Section A or Section B, as appropriate, of the State School Fund by an equal amount, which shall instead be transferred to the Teachers' Retirement Fund.

22719. If a retirant returns to active service, the employing school

district or other employing agency shall not reinstate sick leave for which retirement credit has been given. A retirant who reinstates to membership in the system or on or after July 1, 1980, and subsequently retires shall not receive service credit for the unused sick leave accrued after reinstatement.

22720. The benefits accorded pursuant to Section 22717 shall not be used in the calculation of final compensation under this system.

22721. Except as provided in Section 22717, no credit toward retirement shall be granted for any payment made for accumulated sick leave upon transfer from one district to another, upon termination of service, upon death, or retirement. No contributions shall be taken from those payments. Payments for accumulated sick leave shall not be included in any payroll warrant paid to the teacher but shall be paid by separate warrant. The payments shall not be included in the computation for the purposes of determining "final compensation." No continued leave of absence shall be granted a member solely for the purpose of allowing the member to receive compensation for accumulated sick leave for which the member could otherwise have elected to receive payment.

CHAPTER 14. PERMISSIVE AND ADDITIONAL SERVICE CREDIT

22800. (a) Claims for creditable service shall be corroborated by a statement from the superintendent of schools or custodian of records of the employing agency or public school where the service was performed.

(b) Claims for creditable service performed outside the United States or in federal schools within the United States shall be corroborated by a statement from the custodian of records.

(c) When the official records of the service have been destroyed, the claim may be corroborated by one or more affidavits of knowledge of the service, preferably by persons who served with the member at the time the service was performed.

22801. (a) 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 election.

(b) 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.

(c) 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.

(d) The employer may pay the amount required as employer

contributions for additional service credited under paragraphs (2), (6), (7), (8), and (9) of subdivision (a) of Section 22803.

(e) Regular interest shall be charged on the monthly unpaid balance if the member pays in installments.

22802. A member who was previously excluded from membership in this system may elect to receive credit for:

(a) Substitute service excluded under Section 22602.

(b) Part-time service excluded under Section 22604.

(c) Adult education service excluded under Section 22603.

(d) Service as a school nurse excluded under Section 22606.

(e) Service performed in a position prior to the date the position was made eligible for membership in this system.

(f) Service performed in a position requiring membership in this system while a member of another California public retirement system, provided the member has ceased to be a member of, and has ceased to be entitled to benefits from, the other retirement system. The member shall not receive credit for the service if the member may redeposit withdrawn contributions and subsequently be eligible for any benefits based upon the same service or based upon other full-time service performed during the same period, from another California public retirement system. A member who elects to receive credit for service performed while excluded from membership shall pay for all such service.

22803. (a) A member may elect to receive credit for any of the following:

(1) Service performed in a teaching position in a publicly supported and administered university or college in this state.

(2) Service performed in a certificated teaching position in a child care center operated by a county superintendent of schools or a school district in this state.

(3) Service performed in a teaching position in the California School for the Deaf or the California School for the Blind, or in special classes maintained by the public schools of this state for the instruction of the deaf, the hard of hearing, the blind, or the semisighted.

(4) Service performed in a certificated teaching position in a federally supported and administered Indian school in this state.

(5) Time served, not to exceed two years, in a certificated teaching position in a job corps center administered by the United States government in this state if the member was employed in a position requiring membership in this system within one year prior to entering the service and returned to a position requiring membership in this system within six months following the date of termination of service in the job corps.

(6) Time spent on a sabbatical leave after July 1, 1956.

(7) Time spent on an approved leave to participate in any program under the federal Mutual Educational and Cultural Exchange Program.

(8) Time spent on an approved maternity or paternity leave of

two years or less in duration, regardless of whether or not the leave was taken before or after the addition of this subdivision.

(9) Time spent on an approved leave, up to four months in any 24-month period, for family care leave purposes, as defined by Section 12945.2 of the Government Code, excluding maternity and paternity leave.

(b) In no event shall the member receive credit for service or time described in paragraphs (1) to (9), inclusive, of subdivision (a) if the member has received or is eligible to receive credit for the same service or time in another retirement system.

22804. For the purposes of this chapter, war with a foreign power exists under any of the following conditions:

(a) Whenever Congress has declared war and peace has not been formally restored.

(b) Whenever the United States is engaged in active military operations against any foreign power, whether or not war has been formally declared.

(c) Whenever the United States is assisting the United Nations, in actions involving the use of armed force, to maintain or restore international peace and security.

22805. (a) A member may elect to receive credit for time served in the active military service of the United States or of this state, including active service in any uniformed auxiliary to any branch of that military service authorized as an auxiliary by the United States Congress or the California State Legislature, or in the full-time paid service of the American Red Cross prior to September 1957, if both of the following conditions exist:

(1) The time served was during war with any foreign power or during other national emergency, or in time of peace if the member was drafted for that service by the United States government.

(2) The member was employed in a position requiring membership in this system within one year prior to entering that service. Time included under this section shall be considered as served in the state in which the member was last employed before entering that service.

(b) Time during which the member is absent without compensation for other cause, on leave, or otherwise, shall not be included.

22806. (a) A member who is a state employee or a retirant who retired on or after December 31, 1981, and who was at retirement a state employee may elect to receive credit, of not to exceed four years, for time served of not less than one year, prior to entering this system, in the armed forces of the United States or in the Merchant Marine of the United States prior to January 1, 1950. Service credit shall not be granted if that service terminated with a discharge under dishonorable conditions. The service credit to be accorded pursuant to this section for that service shall be on the basis of one year of credit for each five years of credited service, but shall not exceed a total of four years of service credit regardless of the number of years

of either that service or subsequent service. A member or a retirant electing to receive a credit for that service shall have been credited with at least 10 years of service on the date of election or the date of retirement.

(b) An election by a member with respect to service credit under this section may be made only while the member is in state or university employment, and a retirant shall have retired immediately following service as a member who was at retirement a state employee. The retirement allowance of a retirant who elects to receive service credit pursuant to this section shall be increased only with respect to the allowance payable on and after the date of election.

(c) A member or retirant who elects to become subject to this section shall pay all reasonable administrative costs and contributions, sufficient to cover the total employer and employee cost plus interest of the military service credit, at rates to be determined by the board. The amount shall be contributed in lump sum or by installments over the period and subject to those minimum payments as may be prescribed by regulations of the board. Payments for administrative costs shall be credited to the current appropriation for support of the board and available for expenditure by the board to fund positions deemed necessary by the board to implement this section.

(d) The board has no duty to locate or notify any retirant or to provide the name or address of any retirant, agency, or entity for the purpose of notifying those persons.

22807. (a) A member who voluntarily requests or agrees to an extension of his or her original term of enlistment, service, or tour of duty shall not receive credit for time served during the extension of military service after December 31, 1958.

(b) In no event shall a member receive credit for more than four years of military service performed after June 30, 1968.

22808. A member shall not be required to pay contributions to receive credit for service under Section 22805 under any of the following conditions:

(a) The service was performed after September 15, 1940, and the member returned to a position requiring membership in this system prior to March 19, 1948.

(b) The service was performed prior to January 1, 1950, and the member was continuously performing the service prior to that date and returned to a position requiring membership in this system within six months following the termination of the service.

(c) The service was performed prior to September 14, 1978, and the member entered that service after December 31, 1949, and returned to a position requiring membership in this system within six months following the termination of the service.

(d) The service was performed prior to January 1, 1992, and the member entered that service after August 1, 1990, and retired or returned to a position requiring membership in this system and

earned additional service credit within six months following the termination of that service or within six months after the completion of any period of rehabilitation offered by the United States government, excluding rehabilitation solely for educational purposes. Notwithstanding Section 22250, 22251, or 22253, the school districts, community college districts, or other agencies employing those members shall not be required to make the contributions required by Chapter 16 (commencing with Section 22950).

22809. A member may elect to receive credit for teaching service performed within and outside of this state in a war relocation center administered by the Wartime Civil Control Administration if all of the following conditions exist:

(a) By reason of the member's Japanese ancestry the member was placed in a war relocation center prior to entering membership in this system.

(b) The member received compensation for service in a teaching capacity in the relocation center.

(c) The member possessed a valid California teaching credential issued by the State Department of Education or had a bachelor's degree in education from a California postsecondary institution.

22810. (a) Any member, who was a member of this system on June 30, 1944, may elect to receive credit for the following service performed prior to July 1, 1944, in other states, territories, or possessions of the United States, or in Canada:

(1) Service in a teaching position that in this state would require membership in this system.

(2) Service in a teaching position in a publicly supported and administered university or college.

(3) Service in a teaching position with the Civilian Conservation Corps or in an Indian school supported and administered by the United States government.

(4) Service in a publicly supported residential school for the deaf or the blind.

(b) In no event shall the member receive credit for this service if the member has received or is eligible to receive credit for the same service in another retirement system.

CHAPTER 15. EMPLOYEE CONTRIBUTIONS

22900. Acceptance of employment in a position requiring membership in the system is consent to have deductions from salary taken for the system.

22901. Each member of this system shall contribute to the retirement fund an amount equivalent to 8 percent of the member's compensation.

22902. Members' accumulated retirement contributions and those other contributions required for credited service shall be in the amounts required based on rates of contribution applicable for the years included in that period.

22903. Notwithstanding Sections 22901, 22956, and 23000, each school district, community college district, county board of education, and county superintendent of schools, may pick up, for the sole purpose of deferring taxes, as authorized by Section 414(h) (2) of the Internal Revenue Code of 1986 (26 U.S.C.A. Sec. 414(h) (2)) and Section 17501 of the Revenue and Taxation Code, all of the employee's contributions towards retirement made by members of the State Teachers' Retirement System.

22904. Notwithstanding any other provision of law, the state may pick up all or a portion of the normal contributions required to be paid by a state employee who is a member of the State Teachers' Retirement System. The pick up of member contributions shall be through a salary reduction program pursuant to Section 414(h) (2) of the Internal Revenue Code. These contributions shall be reported as employer-paid member contributions, and shall be credited to member accounts.

22905. Contributions made by a member and member contributions made by an employer pursuant to Section 22903 and 22904 shall be credited by the board to the individual account of the member.

22906. If at the time of retirement, disability, or death, there are contributions remaining to the credit of the member that were made with respect to time on the basis of which the member will not be entitled to receive a benefit, the board shall refund to the member accumulated contributions as it may allocate to the time.

22907. Accumulated contributions credited to the account of a member whose date of birth is changed in the records of the system after December 31, 1979, shall be adjusted to the proper amount based on the correct birth date by either of the following methods:

(a) A refund of the excess contributions plus credited interest from the end of the school year in which contributions were overpaid because of the incorrect birth date.

(b) Payment by the member of the contributions due the system plus regular interest from the end of the school year in which the contributions were underpaid to the date of payment.

22908. (a) Subject to rules prescribed by the board, any member may elect to make annuity deposit contributions for the purpose of providing additional retirement income. However, on and after January 1, 1983, the system shall not accept any annuity deposit contributions.

(b) Accumulated annuity deposit contributions may be withdrawn as provided in Section 23107.

CHAPTER 16. EMPLOYER AND STATE CONTRIBUTIONS

22950. The school districts and other agencies employing members of the State Teachers' Retirement System shall contribute monthly to the Teachers' Retirement Fund 8 percent of the total of the salaries upon which members' contributions are based.

22951. 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.

22952. Effective January 1, 1980, the school districts and other employing agencies in the state, in addition to all other contributions required by this part, on account of liability for benefits pursuant to Section 24407, shall contribute monthly to the Teachers' Retirement Fund 0.307 percent of the total of the salaries upon which members' contributions are based.

22953. (a) Effective January 1, 1981, the school districts and other employing agencies in the state, in addition to all other contributions required by this chapter, on account of liability for benefits pursuant to Section 24408, shall contribute monthly to the Teachers' Retirement Fund 0.108 percent of the total of the salaries upon which members' contributions are based.

(b) 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.

22954. (a) In addition to any other contributions required by this part, on July 1, 1990, and on July 1 of each subsequent year, the Controller, subject to Section 24414, shall transfer, based on estimated payroll data provided by the board, the following percentages of the total of the prior year salaries upon which members' contributions are based to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund, for the purpose of funding the supplemental payments authorized under Section 24415:

(1) For the fiscal year ending June 30, 1991	0.50%
(2) For the fiscal year ending June 30, 1992	1.00%
(3) For the fiscal year ending June 30, 1993	1.50%
(4) For the fiscal year ending June 30, 1994	2.00%
(5) For the fiscal year ending June 30, 1995, and each fiscal year thereafter	2.50%

These transfers shall be based upon estimated payroll data provided to the Director of Finance by the board and shall be adjusted in January of that same fiscal year to reflect actual payroll data.

(b) The board may deduct from the annual state contributions made pursuant to this section an amount necessary for the administrative expenses to implement Section 24415, subject to the annual Budget Act.

(c) Notwithstanding any other provision of law, it is the intent of the Legislature, in establishing the Supplemental Benefit Maintenance Program embodied in this section and Sections 22400, 24414, and 24415, to manifest a contractually enforceable promise to

repay the Teachers' Retirement Fund in full, with interest, as provided in subdivision (b) of Section 24414, for all transfers or advances made from the Teachers' Retirement Fund pursuant to subdivision (a) of Section 24414 and for 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.

(d) Except as provided in subdivision (c), the Legislature reserves the right to reduce or terminate the state's contributions to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund provided by this section and to reduce or terminate the distributions required by Section 24415. It is intended that any legislative reduction or termination of the state's contributions to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund provided by this section or any reduction or termination of distributions required by Section 24415, shall be effectuated by a separate statute rather than by the annual Budget Act.

22955. (a) Notwithstanding Section 13340 of the Government Code, commencing October 1, 1991, a continuous appropriation is hereby made from the General Fund to the Controller, pursuant to this section, for transfer to the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 4.3 percent of the total of the salaries of the immediately preceding calendar year upon which members' contributions are based, to be calculated annually on October 1, and shall be divided into four equal quarterly payments. The percentage shall be adjusted to reflect the contribution required to fund the normal cost deficit when the unfunded obligation has been deemed to be eliminated by the board based upon a recommendation from its actuary. If a rate increase or decrease is required, the adjustment may be for no more than 0.25 percent per year and in no case may the transfer exceed 4.3 percent of the total of the salaries of the immediately preceding calendar year upon which members' contributions are based.

(b) The funds transferred pursuant to subdivision (a) shall first be applied to meeting the normal cost deficit, if any, for that fiscal year.

(c) The transfers made pursuant to this section are in lieu of the state contributions formerly made pursuant to Sections 23401 and 23402.

(d) For the purposes of this section, the term "normal cost deficit" means the difference between the normal cost rate as determined in the actuarial valuation required by Section 22226 and the total of the member contribution rate required under Section 22804 and the employer contribution rate required under Section 23400, and shall exclude (1) the portion for unused sick leave service granted pursuant to Section 22719, and (2) the cost of benefit increases which occur after July 1, 1990. The contribution rates prescribed in Section 22804 and Section 23400 on July 1, 1990, shall be utilized to make the calculations. The normal cost deficit shall then be multiplied by the total of the salaries upon which member contributions are based to

determine the dollar amount of the normal cost deficit for the year.

(e) Pursuant to Section 22001 and the case law, the members are entitled to a financially sound retirement system. The Legislature recognizes that the system shall, pursuant to this act, receive less funds in the short term than it would have received under former Sections 23401 and 23402 (Chapter 282 of the Statutes of 1979). However, it is the intent of the Legislature that this section shall provide the retirement fund stable and full funding over the long term.

(f) This section continues in effect but in a somewhat different form, fully performs, and does not in any way unreasonably impair, the contractual obligations determined by the court in California Teachers' Association v. Cory, 155 Cal. App. 3d 494.

(g) This section shall not be construed to be applicable to any unfunded liability resulting from any benefit increase or change in contribution rate that occurs after July 1, 1990.

(h) The amendments to this section during the 1991–92 Regular Session shall be construed and implemented to be in conformity with the judicial intent expressed by the court in California Teachers' Association v. Cory, 155 Cal. App. 3d 494.

22956. Employer and state contributions made to the system are to finance the employer obligation for all of the members of the system and, therefore, shall not be credited to the individual accounts of the members of the system. These contributions shall be held in the reserves of the system to finance the employers' share of the cost of all benefits payable by the system. Under no circumstances shall employer contributions be allocated or awarded to individual members, retirants, their spouses, or beneficiaries.

22957. (a) Any employer, other than the state, on behalf of any group of members or any member, may elect to make tax-sheltered annuity contributions for the purpose of providing additional benefits. An election by an employer to make these contributions does not require any member to make contributions. These contributions shall continue in effect for the period specified in the election filed with the board. A member shall acquire no right by reason of his or her employment while the election is in effect to a continuation of the contributions beyond the period specified in the election.

(b) Whenever in this part provision is made with respect to accumulated tax-sheltered annuity contributions of a member, that term shall include contributions made by an employer pursuant to this section.

(c) Contributions made by an employer under this section are excluded from the definitions of "compensation" and "salary" as provided in Section 22114.

CHAPTER 17. EMPLOYER COLLECTION AND REPORTING PROCEDURES

23000. The governing board of each school district, the county superintendent of schools, the county auditor, and any other employing department or agency shall deduct from the salary of employee members of this system the contributions required by this part and shall pay to the system those contributions plus the employer contributions required by this part and Section 44987.

23001. The county superintendent shall draw his or her requisitions for contributions required by Sections 22901 and 22950 in favor of the State Teachers' Retirement System, and the requisitions, when allowed and signed by the county auditor, shall constitute a warrant against the county treasury. The county superintendent thereupon shall forward the warrants to the board in Sacramento. The amounts received shall be deposited immediately in the State Treasury to the Teachers' Retirement Fund.

23002. Member and employer contributions required by this part and Section 44987 are due in the office of the system five working days immediately following the period covered by the monthly report upon which the salary earned during the period is being reported and from and upon which the contributions are due. Payments shall be delinquent on the sixth working day thereafter and regular interest on delinquent payments shall begin to accrue as of that day. The board shall authorize estimated payments of not less than 95 percent of the contributions due, and, in that case, the balance of contributions payable shall be due in the office of the system no more than 15 working days following the period covered by the monthly report upon which the contributions are based. This additional payment shall be delinquent on the 16th working day thereafter, and regular interest shall begin to accrue as of that day.

23002.5. Member and employer contributions from school districts conducting a year-round school operation or a continuous school program shall be reported as part of the school year in which the service began.

23003. (a) If a county superintendent of schools or employing agency other than a school district or community college district fails to make payment of contributions as provided in Section 23002, the board may assess penalties.

(b) The board may charge regular interest on any delinquent contributions until they have been paid to the system.

23004. The county superintendent of schools or employing agency other than a school district or a county or community college district shall make a report monthly to the system containing such information as the board may require in the administration of the system.

23005. Monthly reports are due in the office of the system 30 calendar days immediately following the month in which the salary being reported was earned, and are delinquent 15 calendar days

immediately thereafter.

23006. (a) If a county superintendent of schools or employing agency other than a school district or community college district submits monthly reports late or in unacceptable form, the board may assess penalties.

(b) The board may assess penalties, based on the sum of the employer and employee contributions required by the report for late or unacceptable submission of reports, at a rate of interest equal to the regular interest rate or a fee of five hundred dollars ($500), whichever is greater.

23007. Should any county superintendent fail to make payment of any assessment by the board, the Controller shall, upon order of the board, withhold subsequent payments from the State School Fund to the county for deposit in the county school service fund or, upon the request of a county superintendent of schools to the county auditor, he or she shall withhold payments to a school district for deposit in the district general fund until the contributions and report are received in acceptable form in the office of the system and the board directs the Controller to make those payments less the amount of the assessments to the county that would have been paid had no payments been withheld. The Controller shall thereupon pay to the system the amount of the assessments withheld for deposit in the State Treasury to the Teachers' Retirement Fund.

23008. (a) If more or less than the required contributions specified in this part and Section 44987 are paid to the system based on any salary payment to a member, proper adjustments shall be made by the county superintendent or other employing agency on a monthly report within 60 days of discovery or of notification by the system.

(b) The board may assess penalties for late or improper adjustments. These penalties shall be no more than the regular interest as defined in Section 22142. The penalty so assessed shall be deemed interest earned in the year in which it was received.

(c) If a required report contains erroneous information and the system, acting in good faith, disburses funds based on that information, the county superintendent or other employing agency who submitted the report shall reimburse the system in full for the amount of the disbursement. Reimbursement shall be made immediately upon notification by the system.

23009. The board, if in the interest of the system, may, in connection with adjustments to the required contributions referred to in Section 23008, receive or make payments directly from or to the member or beneficiary with interest.

CHAPTER 18. REFUND OF CONTRIBUTIONS

23100. (a) Upon the termination of a member's employment by any cause other than death or retirement there shall be paid to the member, pursuant to this part, both of the following:

(1) The accumulated retirement contributions made after June 30, 1935.

(2) The accumulated annuity deposit contributions.

(b) Accumulated contributions include credited interest through the date of payment.

23101. When a member's contributions are returned to him or her, as provided in Section 23100, all rights to benefits pertaining to the service credits represented by those contributions are forfeited. Those rights and benefits, based upon service performed prior to refund, shall not be restored until the member has redeposited the total of the refunded contributions, and paid the regular interest thereon as provided in Chapter 19 (commencing with Section 23200).

23102. Prior to the system paying a refund of contributions, the employer or superintendent of schools shall certify that the member's employment has been terminated.

23103. Refunds to a member shall be made upon request of the member, or may be made without a request if it appears to the board that the member's employment is permanently terminated and the member does not have enough service under the system to qualify for receipt of a retirement benefit.

23104. (a) Deposit in the United States mail of an initial warrant drawn in favor of a member as a refund of contributions upon termination of employment, and addressed to the latest address on file for the member, shall constitute a return of the member contributions.

(b) If a person to whom the warrant is mailed returns the warrant to the system's office for cancellation, within 30 days from the mailing date, the refund shall be canceled and the person shall be reinstated to membership with all the rights and privileges restored.

23105. The board shall deduct 4 percent of the refundable balance or twenty-five dollars ($25), whichever is less, from each refund made upon termination of service. The amounts deducted are appropriated to the State Teachers' Retirement System and shall be credited to the support appropriation provided for in Section 22304 as reimbursements for the fiscal year during which those amounts are deducted.

23106. If a member ceases to be entitled to credit for service in this system because he or she has become entitled to credit for that service in another retirement system supported wholly or in part by funds of the United States government, or any state government or political subdivision thereof, he or she is entitled to a refund of the accumulated retirement contributions made during the period for which he or she is entitled to credit in the other retirement system.

23107. Any member without terminating membership and upon making application on forms provided by the system shall be paid a refund of the accumulated annuity deposit contribution.

CHAPTER 19. REDEPOSIT OF CONTRIBUTIONS

23200. (a) If a person, whose accumulated retirement contributions have been refunded, again becomes a member of the system he or she may elect to redeposit those contributions with regular interest from the date of refund to the date of payment. If the member elects to redeposit, the member shall repay all accumulated contributions that were previously refunded. The redeposit shall also include the amount deducted for administration expense under Section 23105.

(b) For time prior to July 1, 1944, regular interest shall be at 2½ percent compounded annually.

23201. Any person whose accumulated contributions were refunded to him or her and who has received, or will qualify for the receipt of, a retirement allowance from the Public Employees' Retirement System, the University of California Retirement System, the Legislators' Retirement System, or the San Francisco City and County Employees' Retirement System may elect to redeposit the accumulated contributions that were refunded, with regular interest from the date of refund to the date of payment, without being employed in a position requiring membership in this system. A person who elects to redeposit pursuant to this section shall not receive credit for service that might otherwise be creditable under Section 22810.

23202. (a) 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.

(b) An election to redeposit refunded contributions shall be considered as an election to repay all contributions previously refunded.

(c) If any payment due because of this election is not received at the Sacramento office of the system within 120 days of its due date, the election shall be canceled. Upon the cancellation of election any payments made under the election shall be refunded.

(d) 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.

23203. Repayment of withdrawn accumulated retirement contributions shall be made in one sum, or in not more than 60 monthly installments, provided that no installment, except the final installment, shall be less than twenty-five dollars ($25).

CHAPTER 20. BENEFICIARY DESIGNATION

23300. (a) A member or retirant may at any time designate a beneficiary to receive benefits payable under this part, except that no beneficiary designation may be made in derogation of the

community property share of any nonmember spouse when any such benefit is derived, in whole or in part, from community property contributions or service credited during the period of marriage, unless the nonmember spouse has previously obtained an alternative order for distribution pursuant to Section 2610 of the Family Code. Any change of beneficiary shall be in writing on a form prescribed by the system, executed by the member, witnessed by two witnesses, neither of whom may be beneficiaries. To be valid the instrument shall be received in the office of the system in Sacramento before the member's death.

(b) Except as otherwise stated in this section, the designation of beneficiary, other than an option beneficiary, may be revoked at the pleasure of the person making the nomination, and a different beneficiary designated in the same manner as provided in this section.

23301. A corporation, trust, eleemosynary, parochial institution, or public entity may be designated as a beneficiary. However, they may not be designated as option beneficiaries.

23302. Payment to a beneficiary designated in the form on file in the system at the date of death by a warrant drawn prior to any claim under community property rights shall constitute full discharge of any and all liability of the board and system by reason of the member's death.

23303. (a) The board, if the whereabouts of the nominated beneficiary cannot be determined, or if the beneficiary is the estate of the deceased person, may pay to the undertaker who conducted the funeral, or to any person who, or any organization that, has paid the undertaker from funds owned by the person or organization, in its discretion all or a portion of any amount payable under the system, but not to exceed the funeral expenses of the deceased person, or the portion of the expenses paid by the person or organization, as evidenced by the sworn itemized statement of the undertaker, person, or organization and by any other documents the board may require.

(b) The payment shall be in full and complete discharge and acquittance of the board and system up to the amount paid.

23304. If no beneficiary designation is in effect on the date of death, any benefit payable shall be paid to the estate of the member. Payment pursuant to the board's determination in good faith upon evidence satisfactory to it of the existence, identity or other facts relating to entitlement of persons under this section shall constitute a complete discharge of and release of the system from liability for the benefit.

CHAPTER 21. PRE-1972 BENEFITS

23400. (a) If, prior to attaining the age of 55 years, a person who is entitled to receive a retirement allowance because of his or her retirement for disability prior to July 1, 1972, engages in a gainful

occupation, the board shall reduce the portion of his or her monthly retirement allowance that is not provided by his or her accumulated contributions, to an amount, which when added to the compensation earned monthly by him or her, does not exceed the amount of the compensation that would be earnable by a person holding the same or an equal position as or to that which he or she held at the time of his or her retirement, and in the same salary step or rating, or if no such position then exists, the compensation earnable immediately prior to its abolition.

(b) If his or her earnings are further altered, the board shall further alter that portion of his or her retirement allowance to the lower of the following amounts:

(1) The amount of that portion of his or her retirement allowance as it would be if not reduced under this section.

(2) An amount that, when added to the compensation earned by him or her, equals the amount of the compensation that would be earnable by a person holding the same or an equal position as or to that which he or she held at the time of his or her retirement, and in the same salary step or rating, or if no such position then exists, the compensation earnable immediately prior to its abolition.

(c) For purposes of this section, the retirement allowance subject to adjustment is the unmodified allowance irrespective of the option elected.

(d) When he or she attains the age of 55 years, his or her retirement allowance shall be made equal to the amount it would be if not reduced under this section, and may not again be modified under this section. Section 24015 does not apply to those persons affected by this section.

23401. The board may require any disability retirant who retired, prior to July 1, 1972, and who has not attained 58 years of age, to undergo a medical examination. If the examination, together with other available information, shows to the satisfaction of the board that he or she is no longer disabled, his or her retirement allowance shall cease, and he or she shall be reinstated to membership in the system. Should any retirant refuse to submit to medical examination, as provided in this section, payments to the retirant under disability retirement shall be discontinued and all rights of the retirant in the disability retirement allowance shall be revoked.

23402. Benefits payable on account of deaths that occurred prior to July 1, 1972, and provided under former Section 14193, as it read prior to July 1, 1972, shall be continued. Former Sections 14195 and 14196 as they read prior to that date shall continue to apply to these payments.

23403. Survivor benefits payable on account of deaths that occurred prior to July 1, 1972, shall be continued in the amounts and under the conditions stated in Sections 23804 and 23811, as they read prior to July 1, 1972.

23404. Upon termination of the retirement allowance that began to accrue prior to July 1, 1972, the member's individual account shall

be credited with amounts that are the actuarial equivalents at that time, as based on the disabled life, where retirement had been for disability, or on the active life where the retirement had been for service of the allowance and annuities being paid from accumulated retirement contributions, accumulated annuity deposit contributions, or accumulated tax-sheltered annuity contributions. These credited amounts shall not exceed the amount of his or her accumulated contributions as they were in those accounts at the date of retirement.

CHAPTER 21.5. ELECTION OF DISABILITY AND DEATH BENEFIT COVERAGE

23700. (a) New survivor benefit and disability retirement programs that are provided pursuant to Chapter 23 (commencing with Section 23850) and Chapter 26 (commencing with Section 24100), are effective as of October 16, 1992. All members with an effective date of membership on or after October 16, 1992, shall be covered by these survivor benefit and disability retirement programs.

(b) The purpose of this chapter is to set forth the criteria for granting certain members of the system, as defined in Section 23702, the opportunity to elect to either retain coverage under the current family allowance and disability allowance programs pursuant to Chapter 22 (commencing with Section 23800), and Chapter 25 (commencing with Section 24001) or to be covered under the survivor benefit and disability retirement programs.

23701. (a) The election of disability and death benefit programs shall be made during the 180-day period commencing on October 16, 1992, and ending on April 13, 1993. All elections made during this period shall be effective as of October 16, 1992.

(b) If a member has made an election and subsequently becomes disabled or dies, the benefits shall be paid under the elected program provisions as though the election had been executed on October 16, 1992.

23702. (a) All members of the State Teachers' Retirement System on October 15, 1992, who are not receiving a disability allowance or a retirement allowance with an effective date prior to October 16, 1992, shall be eligible to make an irrevocable election, pursuant to this chapter, to retain coverage under either the disability allowance and family allowance programs or to have coverage under the disability retirement and survivor benefit programs.

(b) The member's eligibility to participate in the election shall be based on the member's status with the system on October 15, 1992, only, and not on prior or subsequent events.

23703. A member's election of disability or death benefit coverage shall meet all of the following requirements:

(a) The member is eligible to participate in the election pursuant

to Section 23702.

(b) The election is filed on a form provided by the system.

(c) Except as provided in Section 23704, the election document contains the signature of the spouse of the member, unless the member declares, in writing, under penalty of perjury, that one of the following conditions exists:

(1) The member does not know, and has taken all reasonable steps to determine, the whereabouts of the spouse.

(2) The spouse is incapable of executing the acknowledgement because of an incapacitating mental or physical condition.

(3) The member and spouse have executed a marriage settlement agreement pursuant to Chapter 2 (commencing with Section 1600) of Part 5 of Division 4 of the Family Code that makes the community property law inapplicable to the marriage.

(4) The member is not married.

(5) The current spouse has no identifiable community property interest in future benefits.

(d) The election document is signed and dated during the 180-day election period specified in Section 23701.

(e) The signatures of the member and the member's spouse on the election document are witnessed by a third party who is at least 18 years of age.

(f) The election document is received in the system's office in Sacramento within 30 days after the date of signature, but no later than May 1, 1993.

23704. If a spouse refuses to sign the election document, the member may bring an action in court to enforce the spousal signature requirement or to waive the spousal signature requirement. Either party may bring an action pursuant to Section 1101 of the Family Code to determine the rights of the party.

23705. After receipt of a member's election document, the system shall mail an acknowledgement notice to the member that indicates the member's choice of disability and death benefit programs. If the member does not agree with the system's recording of his or her election choice, the member has 30 days from the date of the acknowledgement notice to notify the system in writing.

23706. (a) Failure to file an election pursuant to this chapter shall be deemed to be an election to retain coverage under the disability allowance and family allowance programs.

(b) Failure to meet all of the requirements for submitting an election pursuant to this chapter shall be deemed to be a failure to file an election.

CHAPTER 22. ACTIVE DEATH BENEFITS: FAMILY ALLOWANCE

23800. This chapter governs the eligibility, benefit provisions, allowance computations, and related provisions for the death benefits payable upon the death of eligible members. "Members," as used in this chapter, means all members who were disabilitants on

October 15, 1992, and all persons who were members of the system on October 15, 1992, who elected, pursuant to Chapter 21.5 (commencing with Section 23700), to retain coverage under the death benefit provisions of this chapter.

23801. (a) A death payment of five thousand dollars ($5,000) shall be paid to the beneficiary upon receipt of proof of death of a member who had one or more years of credited service, at least one of which had been performed subsequent to the most recent refund of accumulated retirement contributions, if the member died during any one of the following periods:

(1) While in active employment.

(2) While disabled, if the disability had been continuous from the last day for which compensation had been paid.

(3) Within four months after terminating employment.

(4) Within four months after termination of a disability allowance if no service was performed after the termination.

(5) Within 12 months of the last day for which compensation was paid, if the member was on an approved leave of absence without compensation for reasons other than disability or military service.

(b) A death payment pursuant to this section shall not be payable for the death of a member that occurs within one year commencing with the effective date of reinstatement from service retirement pursuant to Section 24208.

(c) The board may adjust the death payment amount following each actuarial valuation based on changes in the All Urban California Consumer Price Index.

23802. (a) Upon receipt of proof of death of a member who has no preretirement option in effect, and who has no eligible survivors for a family allowance, there shall be paid to the beneficiary both of the following:

(1) The accumulated retirement contributions after July 1, 1935.

(2) The accumulated annuity deposit contributions.

(b) Accumulated contributions include credited interest through the date of payment.

23803. Notwithstanding Chapter 3 (commencing with Section 13100) of Part 1 of Division 8 of the Probate Code, or any other provision of law, death payments and return of contributions pursuant to Sections 23801 and 23802, if any, may be requested by the beneficiary and paid by the system as soon as practicable after receipt of proof of death.

23804. (a) A family allowance is payable upon the death of a member or a disabilitant who was receiving a disability allowance that began to accrue after June 30, 1972.

(b) (1) For the family allowance to be payable upon the death of a member, all of the following conditions shall be met at the time of death:

(A) Death occurred after June 30, 1972.

(B) A preretirement election of an option is not in effect.

(C) The provisions for the death payment under this part have

been met.

(2) In addition to the conditions specified in paragraph (1), at least one-half year of credited service had been performed subsequent to the end of the last break, if a break in service of more than one year had occurred.

(3) In addition to the conditions specified in paragraph (1), at least one year of credited service had been performed subsequent to the last reinstatement date, if reinstated from retirement.

(c) The family allowance is in lieu of the return of the member's accumulated retirement contributions.

(d) The family allowance may be terminated, if all eligible beneficiaries formally waive their rights in accordance with the requirements established by the system.

23805. A family allowance is payable in the amount and to the specified persons in the following order of priority:

(a) To the member's or disabilitant's surviving spouse who has financial responsibility for at least one child, an amount equal to 40 percent of the deceased member's final compensation or the disabilitant's projected final compensation plus 10 percent of the deceased member's final compensation or the disabilitant's projected final compensation for each child, up to a maximum allowance of 90 percent.

(b) If there is no surviving spouse or upon the death of the surviving spouse, to each child, an amount equal to 10 percent of the deceased member's final compensation or the disabilitant's projected final compensation, up to a maximum allowance of 50 percent. If there are more than five children, they shall share equally in the maximum allowance of 50 percent.

(c) To the surviving spouse at age 60 or over without children, an amount equal to Option 3 as provided under this part computed on the member's or disabilitant's projected final compensation and projected service to normal retirement age. The allowance payable under this subdivision shall be increased by application of the benefit improvement factor for time that elapses between the date the member or disabilitant would have attained normal retirement age and the date the family allowance under this subdivision begins to accrue. The benefit calculation shall include credit for the unused sick leave that had accrued to the member as of the date of the member's death.

(d) If there is no surviving spouse or children upon the member's or disabilitant's death, to the dependent parent age 60 years or over, an amount equal to Option 3 as provided under this part computed on the member's or disabilitant's projected final compensation and projected service to normal retirement age. The benefit calculation shall include credit for the unused sick leave that had accrued to the member as of the date of the member's death. If there are two dependent parents, a single family allowance shall be computed on the assumption that the younger parent is the beneficiary and the allowance shall be divided equally for as long as there are two

dependent parents. Thereafter, the allowance shall be payable to the surviving dependent parent.

(e) If there are no children who qualify under Section 22111, a spouse or the dependent parent or parents may elect, prior to the receipt of the first payment under subdivision (c) or (d), to receive the accumulated contributions in a lump sum subject to a reduction for any payments made from the account for any prior qualified persons.

23806. (a) If there are eligible dependent children who are not in the care of the surviving spouse, they shall be included in the calculation of the family allowance.

(b) An allowance increment payable for an eligible dependent child shall be paid to the guardian of the estate of the child, the natural or adoptive parent having custody of the child, or if none, then to the trustee of the trust established for the benefit of the child. In the case of a child age 18 years or older, the child's share of the allowance shall be paid to the guardian of the estate of the child, trustee of the trust established for the benefit of the child, or if none, then to the child.

23807. To determine eligibility for benefits payable under family and disability allowances as a full-time student, all of the following shall apply:

(a) An individual shall be deemed to be a full-time student during any normal period of vacation or holiday of the institution involved, and there is sufficient evidence to satisfy the board of the intention to continue in full-time attendance at the educational institution immediately following the period of vacation or holiday.

(b) If the individual fails to return to full-time attendance following vacation or holiday, the allowance ceases as of the first of the month in which return to full-time attendance was required.

(c) An individual does not qualify as a full-time student during any period of nonattendance if the nonattendance is due to expulsion or suspension.

(d) An individual shall not qualify as a full-time student if attendance at an educational institution is paid for and provided by the employer or is in the course of on-the-job training, unless the on-the-job training is part of the regularly established school training for which credit toward a diploma, certificate, or graduation is given. An individual shall not qualify as a full-time student for any full-time course of study which is directly paid for and sponsored under the Job Corps of the Economic Opportunity Act of 1964 (Public Law 88-452), as amended, or paid for or sponsored by any armed forces for this state or the United State of America.

23808. A stepchild or adopted child acquired subsequent to the death of the member shall not be entitled to any allowance and shall be excluded in the determination of allowances under this chapter.

23809. The family allowance payable to the surviving spouse who has financial responsibility for at least one child, or payable to the children, shall be reduced by an amount equal to the unmodified

benefits paid or payable from other public systems for the same event which qualified the member or disabilitant for the family allowance.

23810. If the person or persons to whom a family allowance is payable dies or no longer qualifies for the allowance, the allowance shall be terminated on the day of that event except as provided in Section 24600.

23811. (a) Upon termination of family allowances under this part and prior to the payment of allowances equal to the amount of the member's accumulated retirement contributions at the time of death, the balance shall be paid to the member's beneficiary.

(b) Payments provided under this section shall include credited interest on the unpaid balance calculated from the date family allowances were last paid or from the date of death, if no family allowance payments were made, to the date the balance is paid.

CHAPTER 23. ACTIVE DEATH BENEFITS: SURVIVOR BENEFITS

23850. This chapter governs the eligibility, benefit provisions, allowance computations, and related provisions for the death benefits payable upon the death of eligible members. "Member," as used in this chapter, means all persons who became members of the system on and after October 16, 1992, and all persons who were members as of October 15, 1992, who elected, pursuant to Chapter 21.5 (commencing with Section 23700), to be covered under the death benefit provisions of this chapter.

23851. (a) A death payment of twenty thousand dollars ($20,000) shall be paid to the beneficiary, as designated pursuant to Section 23300, upon receipt of proof of death of a member who had one or more years of credited service, at least one of which had been performed subsequent to the most recent refund of accumulated retirement contributions, if the member died during any one of the following periods:

(1) While in active employment.

(2) Within four months after terminating employment.

(3) Within 12 months of the last day for which compensation was paid, if the member was on an approved leave of absence without compensation for reasons other than disability or military service.

(b) A death payment pursuant to this section shall not be payable for the death of a member that occurs within one year commencing with the effective date of reinstatement from service retirement pursuant to Section 24208 or during the calendar six months commencing with the effective date of reinstatement from disability retirement pursuant to Section 24117.

(c) The board may adjust the death payment amount following each actuarial valuation based on changes in the All Urban California Consumer Price Index.

23852. Upon receipt of proof of death of a member who has no preretirement option in effect:

(a) The surviving spouse may elect to receive either of the following:

(1) The member's accumulated retirement contributions in a lump sum.

(2) The survivor benefit allowance pursuant to Sections 23854 and 23855.

(b) If there is no eligible surviving spouse, the member's accumulated retirement contributions shall be paid to the member's beneficiary in a lump sum.

(c) The member's accumulated annuity deposit contributions shall be paid to the member's beneficiary in a lump sum.

The payment of accumulated contributions in a lump sum shall include credited interest through the date of payment.

23853. Notwithstanding Chapter 3 (commencing with Section 13100) of Part 1 of Division 8 of the Probate Code or any other provision of law to the contrary, death payments and return of contributions pursuant to Sections 23851 and 23852, if any, may be requested by the surviving spouse or beneficiary and paid by the system as soon as practicable after receipt of proof of death.

23854. (a) A survivor benefit allowance is payable upon the death of a member, as defined in Section 23850.

(b) For the survivor benefit allowance to be payable upon the death of a member, all of the following conditions shall be met at the time of death:

(1) Death occurred after October 15, 1992.

(2) A preretirement election of an option is not in effect.

(3) Death occurs during any one of the following periods:

(A) While in active employment.

(B) Within four months after termination of employment.

(C) Within four months after reinstatement from disability allowance.

(D) Within four months after reinstatement from disability retirement.

(E) Within 12 months following the last day for which compensation was paid if the member was on an approved leave of absence without compensation for reasons other than disability or military service.

(4) At least one-half year of credited service had been performed subsequent to the end of the last break, if a break in service of more than one year had occurred.

(5) At least one year of credited service had been performed subsequent to the last reinstatement date, if reinstated from service retirement.

(c) The survivor benefit allowance is in lieu of the return of the member's accumulated retirement contributions.

23855. (a) The survivor benefit allowance is a monthly allowance equal to one-half of the modified retirement allowance the member would have received at age 60 years, if the member had elected an Option 3 naming the spouse as the option beneficiary.

(b) The Option 3 allowance shall be based on the member's actual service credit and final compensation at time of death, the age 60 retirement factor, and the member's and spouse's ages as of the member's 60th birthday anniversary. If death occurs after the member attained age 60 years, the actual final compensation, retirement factor, and the member's and spouse's ages as of the date of death shall be used in the Option 3 allowance calculation.

(c) The allowance calculation shall include service credit for the unused sick leave that the member was entitled to on the date of the member's death. Eligibility for the use of sick leave and calculation of service credit shall be determined pursuant to Section 22717.

(d) The surviving spouse may elect to begin receiving the survivor benefit allowance immediately as of the date of the member's death or to defer receipt of the allowance to the date the member would have attained age 60 years. If the payments to the surviving spouse commence prior to the date the member would have attained age 60 years, the allowance payable shall be subject to a reduction as periodically determined by the board.

(e) If the spouse elects, pursuant to Section 23852, to receive the survivor benefit allowance, an additional increment of 10 percent of final compensation is payable for each eligible dependent child up to the attainment of age 21 years, up to a maximum of 50 percent of final compensation for the children's increment. The children's increment shall begin to accrue on the day following the member's date of death and shall be payable even if the spouse elects to postpone receipt of the base survivor benefit allowance until the member's 60th birthday anniversary.

23856. (a) If there are eligible dependent children who are not in the care of the surviving spouse, they shall be included in the calculation of the children's increment portion of the survivor benefit allowance.

(b) Allowances payable to the eligible dependent children shall be paid to the guardian of the estate of the child, the natural or adoptive parent having custody of the child, or if none, then to the trustee of the trust established for the benefit of the child. In the case of a child who is age 18 years or older, the child's share of the allowance shall be paid to the guardian of the estate of the child, trustee of the trust established for the benefit of the child, or if none, then to the child.

23857. A stepchild or adopted child acquired subsequent to the death of the member shall not be entitled to any allowance and shall be excluded in the determination of allowances under this chapter.

23858. If the person or persons to whom a survivor benefit allowance is payable dies or no longer qualifies for the allowance, the allowance shall be terminated on the day of the event except as provided in Section 24600.

23859. (a) Upon termination of a survivor benefit allowance pursuant to this chapter and prior to the payment of allowances equal to the amount of the member's accumulated retirement

contributions at the time of death, the remaining balance shall be paid to the estate of the spouse.

(b) Payments provided under this section shall include credited interest on the unpaid balance calculated from the date survivor benefit allowances were last paid or from the date of death of the member, if no survivor benefit allowance payments were made, to the date the balance is paid.

CHAPTER 24. RETIRED DEATH BENEFITS

23880. (a) A death payment of five thousand dollars ($5,000) shall be paid to the beneficiary upon receipt of proof of death of either of the following:

(1) A retirant.

(2) A member, if the death payment pursuant to Section 23801 would have otherwise been payable or if the conditions specified pursuant to paragraph (3) of subdivision (b) of Section 23854 are met, and if the member's death occurs within one of the following periods:

(A) One year commencing with the effective date of reinstatement from service retirement pursuant to Section 24208.

(B) Six months commencing with the effective date of reinstatement from disability retirement pursuant to Section 24117.

(C) Six months commencing with the date of reinstatement from disability allowance.

(b) The board may adjust the death payment amount following each actuarial valuation based on changes in the All Urban California Consumer Price Index.

23881. (a) Upon receipt of proof of death of a retirant who retired after June 30, 1972, and of the retirant's option beneficiary, prior to the time the total retirement allowance paid or payable equals the accumulated retirement contributions at retirement, the difference shall be paid to the beneficiary, if no option was elected, or to the estate of the option beneficiary, if an option was elected.

(b) Payments provided under this section shall include credited interest on the unpaid balance calculated from the date retirement allowances were last paid to the date the balance is paid.

23882. Notwithstanding Chapter 3 (commencing with Section 13100) of Part 1 of Division 8 of the Probate Code or any other provision of law, death payments and return of contributions pursuant to Sections 23880 and 23881, if any, may be requested by the beneficiary and paid by the system as soon as practicable after receipt of proof of death.

CHAPTER 25. DISABILITY ALLOWANCE

24001. (a) A member may apply for a disability allowance if the member has five or more years of credited service and if all of the following requirements are met:

(1) At least four years were credited for actual service performed in a position requiring membership in the system. Credit received because of workers' compensation payments shall be counted toward the four-year requirement.

(2) The last five years of credited service have been served in this state.

(3) At least one year was credited for service performed subsequent to the date on which the member was reinstated to membership under Section 24208.

(4) At least one year was credited for service performed subsequent to the most recent refund of accumulated retirement contributions.

(5) The member has not attained normal retirement age, or has unused sick leave with sufficient days to have the member receive salary on account of sick leave to normal retirement age.

(6) The member is not applying for a disability allowance because of a physical or mental condition known to exist at the time the most recent membership in this system commenced and remains substantially unchanged at the time of application.

(b) Nothing in this section shall affect the right of a member to a disability allowance if the reason that the member has less than four years of actual service is due to an on-the-job injury or disease in a position requiring membership in the system.

(c) A member shall not be eligible for disability under this system while on a leave of absence to serve as a full-time elected officer of an employee organization, even if receiving service credit under Section 22711.

24002. The board may authorize payment of a disability allowance to any member who is qualified upon application by the member, the guardian or conservator, or the employer, if the application is made during any one of the following periods:

(a) While the member is employed or on a compensated leave of absence.

(b) While the member is physically or mentally incapacitated for performance of his or her duty and the incapacity has been continuous from the last day for which compensation was paid to the member.

(c) While the member is on a leave of absence without compensation, granted for reason other than mental or physical incapacity for performance of his or her duty, and within four months after the last day of employment for which compensation was paid to the member, or within 12 months while on an official district leave to study at an approved college or university.

(d) Within four months after the termination of the member's employment in a position requiring membership in the system, if the application was not made under subdivision (b) and was not made more than four months after the last day for which compensation was paid to the member.

(e) A member with children who becomes disabled prior to

normal retirement age, and whose sick leave will extend beyond normal retirement age, may be awarded a disability allowance with an effective date after normal retirement age, if application is filed prior to attaining normal retirement age.

(f) The member is not applying for a disability allowance because of a physical or mental condition that existed at the time the most recent membership in this system commenced and that remains substantially unchanged at the time of application.

24003. (a) The member shall provide medical documentation related to the impairment qualifying him or her for the disability allowance.

(b) On receipt of an application for disability allowance, the system may order a medical examination of a member to determine whether the member is incapacitated for further service. The medical examination shall be conducted by a practicing physician, selected by the board, with expertise in the member's disability and the board shall pay all costs associated with the examination. The board shall pay all other reasonable costs related to travel and meals in accordance with the rates set for state employees by the Department of Personnel Administration. If the member refuses to submit to the required medical examination, the application for disability allowance shall be rejected. The member shall either remain in the state, or return to this state at the member's own expense, to undergo the initial evaluations or examinations, or the application shall be disallowed, unless this requirement is waived by the board. If the member is too ill to be examined, the system shall postpone the examination until the member can be examined. The member or the member's treating physician shall inform the system, in writing, when the medical examination can be rescheduled.

(c) The system may reject the disability allowance application if the member fails to provide requested medical documentation to substantiate a disability, as defined in Section 22125, within 45 days from the date of the request or within 30 days from the time that a legally designated representative is empowered to act on behalf of a member who is too mentally or physically incapacitated to comply.

(d) If the board determines that a member who has applied for a disability allowance may perform his or her usual duties or those of a comparable level position with the assistance of reasonable accommodation, the board may require the member to request reasonable accommodation from the employer. Failure of the member to request reasonable accommodation, as directed by the board, may be grounds for cancellation of the disability allowance application.

(e) In the event that the employer fails or refuses to provide reasonable accommodation, the board may require the member to pursue an administrative appeal of the employer's denial as a condition for receiving a disability allowance.

24004. In those cases of willful substance abuse or where the board determines a member qualifying for a disability allowance

pursuant to Section 24001 has mental, physical, or vocational rehabilitation potential, the board may limit the disability allowance to a period not to exceed two years from the date of approval of the disability allowance. Notwithstanding Section 24013, the disability allowance shall terminate at the end of the period granted unless extended by the board.

24005. (a) A disability allowance shall become effective upon any date designated by the member, provided all of the following conditions are met:

(1) An application for disability allowance is filed on a form provided by the system.

(2) The effective date is later than the last day of service for which salary is payable to the member.

(3) The effective date is no earlier than either the first day of the month in which the application is received by the system in Sacramento, or the date upon and continuously after which the member is determined to the satisfaction of the board to have been mentally incompetent.

(b) If the member is employed in a position requiring membership in the system at the time the disability allowance is approved, the member shall notify the system in writing, within 90 days, of the last day on which he or she will perform service. If the member does not respond within 90 days, or if the last day on which service will be performed is more than 90 days after the date the system notifies the member of approval of the disability allowance, the member's application for a disability allowance shall be rejected and a disability allowance shall not be payable to the member.

24006. Upon qualification for disability, a member shall receive a disability allowance equal to 50 percent of final compensation payable in monthly installments. The allowance shall be increased by 10 percent of the final compensation for each child, to a maximum of four children.

24007. A member who qualifies for a disability allowance under this chapter and who has reached age 45 years, but who is not yet age 60 years, shall have his or her own allowance also calculated upon service with each year of credited California service providing 5 percent of final compensation. The disabilitant shall receive the lesser of this benefit or that provided by Section 24006 for the disabilitant's own allowance. The benefits for dependent children shall be as specified in Section 24006.

24008. To determine eligibility for benefits payable under family and disability allowances as a full-time student, all of the following shall apply:

(a) An individual shall be deemed to be a full-time student during any normal period of vacation or holiday of the institution involved, and there is sufficient evidence to satisfy the board of the intention to continue in full-time attendance at the educational institution immediately following the period of vacation or holiday.

(b) If the individual fails to return to full-time attendance

following vacation or holiday, the allowance ceases as of the first of the month in which return to full-time attendance was required.

(c) An individual does not qualify as a full-time student during any period of nonattendance if the nonattendance is due to expulsion or suspension.

(d) An individual shall not qualify as a full-time student if attendance at an educational institution is paid for and provided by the employer or is in the course of on-the-job training, unless the on-the-job training is part of the regularly established school training for which credit toward a diploma, certificate, or graduation is given. An individual shall not qualify as a full-time student for any full-time course of study which is directly paid for and sponsored under the Job Corps of the Economic Opportunity Act of 1964 (Public Law 88-452), as amended, or paid for or sponsored by any armed forces for this state or the United States of America.

24009. Allowances payable under Sections 24006 and 24007 on account of children shall be reduced when children become ineligible. The reduction shall take into account the increases made by application of the improvement factor. However, the member's disability allowance shall not be less than it would have been if there had never been any eligible children.

24010. Allowances payable under Sections 24006 and 24007 shall be reduced by an amount equal to the unmodified benefits paid or payable under other public systems for the same impairment or impairments that qualify the member for a disability allowance.

24011. Any member qualifying for disability allowance pursuant to this chapter with a disabling impairment amenable to treatment that could be expected to restore ability to perform the member's usual duties or those of a comparable level position shall participate in a treatment program prescribed by the member's treatment sources. Willful failure to initiate and continue participation in the program shall cause the disability allowance to be terminated. In determining whether a member has good cause for failure to follow the treatment, the board shall take into account whether treatment would abridge the member's right to the free exercise of religion.

24012. (a) Any member qualifying for a disability allowance pursuant to this chapter who is determined by the board to have a mental, physical, or vocational rehabilitation potential that could be expected to restore ability to perform the member's usual duties or those of a comparable level position shall participate in an appropriate program approved by the board. The board shall pay all reasonable costs of the approved program. Willful failure to initiate and continue participation in the program shall cause the disability allowance to be terminated. In determining whether a member has good cause for failure to participate in the program the board shall take into account whether the participation would abridge the member's right to the free exercise of religion.

(b) Any cost for the approved rehabilitation program prescribed by the board shall be paid directly by the system.

24013. The board may require any member receiving a disability allowance to undergo medical examination at such times as it deems necessary. The system may request the treating physician, upon authorization by the disabilitant, to complete a medical reevaluation questionnaire. The system shall reimburse the disabilitant for all reasonable costs related to this questionnaire if the cost of the questionnaire is no greater than two hundred fifty dollars ($250) and the disabilitant has no other health coverage for the costs of the medical questionnaire. The board may authorize any subsequent medical examination to be conducted by the treating source of the disabilitant at the expense of the disabilitant and, in any case, may require a medical examination to be conducted by a physician selected by the board, in which event, the board shall pay all reasonable costs associated with the examination. The board shall, in scheduling medical examinations, give consideration to the interests and convenience of the disabilitant. If the examination, together with other available information, shows to the satisfaction of the board that the disabilitant is no longer disabled, the disability allowance shall cease. Should the disabilitant refuse to submit to medical examination, as provided in this section, the disability allowance payments shall be discontinued and all rights of the disabilitant in the disability allowance shall be revoked.

24014. A disabilitant may be employed in a position requiring certification qualifications. The employment does not operate to terminate or suspend the disability allowance except as provided in Sections 23401 and 24015, and no deduction shall be made from the disabilitant's salary as contributions to this system.

24015. If a person who begins to receive a disability allowance after June 30, 1972, is employed, or is self-employed in any capacity in which his or her average earnings for any prior continuous six months amount to 66⅔ percent of the indexed final compensation, the person shall be presumed capable of performing gainful employment and no longer disabled. The disability allowance shall be terminated on the first day of the month following the six-month period. Any allowance paid thereafter shall be considered an overpayment and recovery shall be made.

24016. (a) For any one or more months in which a disabilitant's allowance, exclusive of amounts payable on account of minor children or full-time students, and earnings exceed 100 percent of indexed final compensation, 100 percent of the amount in excess shall be considered overpaid and recovery shall be made.

(b) This action does not apply to disabilitants who have allowances terminated under Section 24015 or who are enrolled in an approved rehabilitation program.

24017. If a person who began receiving a disability allowance after June 30, 1972, is enrolled in an approved rehabilitation program and the disability allowance, exclusive of amounts payable on account of minor children or full-time students, and earnings exceed 100 percent of indexed final compensation, 50 percent of the amount

in excess shall be considered as overpayment and recovery shall be made.

24018. Where a disabilitant returns to work in a comparable level position and within six months of return experiences a recurrence of the original disability, that can be medically substantiated, it shall be considered, for the purpose of determining the duration of the disability, that the condition had its onset as of the date the member first became disabled. The former disability allowance shall be restored as of the later of the first day of the month in which the recurrence of the disability occurred or the last day of compensation provided the member complies with the provisions in Section 24003.

CHAPTER 26. DISABILITY RETIREMENT

24100. This chapter governs the eligibility, allowance computations, and related provisions for the disability retirement program. This chapter applies to all persons who become members of the system on and after October 16, 1992, all persons who reenter membership on and after October 16, 1992, following a refund, and to all members as of October 15, 1992, who elect, pursuant to Chapter 21.5 (commencing with Section 23700), to be covered by the disability retirement program set forth in this chapter.

24101. (a) A member may apply for a disability retirement if the member has five or more years of credited service and if all of the following requirements are met:

(1) At least four years were credited for actual service performed in a position requiring membership in the system. Credit received because of workers' compensation payments shall be counted toward the four-year requirement.

(2) The last five years of credited service have been served in this state.

(3) At least one year (1.00) of credited service was earned subsequent to the date on which the member was reinstated to membership under Section 24208.

(4) At least one year (1.00) of credited service was earned subsequent to the date on which the member's disability allowance was terminated.

(5) At least one year (1.00) of credited service was earned subsequent to the most recent refund of accumulated retirement contributions.

(6) The member is not applying for a disability retirement because of a physical or mental condition known to exist at the time the most recent membership in this system commenced and that remains substantially unchanged at the time of application.

(b) Nothing in this section shall affect the right of a member to a disability retirement if the reason that the member has less than four years of actual service is due to an on-the-job injury or disease in a position requiring membership in the system.

(c) A member shall not be eligible for disability under this system

while on a leave of absence to serve as a full-time elected officer of an employee organization, even if receiving service credit under Section 22711.

24102. The board may authorize payment of a disability retirement allowance to any member who is qualified upon application by the member, the guardian or conservator, or the employer, if the application is made during any one of the following periods:

(a) While the member is employed or on a compensated leave of absence.

(b) While the member is physically or mentally incapacitated for performance of his or her duty and the incapacity has been continuous from the last day for which compensation was paid to the member.

(c) While the member is on a leave of absence without compensation, granted for reason other than mental or physical incapacity for performance of his or her duty, and within four months after the last day of employment for which compensation was paid to the member, or within 12 months while on an official district leave to study at an approved college or university.

(d) Within four months after the termination of the member's employment in a position requiring membership in the system, if the application was not made under subdivision (b) and was not made more than four months after the last day for which compensation was paid to the member.

(e) The member is not applying for a disability retirement allowance because of a physical or mental condition that existed at the time the most recent membership in this system commenced and that remains substantially unchanged at the time of application.

24103. (a) The member shall provide medical documentation related to the impairment qualifying him or her for the disability retirement.

(b) On receipt of an application for disability retirement, the system may order a medical examination of a member to determine whether the member is incapacitated for further service. The medical examination shall be conducted by a practicing physician, selected by the board, with expertise in the member's disability, and the board shall pay all costs associated with the examination. The board shall pay all other reasonable costs related to travel and meals in accordance with the rates set for state employees by the Department of Personnel Administration. If the member refuses to submit to the required medical examination, the application for disability retirement shall be rejected. The member shall either remain in this state, or return to this state at the member's own expense, to undergo the initial evaluations or examinations or the application shall be disallowed, unless this requirement is waived by the board. If the member is too ill to comply with this examination, the system shall postpone the examination until a time that the member can attend. The member or the member's treating

physician shall inform the system, in writing, when the medical examination can be rescheduled.

(c) The system may reject the disability retirement application if the member fails to provide requested medical documentation to substantiate a disability, as defined in Section 22125, within 45 days from the date of the request or within 30 days from the time that a legally designated representative is empowered to act on behalf of a member who is too incapacitated mentally or physically to comply.

(d) If the board determines that a member who has applied for disability retirement may perform his or her usual duties or those of a comparable level position with the assistance of reasonable accommodation, the board may require the member to request reasonable accommodation from the employer. Failure of the member to request reasonable accommodation, as directed by the board, may be grounds for cancellation of the disability retirement application.

(e) If the employer fails or refuses to provide reasonable accommodation, the board may require the member to pursue an administrative appeal of the employer's denial as a condition for receiving a disability retirement allowance.

24104. In those cases of willful substance abuse or where the board determines a member qualifying for disability retirement pursuant to this chapter has mental, physical, or vocational rehabilitation potential, the board may limit the disability retirement to a period not to exceed two years from the date of approval of the disability retirement. Notwithstanding Section 24112, the disability retirement allowance shall terminate at the end of the period granted unless extended by the board.

24105. (a) A disability retirement allowance shall become effective upon any date designated by the member, provided that all of the following conditions are met:

(1) An application for disability retirement is filed on a form provided by the system.

(2) The effective date is later than the last day of service for which salary is payable to the member.

(3) The effective date is no earlier than either the first day of the month in which the application is received by the system in Sacramento, or the date upon and continuously after which the member is determined to the satisfaction of the board to have been mentally incompetent.

(b) If a member's application for disability retirement does not contain an election of either an unmodified allowance or an allowance modified under an option and if the member subsequently submits an election, but not within the 30-day period established pursuant to Section 24301, the board shall set a benefit effective date which is no earlier than the first day of the month in which the subsequent election is received by the system. If the member fails to submit an election pursuant to Section 24301 and within six months of the date the acknowledgement notice is mailed pursuant to

Section 24301, the member's application for disability retirement shall be rejected.

(c) If the member is employed in a position requiring membership in the system at the time the disability retirement is approved, the member shall notify the system in writing, within 90 days, of the last day on which he or she will perform service. If the member does not respond within 90 days, or if the last day on which service will be performed is more than 90 days after the date the system notifies the member of the approval of disability retirement, the member's application for disability retirement shall be rejected and a disability retirement allowance shall not be payable to the member.

24106. Upon retirement for disability pursuant to this chapter, a member shall receive a retirement allowance which shall consist of all of the following:

(a) An annual allowance equal to 50 percent of final compensation payable in monthly installments.

(b) An additional 10 percent of final compensation for each eligible dependent child, up to a maximum of 40 percent of final compensation.

(c) An annuity which shall be the actuarial equivalent of the accumulated annuity deposit contributions standing to the credit of the member's account on the effective date of the disability retirement.

24107. A disability retirant may elect an option pursuant to Sections 24301 and 24304 to modify the disability retirement allowance payable pursuant to subdivision (a) of Section 24106.

24108. Retirement allowances payable pursuant to Section 24106 on account of eligible dependent children shall be reduced when children become ineligible. The reduction shall take into account the increases made by application of the improvement factor. However, the retirant's allowance shall not be less than it could have been if there had never been any eligible dependent children.

24109. Retirement allowances payable pursuant to subdivision (a) of Section 24106 shall be reduced by an amount equal to the unmodified benefits paid or payable under a workers' compensation program for the same impairment or impairments that qualify the member for a disability retirement allowance.

24110. Any member qualifying for disability retirement pursuant to this chapter with a disabling impairment amenable to treatment that could be expected to restore ability to perform the member's usual duties or those of a comparable level position shall participate in a treatment program prescribed by the member's primary treating physician. Willful failure to initiate and continue participation in the program shall cause the disability retirement allowance to be terminated. In determining whether a member has good cause for failure to follow that treatment, the board shall take into account whether the treatment would abridge the member's right to the free exercise of religion or whether the medical

condition has worsened as determined by the member's treating physician and substantiated by medical evidence.

24111. (a) Any member qualifying for disability retirement pursuant to this chapter who is determined by the board to have a mental, physical, or vocational rehabilitation potential that could be expected to restore ability to perform the member's usual duties or those of a comparable level position shall participate in an appropriate program approved by the board. The board shall pay all reasonable costs of the approved program. Willful failure to initiate and continue participation in the program shall cause the disability retirement allowance to be terminated. In determining whether a member has good cause for failure to participate in the program the board shall take into account whether the participation would abridge the member's right to the free exercise of religion or whether the medical condition has worsened as determined by the member's treating physician and substantiated by medical evidence.

(b) Any cost for the approved rehabilitation program prescribed by the board shall be paid directly by the system.

24112. The board may require any disability retirant receiving an allowance to undergo medical examination at such times as it deems necessary. The system may request the treating physician, upon authorization by the disability retirant, to complete a medical reevaluation questionnaire. The system shall reimburse the disability retirant for all reasonable costs related to this questionnaire if the cost of completing the questionnaire is no greater than two hundred fifty dollars ($250) and the disability retirant has no other health coverage that pays for the cost of completing the medical questionnaire. The board may authorize any subsequent medical examination to be conducted by the treating source of the retirant at the expense of the retirant and, in any case, may require a medical examination to be conducted by a physician selected by the board, in which event, the board shall pay all reasonable costs associated with the examination. The board shall, in scheduling medical examinations, give consideration to the interests and convenience of the disability retirant receiving the disability retirement allowance. If the examination, together with other available information, shows to the satisfaction of the board that the retirant is no longer disabled, the disability retirement allowance shall cease. Should the retirant refuse to submit to medical examination, as provided in this section, payments to the member under the disability shall be discontinued and all rights of the member in the disability retirement allowance shall be revoked.

24113. A disability retirant may be employed in a position requiring certification qualifications. The employment does not operate to terminate or suspend the disability retirement allowance and no deduction shall be made from the disability retirant's salary as contributions to this system.

24114. A member who begins to receive a disability retirement allowance after October 15, 1992, may be employed or self-employed

in any capacity. In any one calendar year, the retirant may earn not more than the maximum amount earnable as determined by the board pursuant to Section 24214. The earnings limitation shall not be applicable to a disability retirant who is participating in an approved rehabilitation program pursuant to Section 24111.

24115. (a) In any calendar year in which a disability retirant's earnings from all employment exceeds the earnings limit established pursuant to Section 24114, the allowance of the retirant shall be reduced by the amount of the excess.

(b) This section does not apply to a disability retirant who is enrolled in an approved rehabilitation program.

24116. Any disability retirant whose last employment was in the California State University, as a member of this system or the Public Employees' Retirement System, may serve as a member of the teaching staff of the California State University and shall be subject to the employment limitations as provided by the Public Employees' Retirement Law (Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code).

24117. (a) Any retirant who is retired for disability pursuant to this chapter may be reinstated to membership by the board upon receipt of the retirant's written request to terminate the disability retirement allowance and reinstate to membership in the system.

(b) The allowance of a disability retirant who is determined by the board to no longer be eligible to receive a disability retirement allowance pursuant to this chapter shall be terminated and the disability retirant shall be reinstated to membership in the system.

24118. (a) Upon termination of a disability retirement allowance that was payable pursuant to this chapter, the individual account of the member shall be credited with the amount of the member's accumulated retirement contributions as they were on the effective date of disability retirement, less the sum of all payments made under subdivisions (a) and (b) of Section 24106. The reduction shall not be greater than the total of the accumulated retirement contributions.

(b) Upon the termination of a disability retirement, the accumulated annuity deposit contribution account of the member shall be credited with the amounts of those contributions as they were on the date the annuity became payable because of that retirement less the sum of all payments made pursuant to subdivision (c) of Section 24106.

24119. Where a disability retirant returns to work in a comparable level position and within six months of return experiences a recurrence of the original disability, which can be medically substantiated, it shall be considered, for the purpose of determining the duration of the disability, that the condition had its onset as of the date the member first became disabled. The former disability retirement allowance shall be restored as of the later of the first day of the month in which the recurrence of the disability occurred or the last day of compensation, provided the member

complies with Section 24103.

CHAPTER 27. SERVICE RETIREMENT

24201. (a) Any member who comes within any of the following descriptions may be retired for service at his or her option upon written application for retirement to the board, subject to the following conditions:

(1) The member has attained age 55 years or more and has at least five years of credited California service, at least one year of which has been performed subsequent to the most recent refund of accumulated retirement contributions, if five of the final six years of credited service have been in this state.

(2) The member is credited with service that is not used as a basis for benefits under any other public retirement system, if he or she has attained age 55 years and retires concurrently under the Public Employees' Retirement System, the Legislators' Retirement System, the University of California Retirement System, or a local system.

(b) In the calculation of allowances of members who qualify for retirement under paragraph (1) of subdivision (a) and who are not qualified for retirement under paragraph (2) of that subdivision, there shall be excluded any service performed in other states of the United States, its territories and possessions, or in Canada.

(c) Application for retirement under paragraph (2) of subdivision (a) may be made at any time, and those applicants are not subject to Section 24220.

24202. (a) Upon retirement for service that became effective after June 30, 1972, a member shall receive a retirement allowance that shall consist of both of the following:

(1) An annual allowance payable in monthly installments, upon retirement at normal retirement age or over, equal to 2 percent of the final compensation for each year of credited service. If the retirement of a member is effective at less than normal retirement age and between early retirement age and normal retirement age, this allowance shall be reduced by one-half of 1 percent for each full month, or fraction of a month that will elapse until the member will attain normal retirement age.

(2) An annuity that shall be the actuarial equivalent of the accumulated annuity deposit contributions standing to the credit of his or her account at the time of his or her retirement.

(b) In computing the amounts described in subdivision (a), the age of the member at the last day of the month in which the retirement allowance begins to accrue or such later date as provided in Section 24204 shall be used.

24203. (a) Members with 30 years of credited service may retire at age 50 years or older and receive an annual allowance equal to 2 percent of final compensation for each year of credited service. If the member has attained age 50 years, but has not attained early retirement age, the allowance shall be reduced by one-quarter of 1

percent for each full month or fraction of a month that will elapse until the member will attain early retirement age and one-half of 1 percent for each full month, or fraction between early retirement age and normal retirement age.

(b) In computing the amounts described in subdivision (a), the age of the member at the last day of the month in which the retirement allowance begins to accrue or any later date provided in Section 24204 shall be used.

24204. A retirement allowance shall become effective upon any date designated by the member, subject to all of the following conditions:

(a) An application for retirement allowance is filed on a form provided by the system, which is executed no earlier than six months before the effective date of retirement allowance.

(b) The effective date is later than the last day of credited service for which salary is payable to the member.

(c) The effective date is no earlier than the first day of the month in which the application is received by the system in Sacramento.

(d) Either of the following conditions exists:

(1) The effective date is no earlier than one year following the date on which the member was reinstated to membership from disability allowance or was reinstated under Section 24208, or subdivision (a) of Section 24117.

(2) The effective date is no earlier than the date upon and continuously after which the member is determined to the satisfaction of the board to have been mentally incompetent.

24205. (a) The board shall, in consultation with members, develop, adopt, and implement an additional optional retirement plan that will allow an employee to receive a minimum retirement allowance prior to normal retirement age if the employee has at least attained early retirement age. Under the plan, the member shall continue to receive the minimum retirement allowance past normal retirement age until the amounts paid prior to normal retirement age equal the difference between the minimum retirement allowance and the benefits that would have been provided to the member under regular service retirement at normal retirement age, and thereafter shall be paid the regular service retirement allowance for normal retirement age. The board shall determine the age past normal retirement at which the increase will be made by determining how long the minimum retirement allowance would have to be paid beyond age 60 years in order for the amount paid prior to age 60 years to equal the difference between the minimum retirement allowance and the amount that would have been provided to the member under regular service retirement at normal retirement age. The board shall integrate the optional plan adopted under this section with the other retirement options that a member may elect under this part.

(b) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be

determined on the basis of actuarial assumptions and methods which, in the aggregate, are reasonable and which, in combination, offer the actuary's best estimate of anticipated experience under the system.

(c) The additional employer contributions required, if any, under this section shall be computed as a level percentage of member compensation. The additional contribution rate required, if any, shall not be less than the sum of (1) the actuarial normal cost, plus (2) the additional contribution required to amortize the increase in accrued liability attributable to benefits elected under this section over a period of not more than 30 years from January 1, 1979.

24206. The minimum unmodified allowance, exclusive of annuities from accumulated annuity deposit contributions payable for service retirement, shall not be less than ten dollars ($10) per month multiplied by the years of credited service. This guaranteed amount shall be reduced by the amount of an unmodified allowance payable from a local system based on service credited by this system. If the retirement is effective at less than age 60 years this allowance shall be reduced by one-half of 1 percent for each full month or fraction of a month that will elapse until the member would have reached age 60 years.

24207. If a service retirant reenters the system as a member and subsequently retires, the minimum retirement allowance is the allowance provided by Section 24206.

24208. Any retirant who is retired for service may be reinstated to membership by the board upon receipt of the retirant's written request to terminate the retirement allowance and reinstate to membership in the system.

24209. Upon retirement for service following a prior service retirement and subsequent reinstatement to membership in the system, the member shall receive a service retirement allowance that shall equal the sum of both of the following:

(a) An amount equal to the monthly allowance the member was receiving immediately preceding the most recent reinstatement, exclusive of any amounts payable pursuant to Section 22714 or 22715, increased by the improvement factor that would have been applied to the allowance if the member had not reinstated.

(b) An amount calculated pursuant to Section 24202, 24203, or 24206 on service credited subsequent to the most recent reinstatement, the member's age at retirement, and final compensation.

24210. Upon retirement for service following a prior disability retirement granted pursuant to Chapter 26 (commencing with Section 24100) and subsequent reinstatement to membership in the system, the member shall receive a service retirement allowance calculated pursuant to Section 24202, 24203, or 24206 and equal to the sum of both of the following:

(a) An amount based on service credit accrued prior to the effective date of the disability retirement, the member's age as of the effective date of the service retirement, and indexed final

compensation to the effective date of the service retirement.

(b) An amount based on the service credit accrued after reinstatement from disability retirement, the member's age as of the effective date of service retirement, and final compensation.

24211. 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 sum of the allowance calculated on service credit accrued after the termination date of the disability allowance, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and final compensation using compensation earnable and projected final compensation, plus the greater of either of the following:

(1) A service retirement allowance calculated on service credit accrued as of the effective date of the disability allowance, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and projected final compensation to the termination date of the disability allowance.

(2) The disability allowance the member was receiving immediately prior to termination of that allowance, exclusive of increments added for children.

(b) Three or more years of credited service after termination of the disability allowance, the member shall receive a retirement allowance that is the greater of the following:

(1) A service retirement allowance calculated on all actual and projected service, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and final compensation using compensation earnable, or projected final compensation, or a combination of both.

(2) The disability allowance the member was receiving immediately prior to termination of that allowance, exclusive of increments added for children.

24212. If a disability allowance granted after June 30, 1972, is terminated for reasons other than those specified in Section 24213 and the member does not return to employment pursuant to Section 22131, the service retirement allowance, when payable, shall be based on projected service, projected final compensation, and the age of the member on the last day of the month in which the retirement allowance begins to accrue. The allowance payable under this section, excluding annuities payable from accumulated annuity deposit contributions, shall not be greater than the terminated disability allowance exclusive of increments added for children.

24213. (a) When a member who has been granted a disability allowance after June 30, 1972, attains normal retirement age, or at a later date when there are no children, the disability allowance shall be terminated and the member is eligible for service retirement. The retirement allowance shall be calculated on the projected final

compensation and projected service to normal retirement age. The allowance payable under this section, excluding annuities payable from accumulated annuity deposit contributions, shall not be greater than the terminated disability allowance.

(b) Upon retirement, the member may elect to modify the service retirement allowance payable in accordance with any option provided under this part.

24214. (a) Any service 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 that 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.

(b) 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 the All Urban California Consumer Price Index using December 1989 as the base.

24215. Any service retirant whose last employment was in the California State University, as a member of this system or the Public Employees' Retirement System, may serve as a member of the teaching staff of the California State University and shall be subject to the employment limitations as provided by the Public Employees' Retirement Law (Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code).

24216. If a service retirant receives payment in excess of the limitation set forth in Section 24214 or 24215, the allowance of the service retirant shall be reduced by the amount of that excess.

24217. A person who was a member on June 30, 1972, and had five or more years of service and who had attained age 55 years, shall have the option of receiving the allowance payable under Section 14245, as it read on that date in lieu of the allowance payable under subdivision (a) of Section 24202.

24218. For the purpose of calculating retirement allowances, credit for service performed between June 30, 1956, and July 1, 1968, on a part-time basis in each school year shall be based on the ratio that service performed bears to the minimum full-time service required for credit for a year of service.

24219. Members who were retired under a previously existing local teachers' retirement system or the San Francisco City and County Employees' Retirement System prior to July 1, 1972, who have not retired under the State Teachers' Retirement System, for the allowance that existed for local system service performed prior to July 1, 1972, shall have that part of the retirement allowance computed under the law in effect on June 30, 1972, whenever they retire in the future.

24220. (a) If the last day of a member's service was performed

prior to July 1, 1935, he or she shall have the right to make application for retirement only after performing additional service in a status requiring membership in this system, of not less than two years, after June 30, 1950.

(b) Subdivision (a) shall not be applicable if a member performed at least three schooldays of service on or after July 1, 1935, and prior to July 1, 1950, even though compensation for that service was not paid out of any public funds, and if that person taught for 15 years or more before July 1, 1935. This provision became effective on November 10, 1969.

(c) Insofar as subdivision (b) creates any rights to a retirement or disability allowance under this chapter, that allowance shall only be payable for periods commencing with November 10, 1969.

CHAPTER 28. OPTIONS

24300. (a) Any member prior to the effective date of the member's retirement may elect an option that is an actuarially modified retirement allowance payable throughout the life of the member and his or her option beneficiary as follows:

(1) Option 2. Upon the retirant's death, the modified retirement allowance equal to the modified amount the retirant was receiving shall be paid to the option beneficiary.

(2) Option 3. Upon the retirant's death, one-half of the modified retirement allowance the retirant was receiving shall be paid to the option beneficiary.

(3) Option 4. The modified retirement allowance shall be paid to the retirant so long as both the retirant and the option beneficiary are living. Upon the death of either the retirant or the option beneficiary, two-thirds of the modified retirement allowance shall be paid to the surviving retirant or the surviving option beneficiary.

(4) Option 5. The modified retirement allowance shall be paid to the retirant so long as both the retirant and the option beneficiary are living. Upon the death of either the retirant or the option beneficiary, one-half of the modified retirement allowance shall be paid to the surviving retirant or surviving option beneficiary.

(5) Option 6. Upon the retirant's death, the modified retirement allowance equal to the modified amount the retirant was receiving shall be paid to the option beneficiary. However, if the option beneficiary predeceases the retirant, the retirement allowance without modification for the option shall be payable to the retirant.

(6) Option 7. Upon the retirant's death, one-half of the modified retirement allowance the retirant was receiving shall be paid to the option beneficiary. However, if the option beneficiary predeceases the retirant, the retirement allowance without modification for the option shall be payable to the retirant.

(b) The option beneficiary, for purposes of this section, shall have been designated by the retirant by written designation duly executed and filed with the system at the time of the member's

retirement.

(c) A member may revoke or change his or her election of an option at any time prior to the effective date of the member's retirement.

24301. (a) Any member who has filed an application for a disability retirement pursuant to Chapter 26 (commencing with Section 24100) may elect, as provided in Section 24300, to receive an actuarially modified disability retirement allowance. After receipt of a disability retirement application from a member, the board shall mail an acknowledgement notice to the member. A 30-day period shall commence with the mailing of the notice, during which time the member may change the option election made on the disability retirement application.

(b) The option shall be effective on the effective date of the disability retirement allowance. The modification of the disability retirement allowance under the option elected shall be based on the ages of the disability retirant and the named option beneficiary as of the effective date of the disability retirement.

(c) The elected option may not be revoked or changed after the later of the effective date of the disability retirement allowance or 30 days after the mailing of the acknowledgement notice pursuant to this section.

(d) If a member dies prior to electing an unmodified allowance or an option, the member will be considered to have died while in active status, regardless of whether the disability retirement application is or would have been approved.

24302. Upon a member's reinstatement to membership pursuant to Section 24208, any option elected at the time of retirement pursuant to Section 24300 shall be considered to be a preretirement election of an option elected as of the effective date of the prior retirement and shall be subject to the same provisions as an option elected under Section 24307.

24303. Reinstatement to membership pursuant to Section 24208 does not cancel an option elected under the provisions of Section 24300 or 24307. The option shall remain in effect unchanged and shall be reapplied to the allowance payable upon the subsequent retirement.

24304. Upon reinstatement of a retirant to membership from disability retirement pursuant to Section 24117, any option elected at the time of retirement pursuant to Section 24301 shall be voided as of the effective date of the reinstatement. The preretirement election of option subsequent to reinstatement pursuant to Section 24117 is subject to the following:

(a) Members may not make a preretirement election of option pursuant to Section 24307 prior to attaining 55 years of age.

(b) Any member who was receiving an unmodified disability retirement allowance prior to reinstatement may not make a preretirement election of option earlier than six months following the date on which the member reinstated pursuant to Section 24117.

(c) Any member who is elected an option pursuant to Section 24301, and is otherwise eligible to make a preretirement election of an option, may make the election anytime during the six months following the date on which the member reinstated pursuant to Section 24117. The member shall elect the same option and retain the same option beneficiary as made under Section 24301 when making the election during the six-month period following the date of reinstatement from disability retirement.

24305. (a) A retirant may cancel the option elected as provided in Section 24300 if the option beneficiary is the retirant's spouse or former spouse in the event a final decree of dissolution of marriage or a judgment of nullity has been entered or an order of separate maintenance has been made on or after January 1, 1978, by a court of competent jurisdiction. A retirant may make the cancellation before or after the first retirement allowance check.

(b) The retirant shall notify the board in writing, and notification shall not be sooner than the effective date of the judgment or order and shall include a certified copy of the final decree of dissolution, or judgment of nullity, or an order of separate maintenance, and any property settlement agreement.

(c) Upon notification to the board, the retirant may elect (1) to receive the unmodified retirement benefit from the date of receipt of notification; or (2) a new joint and survivor option under Section 24300, naming a new option beneficiary. The modification of the retirement allowance under the new option elected shall be based on the ages of the retirant and the nominated option beneficiary at the date the election was received. However, a retirant may not elect a joint and survivor option that would result in any additional liability to the fund. The election shall be consistent with the final judgment or property settlement agreement.

24306. (a) (1) A retirant who elected Option 2, Option 3, Option 4, or Option 5 may name a new beneficiary and select a second joint and survivor option described in Section 24300 if the option beneficiary designated at the time the option was elected predeceases the retirant.

(2) The effective date of the election of the new joint and survivor option shall be one year following the date notification is received by the board, provided both the retirant and the designated option beneficiary are then living. The notification shall include a certified copy of the death certificate of the predeceased beneficiary and a properly executed form for the new joint and survivor option.

(3) The selection of the new joint and survivor option under this subdivision and Section 24300 is subject to an actuarial modification in the amount of the retirement allowance. However, a retirant may not elect a joint and survivor option that would result in any additional liability to the fund.

(b) If the option beneficiary designated in the preretirement election of an Option 6 or 7 pursuant to Section 24307 dies prior to the member's retirement, preretirement election shall be

automatically canceled as of the day following the date of death pursuant to Section 24309 and the member's subsequent retirement allowance shall be subject to the allowance reduction prescribed in that section.

(c) If the option beneficiary designated in the election of an Option 6 or 7 pursuant to Section 24300 or 24307 dies after the member's retirement, the retirement allowance without modification for the option shall be payable to the retirant upon notification to the board and shall commence to accrue to the retirant as of the day following the date of the death of the option beneficiary. Notification to the board shall include a certified copy of the death certificate of the predeceased beneficiary.

24307. (a) Any member who has qualified to make application for retirement allowance under Section 24201 may elect, as provided in Section 24300, and except as provided in Section 24305, without right of revocation or change after the effective date of his or her retirement, to receive an actuarially modified service retirement allowance as of the date of retirement, of the retirement allowance payable to the member when and if the member retires for service. If the death of the member occurs after the date upon which the election has been signed, the election shall be in full force and effect. The election shall be void if not received in the system's office in Sacramento within 30 days after the date of signature.

(b) Upon the member's death, prior to the effective date of retirement, the beneficiary who was designated under the option elected and who survives shall receive an allowance calculated under the option, upon the assumption that the member retired for service on the date of death. The payment of the allowance to the option beneficiary shall be in lieu of the family allowance provided in Section 23804, the payment provided in subdivision (a) of Section 23802, the survivor benefit allowance provided in Section 23854, and the payment provided in paragraphs (1) and (2) of subdivision (a) of Section 23852, except that if the beneficiary dies before all accumulated contributions are paid, the balance, if any, shall be paid to the estate of the person last receiving or entitled to receive the allowance. The accumulated annuity deposit contributions and the death payment provided in Sections 23801 and 23851, shall be paid to the designated beneficiary in a lump sum.

(c) If the member subsequently retires for service, and the elected option has not been canceled pursuant to Section 24309, a modified service retirement allowance computed under Section 24300 and the option elected shall be paid.

(d) The amount of the service retirement allowance prior to applying the option factor shall be calculated as of the earlier of the member's age at death before retirement, or age on the last day of the month in which the member requested service retirement be effective. The modification of the service retirement allowance under the option elected shall be based on the ages of the member and the beneficiary designated under the option, at the date the

election was signed.

(e) Any member reinstated to membership pursuant to Section 24208 is not eligible to file a preretirement election of an option until one year after the date of reinstatement.

(f) The system shall inform members who are qualified to make application for a preretirement election of an option, through the annual statements of account, that the option is available.

24308. (a) The election of an option as provided in Section 24307 shall preclude the payment of a disability allowance or family allowance to the member or any beneficiary. Members receiving a disability allowance under Section 24006 or 24007 may not file an election of option as provided in Section 24307.

(b) The preretirement election of an option made by the member pursuant to Section 24307 shall be voided by the board as of the effective date of an approved disability retirement. Members receiving a disability retirement allowance pursuant to Chapter 26 (commencing with Section 24100) may not file an election of option as provided in Section 24307.

24309. If a member cancels the election of an option made pursuant to Section 24307, written cancellation shall be received by the board on or before the day preceding the effective date of retirement or during the period between reinstatement pursuant to Section 24208 or Section 24117 and the effective date of the subsequent retirement. Regardless of how the member elects to receive his or her retirement allowance, that allowance shall be reduced by one-half of 1 percent for each year or partial year that Option 3, Option 5, or Option 7 is in effect, or by six-tenths of 1 percent for each year or partial year that Option 4 is in effect, or by three-fourths of 1 percent for each year or partial year that Option 2 or Option 6 is in effect.

24310. If a member cancels an election under Section 24307, the member may again elect an option under the provisions of that section. If the member elects to change an option during any year, the reduction for that year shall be that for the option to which the greater reduction under Section 24309 is applicable.

24311. (a) A member who has a preretirement election of an option in effect on December 31, 1990, may change his or her preretirement election of Option 2, Option 3, Option 4, or Option 5, to either Option 6 or Option 7 without the allowance reduction prescribed in Sections 24309 and 24310, provided the change is made on or after January 1, 1991, and prior to the earlier of January 1, 1992, or the member's retirement.

(b) If the member elects to change his or her option under this section, then the member shall retain the same option beneficiary as named in the prior preretirement election. The election to change the preretirement election under this section shall be void if not received in the system's office in Sacramento at least 30 days prior to the death of the option beneficiary.

CHAPTER 29. BENEFIT MAINTENANCE

24400. The Legislature recognizes that inflation erodes the purchasing power of benefits paid under the State Teachers' Retirement System. It is the intent of the Legislature to understand the degree of erosion of these benefits. The board shall report to the Governor and Legislature no later than April 1 of each year on the extent to which inflation has eroded the purchasing power of benefits under the State Teachers' Retirement System. The board shall indicate the amount of supplementary increases in retirement allowances required to preserve the purchasing power of benefits provided by the system. The board shall also determine and report on the increases.

24401. This chapter does not give any retirant, or his or her successors in interest, or his or her beneficiary, any claim against the system for any increase in any allowance paid or payable prior to July 1, 1972.

24402. (a) Service retirement allowances, disability allowances, disability retirement allowances, family allowances, and survivor benefit allowances payable pursuant to this part shall be increased by application of the benefit improvement factor.

(b) Allowances payable to beneficiaries on account of options elected under Section 24300, 24301, or 24307 shall be increased by application of the improvement factor. This factor shall be applicable on the same date when it would have been applied to the allowance of the deceased person.

(c) The benefit improvement factor shall not be applied to an annuity that is the actuarial equivalent of the accumulated annuity deposit contributions standing to the credit of the member's account on the effective date of a service or disability retirement.

24403. The allowances that commenced to accrue prior to July 1, 1972, and payable on August 1, 1972, exclusive of annuities from the Annuity Deposit Fund and tax-sheltered annuities payable under former Sections 14193, 14280 and 14284, as those sections read on June 30, 1972, shall be increased by application of the benefit improvement factor on September 1, 1973, and annually thereafter.

24404. (a) Effective July 1, 1973, the benefits of persons eligible for survivor benefits pursuant to Section 23804 as it read on June 30, 1972, shall be increased as follows:

(1) Those eligible for ninety dollars ($90) per month shall be increased to one hundred five dollars ($105) per month.

(2) Those eligible for one hundred eighty dollars ($180) per month shall be increased to two hundred ten dollars ($210) per month.

(3) Those eligible for two hundred fifty dollars ($250) per month shall be increased to two hundred ninety-five dollars ($295) per month.

(b) These benefits shall be subject to the provisions of Section 22139 and 24403 with the first annual improvement to occur on

September 1, 1974, and annually thereafter.

24405. The first three hundred dollars ($300) of the monthly allowances payable by the system to retirants, disabilitants, and beneficiaries are increased as of July 1, 1976, as follows if the member had 20 or more years of credited service:

(a) For those with effective dates prior to July 1, 1972, 9 percent.

(b) For those with effective dates from July 1, 1972, to June 30, 1973, 6 percent.

(c) For those with effective dates from July 1, 1973, to June 30, 1974, 3 percent.

24406. The first three hundred dollars ($300) of the monthly allowances payable by the system to retirants, disabilitants, and beneficiaries are increased as of July 1, 1978, for those members receiving allowances on July 1, 1978, if the member had less than 20 years of credited service, as follows:

(a) For those with effective dates prior to July 1, 1972, 9 percent.

(b) For those with effective dates from July 1, 1972, to June 30, 1973, 6 percent.

(c) For those with effective dates from July 1, 1973, to June 30, 1974, 3 percent.

24407. (a) The monthly allowances payable by the system to retirants, disabilitants, and beneficiaries are increased as of January 1, 1980, for those persons receiving allowances with respect to members who retired or died prior to June 30, 1973, to the amount that results when the initial allowance that was received by those members is multiplied by the percentage set forth opposite the year of retirement or death in the following schedule:

Period During Which Retirement or Death Occurred	Percentage
On or before June 30, 1958	180.4
12 months ending June 30, 1959	175.8
12 months ending June 30, 1960	172.2
12 months ending June 30, 1961	169.8
12 months ending June 30, 1962	167.8
12 months ending June 30, 1963	165.5
12 months ending June 30, 1964	163.0
12 months ending June 30, 1965	159.8
12 months ending June 30, 1966	156.7
12 months ending June 30, 1967	153.1
12 months ending June 30, 1968	147.5
12 months ending June 30, 1969	141.6
12 months ending June 30, 1970	134.5
12 months ending June 30, 1971	128.7
12 months ending June 30, 1972	124.5
12 months ending June 30, 1973	119.6

(B) For those retirants, disabilitants, and beneficiaries receiving an allowance with an effective date prior to July 1, 1965, the initial

allowance, for purposes of this section, shall be deemed to be the allowance payable on July 1, 1965. However, for purposes of determining the allowance payable under this section, the percentage corresponding to the actual year of retirement shall be applied.

24408. (a) The minimum unmodified allowance, exclusive of annuities from accumulated annuity deposit and tax-sheltered contributions, of a person retired prior to January 1, 1981, shall be an amount equal to at least sixteen dollars ($16) per month multiplied by the years of credited service. This guaranteed amount shall be increased as of October 1, 1980, and shall be reduced by the amount of an unmodified allowance payable from a local system based on service credited by this system. If the retirement was effective at less than age 60 years, this allowance shall be reduced by one-half of 1 percent for each full month or fraction of a month that would have elapsed until the retirant would have reached age 60 years. If the retirant elected to have his or her allowance modified under Option 2 or 3, the increase in the retirant's allowance shall be modified under the option selected.

(b) The board may make lump sum payments for increases between October 1, 1980 and January 1, 1981.

24409. The minimum unmodified allowance, exclusive of annuities from accumulated annuity deposit and tax-sheltered contributions, of (a) a person who retired on or before December 31, 1981, (b) the option beneficiary of a person who retired on or before December 31, 1981, or (c) a person receiving a monthly allowance in lieu of the death benefit payable on account of the death of a member whose death occurred prior to July 1, 1972, shall be an amount equal to at least eighteen dollars ($18) per month multiplied by the years of credited service. This guaranteed amount is increased as of September 1, 1981, and is applicable to allowances paid on and after September 1, 1981. If the retirement was effective at less than age 60 years, this allowance shall be reduced by one-quarter of 1 percent for each full month or fraction of a month that would have elapsed until the retirant reached age 55 years, and the allowance shall be reduced by one-half of 1 percent for each full month or fraction of a month between age 55 and age 60 years. If the retirant elected to have his or her allowance modified under Option 2 or 3, the increase in the retirant's allowance shall be modified under the option selected.

24410. (a) If the projected final compensation is used to calculate the service retirement allowance following the termination of the disability allowance or if the disability allowance is continued as the smaller of the two allowance calculations under Section 24213 or 24212, then the original disability allowance effective date shall be retained as the base date for purposes of determining postretirement benefit increases.

(b) This section shall be applicable for determining the base date for applicable postretirement increases made on or after January 1,

1982.

(c) This section shall only apply to service retirements effective the day after the termination date of the disability allowance.

24411. (a) (1) Annual cost-of-living adjustments for retirants, disabilitants, and beneficiaries in excess of the 2-percent adjustment authorized by Section 22139 may be included as a General Fund appropriation in the annual Budget Act. In the annual budget submitted to the Legislature, the Governor shall include a budget item equal to 5 percent of the average annualized statewide increase in payroll for certificated personnel over the three previous school years among school districts, county offices of education, and community college districts.

(2) The amount submitted in the annual Budget Act pursuant to this section shall be considered as part of the overall budget allocations to the public schools and community colleges.

(b) The annual appropriation shall be made to the system on July 1, and shall be placed in a segregated account called the Retirees' Purchasing Power Protection Account. The proceeds of that account are continuously appropriated and shall be distributed annually in quarterly payments commencing on September 1 to retirants, disabilitants, and beneficiaries as follows:

(1) The proceeds shall be allocated among those retirants, disabilitants, and beneficiaries whose allowances, after applying the 2-percent adjustment authorized by Section 22139, have the lowest purchasing power percentage, based on the amount that would be paid had the original allowance been increased by the increases in the index then being used by the Department of Finance to measure changes in the cost of living, increasing those allowances to a common minimum purchasing power level. In any year in which the purchasing power of the allowances of all retirants, disabilitants, and beneficiaries equals not less than 75 percent and additional funds remain from the allocation authorized by this section, those funds shall be allocated by the board to general accounts to reduce the unfunded actuarial liability of the fund.

(2) The board may deduct from the annual appropriation an amount necessary for administrative expenses to implement this section.

(c) The board shall inform each recipient of benefits under subdivision (b) that the increases are not cumulative, are not part of the base retirement allowance, and shall be available only as appropriated annually in the annual Budget Act.

(d) The adjustments authorized by this section shall not be included in the base allowance for purposes of calculating the 2-percent adjustment authorized by Section 22139.

(e) It is the ultimate intent and purpose of the Legislature in amending this section by Chapters 323 and 780 of the Statutes of 1983, to achieve a common minimum purchasing power level equal to 75 percent of the purchasing power of the original retirement allowance. It is the present intent of the Legislature that until

adequate funds are available to fulfill the ultimate intent, those persons whose retirement allowances have been most impacted by inflation shall be accorded first priority in receiving, pursuant to this section, supplemental cost-of-living adjustments from the Retirees' Purchasing Power Protection Account.

(f) This section shall not be operative in any fiscal year during which, as determined by the board, distributions provided for by Section 24415 are being made.

24412. (a) The annual revenues deposited to the Teachers' Retirement Fund pursuant to Section 6217.5 of the Public Resources Code are continuously appropriated without regard to fiscal year for the purposes of this section and shall be distributed annually in quarterly supplemental payments commencing on September 1 of each year to retirants, disabilitants, and beneficiaries. The amount available for distribution in any year shall be the income for that year from the sale or use of school lands and lieu lands, as estimated by the State Lands Commission prior to the beginning of the fiscal year, adjusted by the difference between the estimated and actual income for the preceding fiscal year. The board shall deduct from the revenues an amount necessary for administrative expenses to implement this section.

(b) The net revenues to be distributed shall be allocated among those retirants, disabilitants, and beneficiaries whose allowances, after sequentially applying the annual improvement factor as defined in Section 22139 and the annual supplemental payment as defined in Section 24411, if any, are below 75 percent of original purchasing power. The purchasing power calculation for each individual allowance shall be based on the change in the All Urban California Consumer Price Index between June of the calendar year of retirement and June of the fiscal year preceding the fiscal year of the distribution. The allocation shall provide a pro rata share of the amount needed to restore the allowance payable, after sequential application of the current year annual improvement factor and the supplemental payment under Section 24411, to 75 percent of original purchasing power.

(c) The allowance increase shall not be applicable to annuities payable from the accumulated annuity deposit contributions or the accumulated tax-sheltered annuity contributions.

(d) In any year that the net revenues from school lands and lieu lands is greater than that needed to adjust the allowances of all retirants, disabilitants, and beneficiaries to 75 percent of original purchasing power, the net revenues in excess of that needed for distribution shall be used by the board to reduce the unfunded actuarial obligation of the fund.

(e) The board shall inform each recipient of supplemental payments under this section that the increases are not cumulative and are not part of the base retirement allowance.

24413. Notwithstanding Section 24412, revenues from school lands or lieu lands related to the claim of the State of California to

the school lands within the area referred to as the Elk Hills Naval Petroleum Reserve, shall be deposited in the School Land Bank Fund established by Section 8711 of the Public Resources Code. Interest earnings from this source of revenue deposited in the School Land Bank Fund shall be transmitted to the retirement fund pursuant to Section 6217.5 of the Public Resources Code and shall be distributed pursuant to Section 24412.

24414. (a) Beginning in the 1989-90 fiscal year, and until the first fiscal year in which the Supplemental Benefit Maintenance Account established by Section 22400 derives sufficient resources from the General Fund pursuant to Section 22954 to provide purchasing power of 68.2 percent as authorized by Section 24415, the board shall transfer from the retirement fund to the Supplemental Benefit Maintenance Account those funds that are necessary to provide purchasing power of 68.2 percent as authorized by Section 24415. 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 22954 to the Supplemental Benefit Maintenance Account are adequate to meet the purposes of Section 24415.

(b) The funds advanced pursuant to subdivision (a) and any funds appropriated by Item 1920-111-835 of the Budget Act of 1989 from the retirement fund to provide purchasing power protection payments shall be repaid from those funds transferred pursuant to Section 22954 that are in excess of the resources required to meet the purposes of Section 24415. Repayment shall commence in any year in which those excess funds exist and shall continue until the time all funds advanced under this section and any funds appropriated by Item 1920-111-835 of the Budget Act of 1989 from the 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 22954, 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 24415 or any other provision of law, if the state's contributions to the retirement fund provided by Section 22954 are, for any reason whatsoever, reduced or terminated before the 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 1920-111-835 of the Budget Act of 1989 from the retirement fund to provide purchasing power protection payments, all duties of the board to make the advances or transfers required by subdivision (a) and to make the distributions

required by Section 24415 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 embodied in this section and Section 22400, subdivision (b) of Section 22954, Section 24415, subdivision (b) of Section 44929, and subdivision (b) of Section 87488, not to manifest any promise, except as provided in subdivision (c) of Section 22954, that, 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 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 24415 and the funding mechanism provided therefor by this section and Section 22954 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 22334.

(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 24415 and all actions taken pursuant to Section 22954 and this section.

24415. (a) The proceeds of the Supplemental Benefit Maintenance Account shall, except as otherwise provided by Section 24414, be distributed annually in quarterly supplemental payments commencing on September 1, 1990, to retirants, disabilitants, and beneficiaries. The amount available for distribution in any fiscal year shall not exceed the amount necessary to restore purchasing power up to 68.2 percent of the purchasing power of the initial monthly allowance after the application of all allowance increases authorized by this part, including those specified in Section 24412.

(b) The net revenues to be distributed shall be allocated among those retirants, disabilitants, and beneficiaries whose allowances, after sequentially applying the annual improvement factor as defined in Sections 22139 and 22140, and the annual supplemental payment as defined in Section 24412, have the lowest purchasing power percentage. The purchasing power calculation for each individual shall be based on the change in the All Urban California Consumer Price Index between June of the calendar year of retirement and June of the fiscal year preceding the fiscal year of

distribution. In any year in which the purchasing power of the allowances of all retirants, disabilitants, and beneficiaries equals not less than 68.2 percent and additional funds remain from the allocation authorized by this section, those funds shall remain in the Supplemental Benefit Maintenance Account for allocation in future years.

(c) The allowance increase shall not be applicable to annuities payable from the accumulated annuity deposit contributions or the accumulated tax-sheltered annuity contributions.

(d) The benefits provided by subdivision (b) are not cumulative, not part of the base retirement allowance, and will be payable only to the extent that funds are available from the Supplemental Benefit Maintenance Account. The board shall inform each recipient of the contents of this subdivision.

(e) The adjustments authorized by this section are not vested and shall not be included in the base allowance for purposes of calculating the annual improvement defined by Sections 22139 and 22140.

CHAPTER 30. SUBROGATION

24500. Notwithstanding Sections 11042 and 11043 of the Government Code, if a disability retirement allowance, disability allowance, family allowance, or survivor benefit allowance is payable under this part due to the injury to or death of a member and the injury or death is the proximate consequence of the act of a third person or entity, other than the member's employer, the board may, upon adoption of a resolution, recover from that person or entity on behalf of the system, an amount equal to the actuarial equivalent of benefits paid by the system because of the injury to or death of the member less any amounts the system may be obligated to pay without regard to the actions of the third party. This chapter shall be deemed to create a right of subrogation only to amounts paid as disability retirement allowances, disability allowances, family allowances, or survivor benefit allowances.

24501. The board may act on its own or contract with the State Compensation Insurance Fund or Attorney General for recovery on behalf of the system of any amounts recoverable from third persons under this chapter, Chapter 5 (commencing with Section 3850) of Part 1 of Division 4 of the Labor Code, Section 11662 of the Insurance Code, or otherwise.

24502. In the exercise of its rights under this part, the board or the agent under contract may commence or prosecute actions, file liens, intervene in court proceedings, join parties to the action and consolidate actions all in the same manner and to the same extent provided in Chapter 5 (commencing with Section 3850) of Part 1 of Division 4 of the Labor Code except that recovery shall not be made from benefits payable under this part because of the injury or death.

24503. The State Compensation Insurance Fund or Attorney General as agent for the board may compromise claims before or

after commencement of suit or entry of judgment for an amount as may be approved by a person duly authorized by the board for that purpose.

24504. Any amount recovered by way of subrogation by the board on behalf of the member, shall be applied first to the amount which the system paid or is obligated to pay including court costs, attorney fees, and expenses.

24505. Actions brought by the board or its agent under contract pursuant to this chapter shall be commenced within three years after the liability of the system to pay benefits is fixed. Liability of the system is fixed at the time the board approves the payment of benefits under this part.

CHAPTER 31. PROCEDURES CONCERNING PAYMENT

24600. (a) The service retirement allowance or disability allowance begins to accrue on the effective date of the retirement or disability.

(b) On the death of the retirant, a person receiving a disability allowance or a person who is reinstated to membership, the allowance ceases on the day in which the death or reinstatement occurs.

(c) Family benefits begin to accrue on the day of the month following the day the death of the member occurs and cease on the day of the event that terminates eligibility.

(d) The survivor benefit allowances payable pursuant to Chapter 23 (commencing with Section 23850) on account of surviving spouses begin to accrue on the anniversary of the member's 60th birthday or on the day following the day of the member's death, if elected by the surviving spouse, and ceases on the day of the surviving spouse's death.

(e) Option benefits begin to accrue on the day of the month following the day the retirant died and cease on the day in which the death of the beneficiary occurs.

(f) Family allowances payable on account of a full-time student begin to accrue on the day of the month following the day the death of the member occurs. Disability allowances payable on account of a full-time student begin to accrue on the effective date of the disability allowance. The allowances payable on account of a full-time student shall terminate on the first day of the month following the end of the school quarter or semester that was in progress in the month of attainment of age 22 years. However, any adjustments to a family or disability allowance on account of a full-time student's periods of nonattendance shall be made as follows: the allowance shall cease on the beginning of the month in which the nonattendance was initiated and again accrues on the beginning of a subsequent month in which reattendance occurs.

(g) Disability retirement allowances payable pursuant to Chapter 26 (commencing with Section 24100) on account of dependent

children begin to accrue on the effective date of the retirement allowance and shall terminate on the earlier of termination of the child's eligibility or termination of the disability retirant's eligibility for reasons other than death.

(h) The survivor benefits payable pursuant to Chapter 23 (commencing with Section 23850) on account of dependent children shall begin to accrue on the day of the month following the member's date of death and shall terminate upon termination of the child's eligibility.

24601. Whenever the system determines that payments in the correct amount due cannot be made when payable because required information or documentation is not yet on file in the system, payment of estimated allowances based on preliminary information in the possession of the system may be made, the system may present claims therefore, and the Controller shall draw warrants in payment of the claims.

24602. The board may establish a special account and procedures to pay, on an emergency basis, allowances, death payments and up to 75 percent of the return of the balance of the accumulated retirement contributions as a result of termination of employment or death. Disbursements under the special account shall be by checks issued by the system and subject to the auditing requirements of the Controller. Payments under the special account shall be deducted from allowances, death benefits, and payment of accumulated retirement contributions, otherwise due.

24603. If any estimated allowances are more or less than the correct amount due, the difference between the correct amount and the estimated allowance shall be adjusted in subsequent payments or the Controller may state an account with the retirant, disabilitant, or beneficiary, pursuant to Section 12419 of the Government Code.

24604. (a) Upon the receipt of a request from any retirant, disabilitant, or beneficiary, the board may transmit payments to a bank, savings and loan association, or credit union for deposit in the retirant's, disabilitant's, or beneficiary's account by electronic fund transfer or by mail. The transmittal of the payment shall fully discharge the board and the system from any claim resulting from actions taken under this section.

(b) The board shall send a copy of the benefit payment information to any retirant, disabilitant, or beneficiary who has payments transmitted directly by electronic fund transfer or by mail to a financial institution.

24605. Upon receipt of proof satisfactory to the board, that a warrant drawn in payment of a retirement allowance or in payment of any other account due from the system, has been lost or that payment transmitted electronically cannot be credited to an account, the Controller upon the request of the board shall issue a replacement warrant in payment of the same amount, without requiring a bond from the payee, and any loss incurred in connection therewith shall be charged against the fund from which the payment

was derived.

24606. (a) Whenever any warrant drawn in payment of contributions or accumulated contributions or benefits under this system remains unclaimed or the legal claimant cannot be found, the board shall redeposit the proceeds of the warrant in the retirement fund, and shall hold the proceeds for the legal claimant without further accumulation of interest, and the redeposit shall not operate to reinstate the membership of the claimant in this system.

(b) Subdivision (a) shall apply to warrants drawn and canceled by the Controller pursuant to Section 17070 of the Government Code, except that upon notice of cancellation, the proceeds revert to and become a part of the retirement fund, and shall be applied to meet the liabilities of the retirement fund.

(c) The board may at any time, after reversion of proceeds as provided above to the retirement fund and upon receipt of proper information satisfactory to it, return from the retirement fund an amount equal to those proceeds to the credit of the legal claimant.

24607. Any warrant in an amount less than two thousand dollars ($2,000) paid by the system, for the month in which a retirant or disabilitant dies, shall not be invalidated by the system, except upon the request of the beneficiary of the retirant or disabilitant.

24608. (a) Persons entitled to receive allowances under this system may authorize deductions to be made from those allowances, in accordance with procedures established by the board.

(b) The board shall determine the additional cost involved in making deductions under this section, and may require the public agency, association, insurance carrier, or unit thereof to pay the amount of the additional cost to the board for deposit in the retirement fund.

24609. Any retirement allowance payable to a retirant, that has accrued and remains unpaid at the time of his or her death, shall be paid to either of the following:

(a) The beneficiary entitled to payment in accordance with an optional settlement chosen by the member.

(b) The beneficiary entitled to receive the lump-sum death benefit provided upon death of a retirant if the member has not chosen an optional settlement.

24610. Any disability allowance that has accrued and remains unpaid to a disabilitant at the time of death shall be paid to the person entitled to receive a family allowance or, if none, to the beneficiary entitled to receive the death payment.

24611. Part 5 (commencing with Section 220) of Division 2 of the Probate Code, when applicable, shall govern the distribution of the proceeds of any death benefit payable under the system. In applying Part 5 (commencing with Section 220) of Division 2 of the Probate Code with respect to proceeds payable to a beneficiary, membership in the system shall be considered as having the same status as an insurance policy issued after December 31, 1984.

24612. (a) If any person entitled to a benefit from the system is

a minor who has no guardian of his or her estate, the benefit, not to exceed two thousand dollars ($2,000), may be paid to the person entitled to the custody of the minor to hold for the minor, upon the written statement, duly acknowledged and verified, of the person that the total estate of the minor does not exceed two thousand five hundred dollars ($2,500) in value.

(b) The payment shall constitute full discharge of any and all liabilities of the board and system.

(c) The person shall account to the minor for the money when the minor reaches the age of majority.

(d) Notwithstanding any other provision of this section, a natural parent or an adoptive parent having custody of the minor shall not be required to establish a guardianship for the purpose of collecting a survivor benefit, family benefit, or death benefit.

24613. (a) Payment pursuant to the board's determination in good faith of the existence, identity, or other facts relating to entitlement of persons constitutes a complete discharge and release of the system from liability for that payment.

(b) Notwithstanding Sections 751 and 1100 of the Family Code relating to community property interests, whenever payment or refund is made by this system to a member, former member, or beneficiary of a member pursuant to this part, the payment shall fully discharge the system from all adverse claims thereto unless, before payment is made, the system has received at its office in Sacramento a written notice of adverse claim.

24614. (a) This section shall only be applicable to a district retirement salary plan in a unified district presently having an average daily attendance of less than 200,000 pupils and which was discontinued by the governing board of the district.

(b) The district shall continue to pay monthly to teachers and other persons who were retired prior to the date of the discontinuance an amount equal to the amount by which the retirement allowance to which any of the retired teachers or other persons were entitled under the plan exceeds the increase in the teacher's or other person's retirement allowance under the State Teachers' Retirement System resulting from the discontinuance. The arrangement under which those amounts are paid by the district shall not be considered to be a local retirement system for the purposes of this part, nor shall those amounts be taken into account in the calculation of retirement allowances under the State Teachers' Retirement System.

(c) The reserve fund created by the district from the assets delivered to it by the discontinued district retirement plan under subdivision (c) of former Section 14690 prior to its repeal is continued in existence and the amounts payable under subdivision (b) of this section shall be paid from that reserve fund.

24615. If the board determines that contributions are due the system from a retirant, disabilitant, or a person who has died and the person is unable to pay the amount due, the board may withhold all

or part of subsequent payments due the retirant, disabilitant, or survivor, until the amounts withheld equal the contributions due plus regular interest to the date of payment. Total contributions plus regular interest due shall be recovered by the system within 18 months.

24616. Any overpayment made to or on behalf of any member, former member, beneficiary, disabilitant, or retirant, including but not limited to contributions, interest, benefits of any kind, federal or state tax, or insurance premiums, shall be deducted from any subsequent benefit that may be payable by the system. These deductions shall be permitted concurrently with any suit for restitution, and recovery of overpayment by adjustment shall reduce by the amount of the recovery the extent of liability for restitution.

24617. (a) To recover an amount overpaid, the corrected monthly allowance may be reduced by no more than 5 percent if the overpayment was due to error by system staff, the county superintendent of schools, a school district, or a community college district, and by no more than 15 percent if the error was due to inaccurate information or nonsubmission of information by the recipient of the allowance.

(b) This section shall not apply to the collection of overpayments due to fraud or intentional misrepresentation of facts by the recipient of the allowance.

24618. Losses or gains resulting from overpayment or underpayment of contributions or other amounts within the limits set by the State Board of Control for automatic writeoff, and losses or gains in greater amounts specifically approved for writeoffs by the State Board of Control, shall be debited or credited, as the case may be, to the appropriate reserve in the retirement fund.

24619. The system shall annually report to the board the following information:

(a) The amount of underpayment made to recipients.

(b) The amount to be recovered because of overpayments and the number of overpayments.

(c) The actions taken by the board and the system to reduce the number and amount of overpayments and underpayments.

24620. (a) The special reserve resulting from the discontinuance of a district retirement salary plan as provided in former Section 14690 prior to its repeal, and a part of which is used annually in the interest of the employees of the district at the discretion of the governing board, is continued in existence and shall continue to be used first as provided in this section.

(b) The district in which the district retirement plan was discontinued and that credited each teacher or other person employed by the district at the time of discontinuance, in a status requisite for membership in the system, with an amount that bears the same ratio to the portion of the assets delivered to the district pursuant to former subdivision (c) of Section 14690 prior to its repeal, that remained after the creation of the reserve fund for payments

under former subdivision (d) of Section 14690 prior to its repeal, as required by former subdivision (e) of Section 14690 prior to its repeal, as the accumulated contributions credited to the member in his or her individual contribution account under the discontinued retirement plan at the time of discontinuance, bore to the total accumulated contributions so credited to all such teachers and persons, but this credit to any active member shall not exceed the amount of the member's accumulated contributions so credited at that time. The amount so credited to any person shall continue to be increased by interest at rates approved from time to time by the governing board of the district. The accumulated amount at the date upon which the person retires for service or disability under the system shall continue to be applied according to rates and tables adopted by the governing board and then in effect, to provide an annuity payable to the person throughout the balance of his or her life or a lump-sum payment of the total account balance on the date of retirement at the option of the governing board. If the person dies prior to retirement, the amount, with credited interest, shall be paid to his or her designated beneficiary, as it appears on the records of the district, if any, otherwise to the member's estate. If the person ceases to be employed by the district for any reason other than death, retirement, or attainment of the age at which his or her classification as a permanent employee ceases, he or she shall no longer be credited with or have any right to the accumulated amount, but the amount shall revert to and belong to the district. The arrangement under which annuities and death benefits are paid by a district under this subdivision shall not be considered to be a local retirement system for the purposes of this part, nor shall those payments be taken into account in the calculation of retirement allowances under the system.

(c) The reserve fund created by the district from the assets delivered to it pursuant to subdivision (c) of former Section 14690 prior to its repeal is continued in existence and in the amount equal in amount to the total contributions credited to employees of the district, under former subdivision (b) of former Section 14691 prior to its repeal, and the annuities and death benefits payable under subdivision (b) of former Section 14691 prior to its repeal shall continue to be paid from this reserve fund. If the reserve fund as first created proves insufficient to make the payments required under subdivision (b) of former Section 14691, the district shall continue to make any additions to the reserve fund necessary to provide for those payments.

(d) (1) In addition to any other investments authorized by law for the investment of those funds, the funds of any specialized reserve or reserve fund established pursuant to former Section 14690 or former Section 14691 prior to their repeal may continue to be invested as authorized by Section 31595 of the Government Code for the investment of the funds of a county employees' retirement system.

(2) The governing board may employ investment advisers to advise it on these investments and the fees for these services may be paid from the special reserve or reserve funds.

(e) The governing board may make additional cost-of-living adjustments in the payments to persons who retired prior to January 1, 1953.

CHAPTER 32. SAN FRANCISCO LOCAL SYSTEM

24700. On July 1, 1972, and thereafter all persons who first enter employment in the San Francisco Unified School District and the San Francisco Community College District in positions requiring membership in the system are members of the system in accordance with Section 22501. These new members are excluded from coverage under Subchapter II (commencing with Section 401) of Chapter 7 of Title 42 of the United States Code, for service performed as a member of the system.

24701. Those credentialed members of the San Francisco City and County Employees' Retirement System on June 30, 1972, who make an irrevocable election to be covered only by the State Teachers' Retirement System for prior and future service performed in San Francisco, shall be allowed to be covered for other certificated service concurrently, where the provisions of the city and county charter permit. This shall not include any credited service, as defined in Section 22120.

24702. (a) All persons on the San Francisco system retired rolls on June 30, 1972, shall remain on the local rolls. The State Teachers' Retirement System shall continue the subvention in Section 24706 for those persons, shall apply the percentage update and annual improvement factor to payments being made by the State Teachers' Retirement System directly to the retirant, and shall pay the retired death payment upon their death.

(b) The allowance that would have been payable had the member retired solely under the State Teachers' Retirement System, including the percentage update calculated under Sections 14332, 14333, and 14334 of the Education Code, as enacted by Chapter 2 of the Statutes of 1959, as those sections read on December 31, 1974, shall be taken into account in computing the amount of increase for the ten dollar ($10) a month per year of service minimum benefit.

24703. Persons who select to be covered only by the State Teachers' Retirement System and already have credit for classified or other noncertificated service in the San Francisco local system shall not have that credit transferred to the State Teachers' Retirement System.

24704. The San Francisco City and County Employees' Retirement System shall provide concurrent retirement benefits for classified and other noncertificated service in the San Francisco system according to the provisions applicable to miscellaneous employees of the time of the concurrent retirement for:

(a) Members of that system who transfer to the State Teachers' Retirement System after June 30, 1972.

(b) Persons who were members of both retirement systems on June 30, 1972.

(c) Any person who could have qualified under subdivision (b) if he or she had not taken a refund from either but not both systems, provided he or she qualifies for and redeposits prior to retirement.

24705. Notwithstanding the provisions in Section 24201, a member of the San Francisco local system may retire concurrently and receive credit for service performed in other states of the United States, its territories and possessions, and in Canada provided that person is eligible under Section 22707.

24706. The system shall pay to the San Francisco Unified School District and the San Francisco Community College District the amounts due for subventions required prior to July 1, 1972, on account of persons who retired or died prior to that date.

CHAPTER 33. LOS ANGELES UNIFIED SCHOOL DISTRICT PLAN

24750. Those members who took a refund of their accumulated contributions from the former Los Angeles Unified School District Retirement System or the former Los Angeles Community College District Retirement System or the San Francisco City and County Employees' Retirement System, prior to July 1, 1972, and who have former Permanent Fund contributions only on deposit related to former local system service shall have those accumulated former Permanent Fund contributions on deposit as of July 1, 1972, treated in the same manner as accumulated retirement contributions of all nonlocal members. Upon discovery and notification to those members, they shall do either of the following:

(a) Redeposit the contributions required to bring the account into full balance with regular interest prior to retirement.

(b) Leave those former Permanent Fund accumulated contributions on deposit and receive a reduced retirement allowance under the law as it read on June 30, 1972.

24751. Those members who took a refund of their accumulated contributions from the former Los Angeles Unified School District Retirement System or the former Los Angeles Community College District Retirement System or the San Francisco City and County Employees' Retirement System, prior to July 1, 1972, and who also took a refund of their Permanent Fund contributions from the State Teachers' Retirement System, and who redeposited their contributions in the local system but did not redeposit their Permanent Fund contributions in the State Teachers' Retirement System, shall redeposit the contributions required to bring the account into full balance with regular interest from the date of refund to the date of payment. The redeposit may be made immediately upon notification by the system and shall be made prior to retirement. The redeposit shall be made in a lump sum or by

installment payments as specified by the chief executive officer.

CHAPTER 34. ADMINISTRATION OF THE DISTRICT RETIREMENT SALARY PLAN

24800. (a) All payments from the district retirement fund shall be made in the same manner as payments from school district funds but shall be subject to approval of the district retirement board. Warrants drawn on the fund shall be signed by at least one member of the district retirement board who shall be designated by the board.

(b) The duties imposed upon the county treasurer shall be a part of his or her official duties, for the faithful performance of which he or she shall be liable upon his or her official bond.

24801. (a) Any other provisions of law to the contrary notwithstanding, whenever any retirement benefits under a district retirement system payable solely by reason of death of the retired member to his or her estate, heir or beneficiary have been unclaimed for a period of four years from the date of notification, by the district retirement system, by means of United States mail, to the estate, heir or beneficiary, such funds shall revert to and become a part of the contributions of the district and shall be applied to reduce the cost to the taxpayers of the district maintaining the retirement system.

(b) The district retirement system may at any time after reversion of these benefits to the district and upon receipt of proper information satisfactory to it, return from district contributions, an amount equal to that which had, on account of the deceased member, reverted to the district.

24802. (a) Notwithstanding any other provision of law, whenever any warrant drawn in payment of contributions or accumulated contributions or benefits under a district retirement system, remains unclaimed or the claimant cannot be found, the proceeds of the warrant shall be redeposited in the respective fund, or funds, from which they were derived, and held for the claimant, without further accumulation of interest, and the redeposit shall not operate to reinstate the membership of the claimant in the district retirement system. If the proceeds, whether heretofore or hereafter redeposited, are not claimed within four years after the date of redeposit, they shall revert to and become a part of the contributions of the district and shall be applied to reduce the cost to the taxpayers of the district maintaining the retirement system and on account of which the contributions were made.

(b) The provisions of this section shall apply to warrants drawn under a district retirement system and that would become void under Section 85270.

(c) The district retirement system may at any time, after the reversion of proceeds to the district maintaining the retirement system, and upon receipt of proper information satisfactory to it, return from district contributions, an amount equal to those proceeds, to the credit of the claimant to be administered in the

manner prescribed under the district retirement system.

(d) The deposit in those funds of the proceeds of unclaimed and unpaid warrants prior to September 7, 1955, in accordance with the procedure specified in this section, is hereby validated, ratified, and confirmed.

24803. (a) If any benefit is payable by a district retirement system to the estate of a deceased person, whether because the estate is the beneficiary of the person or because no beneficiary was designated or because an allowance payable to the person had accrued and remained unpaid at the date of the death, and the estate would not be administered if no amount were due from the system, then the benefit shall be paid directly without procuring letters of administration to the surviving next of kin of the deceased, or the guardians of the survivors' estates, share and share alike. The payment shall be made in the same order in which the following groups are listed:

(1) Husband or wife.

(2) Children and issue of deceased children by right of representation.

(3) Father and mother.

(4) Brothers and sisters.

(5) Nieces and nephews.

(b) Payment may also be made to persons in the groups listed in subdivision (a) to the extent those persons are the only beneficiaries under the last will and testament of a deceased former member of a district retirement system, without the probate of the will.

24804. Except in the case where the deceased former member of a district retirement system leaves a will, no payment shall be made to persons included in any group specified in subdivision (a) of Section 24803, if at the date of death of any person or persons to whom any benefit is payable by a district retirement system there are living persons in any of the groups preceding it, as listed. Payment to the persons in any group, upon receipt from them of an affidavit upon a form supplied by the system, that there were no surviving individuals in the groups preceding it, or that they are one of the beneficiaries in any group specified in subdivision (a) of Section 24803 under the will of the deceased former member, and that the estate of the deceased will not be administered, is in full discharge of the liability of the board and system on account of the death.

24805. (a) Notwithstanding any other provision of law, whenever any member of the district retirement system dies while in active membership status, including those on a deferred membership status, or within four months after the termination of the member's employment in a status requisite for membership in the retirement system, benefits payable at death, unless a claim by someone other than the designated beneficiary or beneficiaries is filed with the retirement system during the period provided in this section, shall be paid to the beneficiary or beneficiaries designated

by him on a form provided by the retirement system and on file in the office of the retirement system prior to the death of the member.

(b) Payment to a beneficiary or beneficiaries designated in the form on file in the retirement system at the date of death by a warrant drawn prior to any claim under a will or under community property rights, shall constitute full discharge of any and all liability of the district retirement board and retirement system by reason of the member's death. The retirement system shall provide a 30-day claim period subsequent to notification of death before drawing a warrant in favor of the designated beneficiary or beneficiaries.

24806. (a) A district retirement salary plan established under Sections 24800 to 24812, inclusive, in any school district or districts, in which the average daily attendance of all districts combined is in excess of 200,000, governed by the same governing board, may be discontinued by the governing board of the district or districts, with the consent of the majority of the active members of the system expressing their desires with respect to the discontinuance of the plan evidenced in the manner as the governing board may prescribe. However, no discontinuance of any retirement plan shall be effective for any purpose unless provision is made for retirement allowances for active and retired employees of the district as provided in subdivisions (b), (c), (d), and (e).

(b) (1) Active and retired employees of the district or districts who otherwise would be members of the plan, other than teachers and persons employed in a status requisite for membership in the State Teachers' Retirement System or who were so employed prior to retirement, shall be made members and beneficiaries, respectively, of the Public Employees' Retirement System according to Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code, including transfer to the system of the accumulated contributions of the employees, together with any other assets of the plan as may be determined.

(2) With respect to persons who are members of the plan at its discontinuance, it shall be provided in the contract making the employees members of the Public Employees' Retirement System, that their respective rates of contribution under the system shall be based on the age at the nearest birthday on July 1, 1944, or at the respective later effective dates of their membership in the plan, all instead of the age at the nearest birthday at the effective date of membership in the employees' system.

(3) Each employee of the district or districts who is included in the contract, but who during all or part of his or her employment in a status requisite for membership in the plan was not a member thereof, because of his or her election under an available option, or who failed to redeposit upon reentry into membership contributions previously withdrawn, shall have the right to elect by written document filed with the Board of Administration of the Public Employees' Retirement System, at any time within 90 days after the date upon which the notice of the right to make the election is mailed

by the system to the member's latest address on file in the office of the system, and prior to the date of retirement, to contribute to the system, subject to minimum payments fixed by the board of administration, and in one or more sums, or in not to exceed 60 monthly payments, an amount which, when added to his or her accumulated contributions, including interest, transferred as required in paragraph (1), will make a total amount equal to the accumulated contributions, including interest, that would have been credited to him or her in the plan, if he or she had never elected not to be a member thereof, or if he or she had redeposited the withdrawn contributions upon reentry, as the case may be. The employee shall pay to the Public Employees' Retirement System interest on the unpaid balance of the amount payable to the system, beginning with the date of discontinuance of the plan at the rate of interest currently used from time to time under the system. If the employee elects to make, and makes the contributions, and pays the interest, but not otherwise, he or she shall receive credit under the employees' system, as state service, for all the service rendered while he or she was not a member of the plan, because of his or her optional exclusion, or for all service upon which the withdrawn contributions were based, and for the purpose of paragraph (2) shall be considered as a member of the plan at its discontinuance and from November 1, 1937, or later beginning date of the service. Regardless of whether the contributions are made, the employee shall receive credit for service with which he or she was credited or would have been credited if he or she had been a member, as prior service under the plan. The contributions under this paragraph shall be added to and administered in the same manner as the contributions transferred under paragraph (1).

(4) Service rendered by active employees, who are made members of the Public Employees' Retirement System, prior to the assumption by the district or districts of the function under which the service was rendered, such as, but not limited to, cafeterias and student body activities, shall be credited under the employees' system, provided the service qualified for credit under the discontinued plan.

(5) The contract making the active employees members of the Public Employees' Retirement System, shall include the employees with respect to service rendered in a status in which they are not eligible for membership in the State Teachers' Retirement System, as provided in Section 20491 of the Government Code, and also with respect to service rendered in a status in which they are eligible for membership, but that is no longer credited under the retirement system, and the service shall be credited in the same manner applicable to service otherwise qualifying for credit.

(6) Retirement allowances being paid under the discontinued plan to retired employees of the district or districts, who are made beneficiaries of the Public Employees' Retirement System, shall be changed by action of the governing board of the districts, effective

at the discontinuance of the plan, to retirement allowances calculated on the basis of service used in the calculation of the respective allowances under the plan, and average annual salary earnable during the highest three consecutive years of creditable service, calculated according to the methods used at the date of discontinuance, under the plan in determining salary earnable, but excluding any salary based on overtime as provided in Section 20025.2 of the Government Code, but otherwise according to the formulae under the employees' system that apply to active employees who are made members thereof. The changed allowances shall be paid to beneficiaries for time commencing on the date they are made beneficiaries of the employees' system. No allowance shall be reduced by the change.

(7) If two or more districts under the control and management of a single governing board are participants in the plan, one contract between the board of administration and the governing board may include all the districts. The governing board may apportion the total contributions required under the contract, among the districts on the basis of total salaries upon which the contributions are computed, and on the basis of other pertinent information.

(8) Notwithstanding paragraph (1), the contract making active employees members of the Public Employees' Retirement System, shall include teachers and persons employed in a status requisite for membership in the State Teachers' Retirement System, with respect to service rendered in a status in which they would have been eligible for membership in the Public Employees' Retirement System, if the district or districts by which they were employed had been participating in that system under Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code. Contributions deducted from salary earned by the employees in that service, together with credited interest, and standing to the credit of the employees at the effective date of discontinuance of the plan, shall be subject to paragraph (1), in the same manner as they would have been so subject if the employees had been employed at the date of the discontinuance, in a status which was not requisite for membership in the State Teachers' Retirement System. The employees shall be members of the Public Employees' Retirement System with the same effect, but only with respect to that service, as if they had been employed in a status that would have qualified them for membership under other paragraphs of this section. The employees shall continue in membership and shall be entitled to benefits in the same manner as if they individually were credited with at least five hundred dollars ($500) in accumulated contributions. In the computation of the members' benefits under the Public Employees' Retirement System, their compensation earnable while they are members of the State Teachers' Retirement System shall be taken into consideration.

(c) Notwithstanding Sections 35161, 35162, Article 1 (commencing with Section 7000) of Chapter 1 of Part 5, Article 2

(commencing with Section 10010) of Chapter 1 of Part 7, Article 1 (commencing with Section 12500) of Chapter 5 of Part 8, this part, Article 5 (commencing with Section 32340) of Chapter 3 of Part 19, and Part 25 (commencing with Section 44000), contributions to the discontinued district retirement plan made by teachers and other persons employed by the district or districts in a status requisite for membership in the State Teachers' Retirement System standing to their individual credit at the date of discontinuance of the district retirement plan shall be deposited in the Retirement Annuity Fund with credited interest, to be applied on the amount due from the teachers, but not to exceed the amount due. Likewise an amount equal to the actuarial equivalent of the annuity portion of the retirement allowance to which the respective retired teachers and other persons employed by the district or districts, prior to retirement, in a status requisite for membership in the State Teachers' Retirement System were entitled under the plan, based on the interest rate and mortality tables used in its determination, shall be deposited in the Retirement Annuity Fund, to be applied on the amount due from the respective retired teachers, but not to exceed the amount due. Any excess of the contributions with credited interest or the actuarial equivalents, as the case may be, over the respective amounts due under those sections, shall be paid to the respective active and retired teachers and other persons. Further amounts, if any, due under those sections after the deposits, shall be paid to the Retirement Annuity Fund by the respective active and retired teachers and other persons. If any of the teachers or other persons who is not retired, is not entitled to credit under the State Teachers' Retirement System for all or part of his or her service credited under the plan, or if any of the retired teachers or other persons is not entitled to a retirement allowance from the system, either before or after the discontinuance, the provisions of this subdivision about contributions and credited interest or about the actuarial equivalent of annuity portions of retirement allowances, as the case may be, shall not apply to him or her with respect to service that is not credited under the state system, until and unless he or she becomes entitled to credit for that service or to an allowance from the state system, based on service that was credited to him or her under the discontinued plan. The balance of the assets held in the various funds of the discontinued district retirement plan after the transfers, deposits, and payments required by this section, or after establishment of reserves from which the transfers, deposits, and payments shall be made, shall be delivered to the district or districts in which the plan is discontinued.

(d) The district or districts in which the district retirement plan is discontinued shall pay monthly to teachers and other persons employed by the district or districts, prior to retirement, in a status requisite for membership in the State Teachers' Retirement System who were retired prior to the date of the discontinuance an amount equal to the amount by which the retirement allowance to which any

of the retired teachers or other persons was entitled under the plan exceeds the increase in the teacher's or other person's retirement allowance under the State Teachers' Retirement System resulting from the discontinuance. If the amount payable to any teacher or other person, under the previous sentence, is less than two dollars ($2), the district or districts may pay, in lieu of that amount, one amount which shall be actuarially equivalent to the monthly amount thereafter payable, according to the interest rate and mortality table used in the determination of the teacher's or other person's retirement allowance under the district retirement plan. The payment of the actuarially equivalent amount shall discharge fully the district's liability to the teacher or other person under this subdivision. The arrangement under which the amounts are paid by the district shall not be considered to be a local retirement system for the purposes of Chapter 1 (commencing with Section 22000) to Chapter 19 (commencing with Section 23200), inclusive, and Chapter 21.5 (commencing with Section 23700), nor shall the amount be taken into account in the calculation of retirement allowances under the State Teachers' Retirement System. If any of the teachers or other persons is not entitled to a retirement allowance from the State Teachers' Retirement System, either before or after discontinuance, the district or districts shall pay monthly to him or her, an amount equal to his or her retirement allowance under the plan prior to the discontinuance. If any teacher or other person has left the service of the district or districts, and is in a status under the plan, which if continued would qualify him or her for a retirement allowance without his or her return to that service, but is in a status which would otherwise not qualify him or her for retirement under the state system, the district or districts shall pay monthly to the teacher or other person, beginning at the date upon which he or she would have qualified for service retirement under the plan, an amount equal to the retirement allowance for which he or she would have qualified if the plan had not been discontinued. If any teacher or other person has credit under the plan for service that does not qualify for credit under either the State Teachers' Retirement System or Public Employees' Retirement System, the district or districts shall pay monthly to the teacher or other person, beginning on the date upon which he or she would have qualified for service retirement under the plan, an amount equal to the retirement allowance for which he or she would have qualified on the basis of that service if the plan had not been discontinued. If the individual at a later date becomes entitled to a retirement allowance from the state system, based on service that was credited to him or her under the discontinued plan, the monthly payments shall cease, and he or she shall become subject to subdivision (c), and the first four sentences of this subdivision, in the same manner as he or she would have been subject, if he or she had been entitled to a retirement allowance at the date of discontinuance, but calculation of actuarial equivalents and amounts

payable shall be made as of the later date.

(e) If any person who was retired prior to the discontinuance from a position requisite for membership in the State Teachers' Retirement System, under a district retirement salary plan that is discontinued pursuant to this section, elected either under the plan or under the system, but not under both, to have the retirement allowance modified according to an option under which he or she would receive a smaller allowance and provide a benefit for his or her beneficiary, the person shall have the right, to be exercised not later than 60 days after the discontinuance of the plan, to change his or her election under the State Teachers' Retirement System with respect to the options. Any computations of actuarial equivalent under a changed election shall be made as of the date of discontinuance of the plan, and no adjustment shall be included in the computation on account of retirement allowance payments made prior to that date.

24807. The balance of the assets delivered to the district pursuant to subdivision (c) of Section 24806, after the transfers, deposits and payments required by that section, or after establishment of reserves from which those deposits and payments shall be made, shall be allocated and distributed as follows:

(a) Sixty-five percent of the balance shall be distributed to the undistributed reserve of the general fund of the district to be reduced to cash as necessary and appropriated in any year by majority vote of the governing board. Until the balance of the assets has been reduced to cash, the governing board may invest and reinvest the assets in securities legal for the investment of funds of the State Teachers' Retirement System when in the judgment of the governing board any sale and reinvestment is advisable. Ten percent of this amount shall be used only for maintenance operation.

(b) Twenty percent of the balance shall be transferred to a special account in the undistributed reserve of the district's general fund to be reduced to cash as necessary in order to be used only for the purpose of reducing the tax collected pursuant to former Section 23401, as it read on January 1, 1979, in order to provide the contributions required by Section 22950 to the Teacher's Retirement Fund. In the event that the special account is not wholly distributed for the purpose of making the contribution, the balance in the special account shall be released to the undistributed reserve. Until the balance of the assets has been reduced to cash, the governing board may invest and reinvest the assets in securities legal for the investment of funds of the State Teachers' Retirement System when in the judgment of the governing board any sale and reinvestment is advisable.

(c) (1) Fifteen percent of the balance shall be held intact by the district in an annuity reserve fund from which shall be provided a supplementary annuity at time of retirement under any California public retirement system to or on behalf of those members of the local district retirement system who were on the active roll or

members on the retired roll of such local district retirement system as of June 30, 1972, and those members added to the active and retired rolls between June 30, 1972, and any later date of discontinuance, and those probationary or permanent certificated employees of the district holding memberships in California public retirement systems other than the local district retirement system who are making contributions to those systems on June 30, 1972, or on any later date of discontinuance. The supplement annuity may be paid in lump sum or in installments for the life of the person eligible, or his or her beneficiary, after his or her retirement.

(2) No participant in the annuity reserve fund shall have vested rights to the benefits of this annuity reserve fund until he or she has continued in active service for a period of five years from the date of discontinuance of the local district retirement system, except participants who have separated from service by reason of retirement, including deferred retirement, or death.

(3) An account shall be opened in the name of each person eligible to participate in the benefits of the annuity reserve fund to which shall be credited his or her share of the annuity reserve fund. The individual participant's share of this fund shall bear the same ratio to the total of this fund as his or her annuity savings contributions, including interest earned, to the retirement system, to which he or she is making annuity contributions as of June 30, 1972, or any later date of discontinuance, or, if a retired member, the date of retirement prior to June 30, 1972, bears to the total annuity savings contributions, including interest earned, of all such participants in the retirement systems to which they are making contributions at the date of discontinuance, including total contributions to the local district retirement system previously made by living members on the retired roll. The fund shall include principal and interest in the account of any participant forfeited because the participant separated from service, except by reason of retirement, including deferred retirement, or death, within five years from June 30, 1972, or other date of discontinuance. The forfeiture shall be treated as earnings of the fund.

(4) As of June 30 each year, and on any other dates the annuity reserve fund board may determine, the earnings of the fund less administrative expense shall be credited to the accounts of the remaining participants in the annuity reserve fund on the ratio that the participant's individual account balance bears to the total balance of the annuity reserve fund. The cost of administering the fund shall be charged against the assets of the fund, as approved by the governing board of the school district.

(5) When a participant separates from service, the earnings since the preceding date on which the earnings of the fund, less administrative expenses, were credited to the accounts of the participants, shall remain in the fund. Any member whose accumulated contributions to the local retirement system exceed the amount required by law to be deposited by the member in the State

Teachers' Retirement System's Annuity Fund upon discontinuance of the local system may deposit to his or her credit all or part of the excess amount in the annuity reserve fund.

(6) The governing board of the school district that maintained the discontinued local district retirement system shall establish an annuity reserve fund board of not more than seven members, the majority of whom shall be composed of certificated employees who are participants in the annuity reserve fund. The certificated employees on the annuity reserve fund board shall be elected by participants in the annuity reserve fund. The annuity reserve fund board shall have the authority to make rules and regulations necessary for the management of the annuity reserve fund in accordance with modern business practice. The local district retirement board shall continue to function as the annuity reserve board pending its establishment.

(7) Except as otherwise restricted by the California Constitution or by law, the annuity reserve fund board may, in its discretion, invest or reinvest the assets of the fund through the purchase, holding, or sale thereof of any investment, financial instrument, or financial transaction, if the investment, financial instrument, or financial transaction is prudent in the informed opinion of the annuity reserve fund board.

(8) All securities and cash of the annuity reserve fund shall be held in a trust fund in the county treasury. The county treasurer, as one of his or her official duties, shall be a member ex officio of the annuity reserve fund board established to invest the assets of this fund.

(9) Any funds raised for the support of the local district retirement system and not appropriated to any specific account shall be transferred to the annuity reserve fund. All payments from the district's annuity reserve fund shall be made in the same manner as payments from school district funds. The annuity reserve fund board may, at its discretion, request the district governing board to hold an election among existing annuity reserve fund participants as to whether the board should distribute existing funds in the annuity fund. The annuity reserve fund board may prescribe all rules and regulations regarding such an election and may distribute the funds if a majority of the members so elect.

24807.5. Any certificated employee of a district having an annuity reserve fund may enter into an amendment of his or her employment contract for the purpose of effecting a reduction in salary. The reduction shall be deposited by the employer, at the employee's request, in the district's annuity reserve fund. The deposits shall be used to provide the employee an annuity within the meaning of Section 403(b) of the Internal Revenue Code of 1986 (26 U.S.C.A. Sec. 403(b)).

24807.7. Notwithstanding Section 24807, the annuity reserve fund board may adopt rules allowing participants who have reached 70 years of age to withdraw their benefits.

24808. The governing board may provide that members of the

annuity reserve fund board be paid one hundred dollars ($100) for each meeting, not to exceed one meeting each month, if they are not being paid by the governing board for any other assignment at the time of the meeting. The compensation shall be a charge against the annuity reserve fund.

24810. (a) Notwithstanding Section 24806, persons other than teachers and other persons employed in a status requisite for membership in the State Teachers' Retirement System, who are active or retired members of a district retirement salary plan established under Sections 24800 to 24812, inclusive, in any school district or districts in which the average daily attendance of all districts combined is in excess of 200,000, governed by the same governing board, may be transferred by the governing board of the district or districts, with the consent of the majority of the active members of the plan expressing their desires with respect to the transfer evidenced in the manner the governing board prescribes. However, no transfer of the active and retired members shall be effective for any purpose unless provision is made for retirement allowances for active and retired employees of the district as provided in subdivision (b).

(b) (1) Active and retired employees, including future employees, of the district or districts who otherwise would be members of the plan, persons who are members of the district's retirement salary plan, and persons who were employees on June 30, 1957, and who attained age 65 years or over during the 12 months immediately preceding July 1, 1957, other than teachers and persons employed in a status requisite for membership in the State Teachers' Retirement System or who were so employed prior to retirement, shall be made members and beneficiaries, respectively, of the Public Employees' Retirement System according to the provisions of Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code, including transfer to the system of the accumulated contributions of the members, together with the other assets of the plan as may be determined. However, the total of the other assets transferred shall not be greater than the portion of the reserves of the plan that is allocable to the active and retired employees, as determined by actuarial valuation. In the valuation the portion of the reserves allocable to the active and retired employees proposed to be transferred shall be determined as an amount which bears the same ratio to the total reserves under the plan as the liabilities under the plan on account of the active and retired employees bear to the total liabilities under the plan on account of all active and retired employees under the plan. On the effective date of the contract making the active employees members of the Public Employees' Retirement System, the employees shall cease to be members of the plan, and neither they nor retired persons who are made beneficiaries of the state system, shall be paid or have any right to any allowance or other benefit under the plan for time beginning with the effective date.

(2) With respect to persons who are members of the plan at the transfer, it shall be provided in the contract making the employees members of the Public Employees' Retirement System, that their respective rates of contribution under the plan shall be based on the age at the nearest birthday at July 1, 1944, or at the respective later effective dates of their membership in the plan, all instead of the age at the nearest birthday at the effective date of membership in the employees' system.

(3) Each employee of the district or districts who is included in the contract, but who during all or part of his or her employment in a status requisite for membership in the plan was not a member thereof, because of his or her election under an available option, or who, while employed in a status not requisite for membership in the plan, was a member of the State Teachers' Retirement System and was contributing to that system, or who did not redeposit upon reentry into membership contributions previously withdrawn, shall have the right to elect by written document filed with the Board of Administration of the Public Employees' Retirement System, at any time within 90 days after the date upon which the notice of the right to make the election is mailed by the system either to the member's latest address on file in the office of the system, or to the office of the governing board of the district or districts, and prior to the date of retirement, to contribute to the system, subject to minimum payments fixed by the board of administration, and in one or more sums, or in not to exceed 60 monthly payments, an amount which, when added to his or her accumulated contributions, including interest, transferred as required in paragraph (1), will make a total amount equal to the accumulated contributions, including interest, that would have been credited to him or her in the plan, if he or she had never elected not to be a member thereof, or if he or she had been a member of the plan during the time he or she was a member of the State Teachers' Retirement System and was contributing to the system, or if he or she had redeposited the withdrawn contributions upon reentry, as the case may be. The employee shall pay to the Public Employees' Retirement System interest on the unpaid balance of the amount payable to the system, beginning with the date of transfer, at the rate of interest currently used from time to time under the system. If the employee elects to make, and makes the contributions, and pays the interest, but not otherwise, he or she shall receive credit under the employees' system, as state service, for all the service rendered while he or she was not a member of the plan, because of his or her optional exclusion, or for service rendered while he or she was contributing to the State Teachers' Retirement System, provided the service is no longer credited under the teachers' system, or for all service upon which the withdrawn contributions were based, and for the purpose of paragraph (2) shall be considered as a member of the plan at the transfer and from November 1, 1937, or later beginning date of the service. Regardless of whether the contributions are made, the employee shall receive

credit for service with which he or she was credited or would have been credited if he or she had been a member, as prior service under the plan. The contributions under this paragraph shall be added to and administered in the same manner as the contributions transferred under paragraph (1).

(4) Service rendered by active employees who are made members of the Public Employees' Retirement System prior to or after the assumption by the district or districts of the function under which the service was rendered, but prior to the effective date of the contract making active employees members, and the compensation for which was paid wholly or in part from funds other than the funds of the district or districts, shall be credited under the employees' system, provided the service qualified for credit under the plan.

(5) The contract making the active employees members of the Public Employees' Retirement System, shall include the employees with respect to service rendered in a status in which they are not eligible for membership in the State Teachers' Retirement System, as provided in Section 20491 of the Government Code, and also with respect to service rendered in a status in which they are eligible for that membership, but that is no longer credited under the teachers' retirement system, and the service shall be credited in the manner applicable to service otherwise qualifying for credit.

(6) Retirement allowances being paid under the plan to retired employees of the district or districts, who are made beneficiaries of the Public Employees' Retirement System, shall be changed by action of the governing board of the district, effective at the transfer, to retirement allowances calculated on the basis of service used in the calculation of the respective allowances under the plan, and average annual salary earnable during the highest three consecutive years of creditable service, calculated according to the methods used at the date of transfer, under the plan in determining salary earnable, but excluding any salary based on overtime as provided in Section 20025.2 of the Government Code, but otherwise according to the formulae under the employees' system that apply to active employees who are made members of the employees' system. The changed allowances shall be paid to the beneficiaries for time commencing on the date they are made beneficiaries of the employees' system. No allowance shall be reduced by the change.

(7) If two or more districts under the control and management of a single governing board are participants in the plan, one contract between the board of administration and the governing board may include all the districts. The governing board may apportion the total contributions required under the contract, among the districts on the basis of total salaries upon which the contributions are computed, and on the basis of other pertinent information.

(8) The contract making these active employees members of the Public Employees' Retirement System shall provide that the service included in the calculation of the completed years of service as a basis for the portion of the basic death benefit provided in subdivision (b)

of Section 21361 of the Government Code for persons who were members of the plan at transfer, shall not be limited to service under the Public Employees' Retirement System, but instead that service rendered as members of the plan shall also be included.

24811. If two or more districts have been included in one contract between the Board of Administration of the Public Employees' Retirement System, and the governing board of the districts, as provided in paragraph (7) of subdivision (b) of Section 24810, and if, since that inclusion, two or more of the districts have been combined into a unified district, the unified district, by amendment to the contract, may, notwithstanding Section 20580 of the Government Code, be substituted for the districts so combined, and for all purposes of the contract.

24812. If two districts, one of which is a community college district, have been included in one contract between the Board of Administration of the Public Employees' Retirement System and the governing board of the districts, as provided in paragraph (7) of subdivision (b) of Section 24810, and thereafter members of the governing board of the community college district are precluded by law from serving as members of the governing body of the other district, the contract shall be deemed a separate contract as to each district. The Board of Administration of the Public Employees' Retirement System shall determine the accumulated contributions held for or as having been made by each district and its employees, and shall credit the contributions to the respective contracts. Benefits based on all service of an employee to the districts prior to the date upon which employees' elections to serve the respective districts are effective shall be a liability of the contract of the district employing the person on the effective date. A person retired prior to the effective date shall, for all purposes of this section, be deemed an employee of the district other than the community college district.

24813. (a) The contract executed under Section 24810, and making persons other than teachers and other persons employed in a status requisite for membership in the State Teachers' Retirement System, who are active or retired members of a district retirement salary plan established under Sections 24800 to 24812, inclusive, members and beneficiaries of the Public Employees' Retirement System, shall be amended to include as members or beneficiaries, teachers and other persons who were employed in a status requisite for membership in the State Teachers' Retirement System, who ceased to be members of the plan if it was discontinued, or if the plan was not discontinued, who resign instead of retiring and are refunded their accumulated contributions under that plan, or who retire or have retired under the district plan and relinquish or have relinquished their right to allowances from the plan with credit for service rendered in a status in which they would have been eligible for membership in the Public Employees' Retirement System, if the district or districts by which they were employed had been

participating in that system under Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code, but only if the service qualified for credit under the plan and is not credited under any other retirement system.

(b) The service of a person who ceased to be a member, or resigns or has resigned instead of retiring, or who relinquishes or has relinquished, shall be administered under the contract in exactly the same manner as that applied to service of persons who were retired under the local retirement system at the effective date of that contract, and were made beneficiaries, or who were not retired and were made members of the system on that date. The retirement allowances being received by the relinquishing persons, on account of service that would have been credited under the Public Employees' Retirement System as stated, shall be adjusted in the same manner that allowances were adjusted under paragraph (6) of subdivision (b) of Section 24810. Any member who is credited with service in accordance with this section, shall pay to the Public Employees' Retirement System, at times and in the manner fixed by the board of administration of that system, an amount equal to contributions with interest, that the member received as a refund from the plan, and that were based on service credited, plus interest from the date of refund to the date of the payment, at the interest rate in effect under the system at the date of payment. Contributions required of the district or districts shall be determined by proper valuation, and the contributions set forth in the contract shall be adjusted accordingly.

(c) A retirement allowance based on the credited service shall be payable and retirement shall become effective, under the Public Employees' Retirement System beginning on the first day of the month next following the effective date of this section, in the case of a person who then is retired under the State Teachers' Retirement System, or otherwise on the later effective date of the member's retirement under the teachers' system. The allowance shall be based on the person's age when the allowance begins, and on the same average salary as that upon which his or her allowance under the State Teachers' Retirement System, is based.

CHAPTER 35. JOINT DISTRICT SALARY RETIREMENT PLAN

Article 1. Establishment of Plan

24900. The governing boards of two or more school districts, in none of which the employees are entitled to the benefits of a pension or retirement system maintained by a city, city and county, or county in which the district, or a part thereof, is located, meeting in joint session, may in their discretion, submit to the qualified electors of the districts, and upon petition signed by not less than 10 percent of the qualified electors of each district the governing boards shall submit to the qualified electors of the districts the proposition of establishing

a joint plan for a retirement salary to be paid by the districts to all teachers fulfilling the requirements of the plan in the public schools of the districts and to other employees of the districts as the governing boards may determine, or, in the case of a petition, other employees specified in the petition, and to provide, out of funds of the districts, a portion of the cost thereunder, including expenses incident to the administration of the plan.

24901. The proposition of establishing the plan may be submitted to the electors of the districts at any general or special election called and held in the districts, as the governing boards of the districts may determine. The governing boards of the school districts may order the elections that shall be called and held in accordance with the provisions of Chapter 3 (commencing with Section 5300) of Part 4.

24902. The governing boards calling the election shall consolidate the election and submit to the electors of the respective districts on the same day the question of whether a district retirement plan shall be established in the districts. Within the territory affected by the order of consolidation, the election precinct polling places and voting booths shall, in every case, be the same. There shall be only one set of election officers in each precinct. The propositions to be voted upon within the respective districts may be set forth on one ticket or ballot. All proceedings had in the premises shall be recorded in one set of election papers, and the election shall be held in all respects as though there were only one election.

24903. The election may be consolidated with any other election pursuant to Part 2.5 (commencing with Section 23300) of Division 14 of the Elections Code.

24904. The election shall be called by posting notices, signed by a majority of the governing board of each district, not less than 10 days before the election. If there is a newspaper of general circulation published in any of the districts, notice shall be published in such a newspaper at least once, and at least 10 days prior to the election.

24905. In all respects not otherwise specified the election shall be called and held, and returns canvassed and the result announced in the manner provided for the holding of elections for the purpose of authorizing bonds of the school districts, so far as the provisions of the laws are applicable. The governing boards of the school districts in which the election is held shall, for the purposes of this section, be considered as one board.

24906. There shall be printed on the ballots to be used at the election the proposition: "Shall the governing boards of (here insert the names of the districts under the control of the boards submitting the proposition) school districts be authorized to establish a plan for a joint district retirement salary for the teachers and such other employees of the districts as the governing boards or the petition determines." To the right of the proposition shall be printed the words "Yes" and "No" with voting squares.

24907. If, at the election, a majority of the voters in each district

voting on the proposition cast their ballots in favor of the proposition, the governing boards shall establish a joint district retirement salary plan for the teachers and for such other employees of the districts as the boards or the petition determine.

24908. If a majority of the votes cast in each district on the proposition is in the negative, the governing boards shall not submit the proposition again within a period of six months after the date of the election.

Article 2. Administration of the Plan

24920. Every teacher and every other employee of the school districts for which the plan for district retirement is adopted, who is employed by the districts at the time of the adoption of the plan, and who signs an agreement to be subject to the burdens of the district retirement plan, shall be entitled to the benefits and subject to the burdens of the plan and of this chapter. Every teacher employed in the public schools of the districts after the adoption of the provisions of this chapter by the governing boards of the districts, and any other employees the boards or the petition determines, shall be bound by the benefits and burdens of this chapter.

24921. Any plan shall not be adopted or established until the governing boards, after any inquiry and hearing they may direct, find that the respective contributions of the teachers and other employees and the districts provided for in the plan, are substantially in accordance with the more recent generally prevailing rates of contributions in public institutions that have established retirement systems, and that the plan is in accordance with sound business practice and with recognized actuarial methods.

24922. The plan may provide that the retirement salary shall be a stipulated monthly sum, or that all benefits under the retirement feature of the plan shall be based upon the monthly salary for each year of future active service in the district earned by the employee up to the date of retirement and upon the average monthly salary earned by the teacher or other eligible employee during the year immediately preceding the adoption of the plan and the number of years of past active service of the employee in the district, and subject to those provisions made in the plan for minimum benefits. No employee with less than 15 years' service in the district prior to normal retirement age shall receive the benefit of the minimum. In no instance shall the retirement benefits be based upon or allowed for any amount of salary in excess of the sum of five hundred dollars ($500) per month.

24923. In lieu of the authorizations or requirements provided for in Sections 24920 and 24922, the plan may provide only that the retirement salary shall be based on service rendered prior to the effective date of the plan or prior to July 1, 1944, and shall be an amount which, when added to the retirement allowance the respective member is entitled to receive under the State Teachers'

Retirement System, shall equal a sum of not less than one hundred dollars ($100) per month and Sections 24920 and 24922 shall not be applicable thereto. The costs of the benefits under such a plan may be met by the contributions of the districts alone, notwithstanding Sections 35161, 35162, Article 1 (commencing with Section 7000) of Chapter 1 of Part 5, Article 2 (commencing with Section 10010) of Chapter 1 of Part 7, Article 1 (commencing with Section 12500) of Chapter 5 of Part 8, this part, Article 5 (commencing with Section 32340) of Chapter 3 of Part 19, and Part 25 (commencing with Section 44000), and only teachers who have credit for service rendered prior to that date shall be subject to the plan.

24924. (a) A plan established under this chapter that is intended to provide supplemental benefits only on account of service rendered before July 1, 1944, may be discontinued by the governing board of the district, subject to the following conditions:

(1) Notwithstanding Sections 35161, 35162, Article 1 (commencing with Section 7000) of Chapter 1, Article 2 (commencing with Section 10010) of Chapter 1 of Part 7, Article 1 (commencing with Section 12500) of Chapter 5 of Part 8, this part, Article 5 (commencing with Section 32340) of Chapter 3 of Part 19, and Part 25 (commencing with Section 44000), any teacher who is not retired on July 1, 1956, shall be entitled to the contributions made by him or her to the discontinued plan with interest credited in accordance with the rules and regulations of the local retirement plan up to and including June 30, 1957. Likewise, a teacher who retired prior to July 1, 1956, shall be entitled to a refund equal to the actuarial equivalent, at his or her attained age, of the annuity that would have been provided by the total contributions required of the member under the system, based on interest and mortality tables currently in use, less the amount of any contributions remaining unpaid on the date of discontinuance. The amount to which any teacher is entitled under this section shall be paid to him or her within 90 days of his or her request in writing on a form provided by and filed with the local retirement system. All requests shall be filed prior to July 1, 1959.

(2) The district in which the plan is discontinued shall pay monthly to teachers, who were retired prior to the date of the discontinuance, an amount equal to the amount by which the retirement allowance to which any of these retired teachers was entitled under the plan exceeds the increase in the teacher's retirement allowance under the State Teachers' Retirement System after the discontinuance. In lieu of the monthly payment, the district may elect to pay in a single sum the amount that shall be the actuarial equivalent to the monthly amount thereafter payable, according to the interest rate and mortality table currently in use under the plan. Payment of the amount shall discharge fully the district's liability to the teacher under this subdivision. The arrangement under which the amounts are paid by the district shall not be considered to be a local retirement system for the purposes of Chapter 1 (commencing

with Section 22000) to Chapter 31 (commencing with Section 24600), inclusive, nor shall the amount be taken into account in the calculation of the retirement allowances under the State Teachers' Retirement System.

(b) Any person who was retired prior to July 1, 1956, from a position requisite for membership in the State Teachers' Retirement System, under a district supplemental retirement salary plan which has been discontinued pursuant to this section, and elected either under the plan or under the system, but not under both, to have a portion of his or her retirement allowance modified according to an option under which he or she would receive a smaller allowance and provide for a benefit for his or her beneficiary, that person shall have the right, to be exercised not later than 60 days after July 5, 1956, to change his or her election under the State Teachers' Retirement System with respect to those options. Any computations of actuarial equivalents under a changed election shall be made as of the effective date, and no adjustment shall be included in the computation on account of retirement allowance payments made prior to that date.

(c) When any local retirement plan is discontinued under this section, all funds remaining in the district retirement fund of the local system shall be transferred to the general fund of the school district in which the plan is discontinued. Thereafter any payments to meet continuing obligations of the district arising from the establishment or discontinuance of the plan shall be paid from the general fund of the district.

24925. The governing boards, after the adoption of the plan, shall at regular intervals, each not exceeding a period of five years, secure a general survey and actuarial report of the plan, and the boards shall from time to time amend the plan in any manner found to be advisable to meet changed conditions, or, in the light of experience, considered necessary.

24926. A plan under which the districts establishing it agree to pay to employees who become entitled to retirement salaries within a specified period, not exceeding 15 years, after the establishment of the plan, a specified sum that, during the life expectancy of the employees, will be approximately equal, in the aggregate, to the aggregate difference, during the life expectancy, between the maximum salary paid to employees in the respective classes of the retiring employees, and the salaries paid to beginning employees in the classes, shall be construed to comply with the provisions of this chapter requiring the plan to be in accordance with sound business practices and recognized actuarial methods.

24927. For the purpose of providing funds that may be necessary to make the payments required by any joint district retirement plan, district taxes shall be levied and collected annually by the respective districts at the same time and in the same manner as other district taxes are levied and collected. The tax shall be in addition to any other district tax now or hereafter authorized by law, and shall not

be considered in fixing maximum rates of tax for school district or community college district purposes.

24928. Every joint district retirement plan shall provide that only those teachers and other employees who have served as teachers or employees of the districts for at least 20 years of service immediately preceding retirement, and who have reached a minimum age specified in the joint district retirement plan, which shall not be less than 55 years, shall be entitled to a district retirement salary.

24929. The plan may provide for the retirement of teachers or other employees on account of disability after 10 years of service immediately prior to the retirement, the proportion of the disability retirement salary to the full retirement salary to be specified in the plan.

24930. Absence from service by reason of a leave of absence granted by the governing board of an employing district shall not be construed as a break in the continuity of service or by any district retirement plan adopted pursuant to the provisions hereof, but the period of leave shall not be counted as time served toward retirement unless the period is so counted under the State Teachers Retirement Act.

24931. Time of service may be counted in the aggregate and fractions of years amounting to whole years may be counted as whole years when payments by the teacher or other employee have been made for all of the time counted.

24932. The governing boards of the districts shall in all cases determine the teachers and other employees who are entitled to retirement salaries, and make and keep a list of the teachers and other employees, known as the retired list. For the purpose of making the retired list the boards may take testimony and examine witnesses under oath, which may be administered by any member of the board.

24933. The governing boards of the districts may make all necessary and proper rules and regulations in aid or furtherance of the provisions of this chapter and in order to carry out and administer the provisions.

24934. When a joint district retirement plan is established there shall be created in the treasury of the county in which the districts are located, or, if the districts are located in more than one county, in the treasury of the county selected by the governing boards of the districts meeting in joint session, and open upon the books of the auditor and treasurer of the county, a trust fund account designated as the "joint district retirement fund." All moneys, whether from contributions by teachers or other employees, or by the districts, or from any source, properly belonging to the joint district retirement fund shall be placed in the fund. Upon approval of the joint district retirement board all incidental expenses, including actual and necessary clerical or other help, incurred in carrying out the provisions of this chapter shall be paid out of the fund and in the same manner as other expenditures are paid from district funds.

24935. Members of governing boards shall discharge the powers, duties, purposes, responsibilities, and jurisdiction conferred or imposed upon the governing boards under this chapter without extra or additional compensation.

24936. The governing boards of the districts establishing the retirement plan shall provide for the administration of the funds and the payment of retirement salaries by a joint district retirement board composed of three persons not officers or employees of any of the districts, one representative of each district, one representative of the teachers of each district and one representative of the other employees of each district, who shall serve without compensation. The representatives chosen by the teachers and other employees shall be chosen by secret ballot. The county treasurer of the county in the county treasury of which the joint district retirement fund is created shall be ex officio a member of the joint district retirement board. All members of the retirement board shall serve for such terms as may be specified by the governing boards in establishing a plan. The joint district retirement board shall have such further powers and duties as may be prescribed by the governing boards of the districts.

24937. (a) The joint district retirement board shall have charge and control of the district retirement fund of the district and of the payment of all retirement salaries and annuities payable from the fund. The joint district retirement board shall invest the funds in securities that are legal for the investment of funds of savings banks in this state and shall sell the securities and reinvest the proceeds in securities legal for investment of funds of savings banks when in the judgment of the joint district retirement board the sale and reinvestment is advisable. No investment in or sale of securities shall be made except upon authorization of the joint district retirement board at a meeting of the board.

(b) The board also shall collect the income from the securities and pay it into the joint district retirement fund.

24938. The joint district retirement board may sue in its own name when necessary to carry out the powers and duties conferred upon it. The district attorney, or, if there is a county counsel, the county counsel of the county in which are employed the largest number of employees entitled to the benefits and subject to the burdens of the joint district retirement plan shall act as attorney for the joint district retirement board without additional compensation.

24939. All securities purchased by the joint district retirement board shall be deposited with the county treasurer for safekeeping.

24940. (a) All payments from the joint district retirement fund shall be made in the same manner as payments from school district funds but shall be subject to approval of the joint district retirement board. Warrants drawn on the fund shall be signed by at least one member of the joint district retirement board who shall be designated by the board.

(b) The duties imposed upon the county treasurer shall be a part

of his or her official duties, for the faithful performance of which he or she shall be liable upon his or her official bond.

24941. The county auditor of the county in the county treasury of which the "joint district retirement fund" is created shall audit the accounts of the joint district retirement board at least once every 12 months and report upon the financial condition thereof to the governing boards of the districts.

24942. The retirement salaries provided for in this chapter shall be in addition to any other retirement salaries received by any person under Chapter 1 (commencing with Section 22000) to Chapter 31 (commencing with Section 24600), inclusive, or as may be otherwise provided by law.

24943. The retirement salaries provided for in this chapter for all other employees, shall be in addition to any other retirement salaries that may be provided by law.

24944. Whenever by the provisions of this chapter, the governing boards of two or more school districts are required, or authorized, to perform any act, the act may be done only at joint meetings of the boards, and no action shall be taken by the boards except upon the affirmative vote of a majority of the members of a majority of the boards.

SEC. 3. It is the intent of the Legislature in enacting this act to reorganize and clarify the State Teachers' Retirement Law and thus facilitate its administration. It is not the intent of the Legislature to make any substantive change in the law. Thus, if, in the opinion of any court or administrative officer, a different result under any provision of the State Teachers' Retirement Law as it read on December 31, 1993, would occur because of the enactment of this act, the provision as it read on December 31, 1993, shall be followed and the result shall be as it would have been on December 31, 1993. Further, it is the intent of the Legislature that no new or additional rights vest in any member, retirant, or beneficiary as a result of the enactment of this act. No provision of this act may be interpreted to vest any such new or additional right. No dollar amount of any current or future benefit under this act shall be revised in any way because of the enactment of this act.

SEC. 4. Any section of any act enacted in 1993 at the 1993–94 Regular Session of the Legislature that amends, adds, or repeals any section of the State Teachers' Retirement Law (Part 13 (commencing with Section 22000) of the Education Code) and that is chaptered either before or after this act is chaptered shall prevail over this act.

CHAPTER 894

An act to amend Sections 14000, 14300, 14307, 14308, and 14581 of, to add Sections 14004, 14311, 14312, 14313, 14314, 14315, and 14316 to, and to repeal Section 14105 of, the Public Resources Code, relating to the California Conservation Corps, and making an appropriation therefor.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 14000 of the Public Resources Code is amended to read:

14000. (a) The Legislature hereby finds and declares that every California youth should be encouraged to reach his or her full potential, but that many youths require guidance and support to reach their goals and make positive changes in their lives.

(b) The Legislature finds and declares that conserving or developing natural resources, and enhancing and maintaining environmentally important lands and waters through the use of California's young women and men, is beneficial not only to the youth of the state by providing them with educational and work opportunities, but also is beneficial for the state's economy and its environment.

(c) The Legislature further finds and declares that the California Conservation Corps continues to offer California a unique opportunity to meet both the goal of increasing understanding and appreciation of the environment and the goal of helping youths become productive adults.

(d) The Legislature therefore reaffirms its intent that the corps' mission includes increasing awareness of and improving our natural resources, but more importantly, includes instilling basic skills and a healthy work ethic in California youth, building their character, self-esteem, and self-discipline, and establishing within them a strong sense of civic responsibility and understanding of the value of a day's work for a day's wages.

(e) It is the further intent of the Legislature that corpsmembers graduate from the corps with good work habits, positive attitudes, and broadened professional horizons. It is the intent of the Legislature that the corps blend academic and job skills training with personal growth opportunities in order to develop productive youths who can make substantial contributions as California workers and citizens.

(f) It is the further intent of the Legislature, in memory of Brien Thomas "B.T." Collins and John E. "Jack" Dugan, and on behalf of their passion, support, and commitment to the mission of the corps, to ensure that the corps is an entrepreneurial and incentive-based

program with stable and predictable funding. In pursuit of that goal, it is the intent of the Legislature that all state agencies look to the corps first to perform those projects that meet the mission of the corps.

SEC. 2. Section 14004 is added to the Public Resources Code, to read:

14004. In memory of Brien Thomas "B.T." Collins, and on behalf of his passion, support, and commitment to the mission of the corps, the California Conservation Corps headquarters in Sacramento is hereby named the "B.T. Collins California Conservation Corps Building."

SEC. 3. Section 14105 of the Public Resources Code is repealed.

SEC. 4. Section 14300 of the Public Resources Code is amended to read:

14300. Young women and men participating in the corps program shall generally be engaged in projects which do the following:

(a) Preserve, maintain, and enhance environmentally important lands and waters.

(b) Accomplish useful and needed public works projects in both urban and rural areas.

(c) Conserve, maintain, improve, and develop natural resources in both urban and rural areas.

(d) Provide opportunities for public use of, or education in, the areas, projects, and resources described in subdivisions (a), (b), and (c).

(e) Assist in emergency operations, such as natural disaster relief and the rescue of lost and injured persons.

(f) Assist in fire prevention and suppression.

(g) Directly contribute to the conservation of energy.

(h) Contribute toward making public facilities accessible to persons with disabilities.

(i) Assist departments within the Resources Agency in developing, rehabilitating, and restoring parklands, recreational facilities, and historical resources; restoring salmon and steelhead spawning, nursery, and rearing habitat; restoring and preserving wildlife habitat; and enhancing reforestation in both urban and rural areas.

SEC. 5. Section 14307 of the Public Resources Code is amended to read:

14307. Fire prevention, fire suppression, and disaster relief shall be a major emphasis of the program. Certain corps centers designated by the director as fire centers in locations specifically needed to assure emergency capability and readiness for firefighting and natural disaster relief shall be administered and directed jointly by the director of the corps and the Director of Forestry and Fire Protection. The director of the corps shall be responsible for setting the policies under which these centers shall be operated and shall be responsible for the recruitment, orientation, job training, project

planning, and educational and other services generally provided in the corps at its base centers. The Director of Forestry and Fire Protection, and his or her designee, shall be responsible for the supervision of corpsmembers engaged in public service conservation work and for the training, supervision, and direction of corpsmembers engaged in fire prevention, fire suppression, and other emergency activities.

SEC. 6. Section 14308 of the Public Resources Code is amended to read:

14308. In carrying out this division, the director may utilize any services, materials, or property of any agency of the state and may make any agreements with any agency of the state, or take any other actions, that are reasonable and necessary.

SEC. 7. Section 14311 is added to the Public Resources Code, to read:

14311. In keeping with the corps' entrepreneurial nature and to expand the corpsmember population, the corps shall actively seek reimbursable work projects from state and nonstate entities that are in keeping with its mission. The corps shall use the following criteria in reviewing such a project offer:

(a) The project will provide opportunities to expand corpsmember population.

(b) The project will provide corpsmembers with education and training in employable skills.

(c) The project will attract community support, participation, and funding.

(d) The project conserves or enhances the state's natural resources, or has other public benefits.

SEC. 8. Section 14312 is added to the Public Resources Code, to read:

14312. (a) The Collins-Dugan California Conservation Corps Fund is hereby created in the State Treasury, for support of the corps.

(b) Funds from various sources, including funds received in payment for reimbursable work projects, available special funds, donations, and any other available money, but excluding General Fund money, may be deposited in the Collins-Dugan California Conservation Corps Fund.

(c) Notwithstanding Section 13340 of the Government Code, the money in the Collins-Dugan California Conservation Corps Fund is hereby continuously appropriated to the corps for the following program activities:

(1) Program expansion to hire more corpsmembers.

(2) Enhancement of corpsmember education and educational support services.

(3) Enhancement of equipment used by corpsmembers in projects meeting the corps' mission.

(4) Program support when legislatively directed reimbursement targets are unmet in a given fiscal year.

SEC. 9. Section 14313 is added to the Public Resources Code, to read:

14313. To assist the corps' operation as an entrepreneurial and incentive-based program, the director may seek and accept donations from private entities, foundations, or other sources outside of state government for purposes of accomplishing the corps' mission.

SEC. 10. Section 14314 is added to the Public Resources Code, to read:

14314. (a) On and after July 1, 1994, to further long-term strategic planning, the development of performance measures, operational and administrative efficiency and flexibility, and commitment to quality improvement, the corps shall be designated by the Department of Finance as a performance budget department whose annual budget shall take the form of a budget contract between the Legislature and the corps.

(b) The Legislature hereby requests the Governor to issue an executive order establishing performance goals for the corps, by which the Legislature may evaluate a proposed corps contract, and that the executive order includes such goals as increasing the number of corpsmembers, increasing the number of corpsmember hours dedicated to public service conservation work and emergency response, and developing specific and quantifiable measures of the corps' success.

(c) On or before January 1, 1999, the corps shall report to the Legislature regarding the status of the Collins-Dugan California Conservation Corps Fund, the entrepreneurial incentives that financial support provides to the corps, the impact that the funding has had on the program and the development of corpsmembers through work, service, and education, and the corps' success as a performance budget department based on its ability over a five-year period to meet established performance goals.

SEC. 11. Section 14315 is added to the Public Resources Code, to read:

14315. (a) State agencies shall use the services of the corps to the maximum extent feasible to carry out projects that promote the mission of the corps.

(b) The corps may contract with any state agency for the performance of activities consistent with this division.

(c) Upon appropriation by the Legislature and execution of a contract pursuant to subdivision (b), the Controller may transfer money to the Collins-Dugan California Conservation Corps Fund from other funds under the control of the contracting state agency, including, but not limited to, the following funds and accounts:

(1) Hazardous Waste Control Account in the General Fund.

(2) State Highway Account in the State Transportation Fund.

(3) Transportation Planning and Development Account in the State Transportation Fund.

(4) California Environmental License Plate Fund.

(5) Fish and Game Preservation Fund.

(6) Public Resources Account in the Cigarette and Tobacco Products Surtax Fund.

(7) Unallocated Account in the Cigarette and Tobacco Products Surtax Fund.

(8) Habitat Conservation Fund.

(9) Motor Vehicle Fuel Account in the Transportation Tax Fund pursuant to Section 8352.6 of the Revenue and Taxation Code (OMV Fund).

(10) Oil Spill Prevention and Administration Fund.

(11) Integrated Waste Management Account in the Integrated Waste Management Fund.

(12) State Parks and Recreation Fund.

(13) Solid Waste Disposal Site Cleanup and Maintenance Account in the General Fund.

(14) Employment Training Fund.

(15) Harbors and Watercraft Revolving Fund.

(16) California Beverage Container Recycling Fund.

(d) Expenditures from the Collins-Dugan California Conservation Corps Fund of amounts transferred pursuant to subdivision (c) shall be limited to purposes which are consistent with the requirements of each fund or account contributing each amount to the Collins-Dugan California Conservation Corps Fund.

SEC. 12. Section 14316 is added to the Public Resources Code, to read:

14316. The Department of Finance may make a loan from the General Fund to the Collins-Dugan California Conservation Corps Fund, in an amount not to exceed a cumulative total of one million five hundred thousand dollars ($1,500,000) to meet cash flow needs due to delays in collecting reimbursements. Any loan made by the Department of Finance pursuant to this section shall only be made if the corps has a valid contract or certification signed by a client agency that demonstrates that sufficient funds will be available to repay the loan. All money so transferred shall be repaid to the General Fund as soon as possible, but not later than one year from the date of the loan, with interest at the average rate earned by the Surplus Money Investment Fund.

SEC. 13. Section 14581 of the Public Resources Code is amended to read:

14581. Subject to the availability of funds, the department may expend the money set aside in the fund, pursuant to subdivision (c) of Section 14580 for the purposes of this section, in the following order of priority:

(a) The department shall annually expend seven million dollars ($7,000,000) plus the proportional share of the cost-of-living adjustment as provided in subdivision (d) in the form of grants issued 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 subdivision shall not comprise more than 75 percent of the annual budget of a community conservation corps.

(b) The department shall annually expend up to eighteen million five hundred thousand dollars ($18,500,000) for the payment of handling fees, pursuant to Section 14585, until January 1, 1996.

(c) The department shall annually expend two million dollars ($2,000,000) plus the proportional share of the cost-of-living adjustment as provided in subdivision (d) in the form of grants to nonprofit organizations or governmental entities, as determined by the department.

(d) The nine million dollars ($9,000,000) set aside in subdivisions (a) and (c), is a base amount which the department shall adjust 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.

CHAPTER 895

An act to amend Section 23116 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 23116 of the Vehicle Code is amended to read:

23116. (a) No person driving a pickup truck or a flatbed motor truck on a highway shall transport any person in or on, and no person shall ride in or on, the back of the truck.

(b) Subdivision (a) does not apply if the person in the back of the truck is secured with a restraint system. The restraint system shall meet or exceed the federal motor vehicle safety standards published in Sections 571.207, 571.209, and 571.210 of Title 49 of the Code of Federal Regulations.

(c) Subdivisions (a) and (b) do not apply if the person in the back of the truck or the flatbed is being transported in an emergency response situation by a public agency or pursuant to the direction or authority of a public agency.

As used in this subdivision "emergency response situation" means instances in which necessary measures are needed in order to prevent injury or death to persons or to prevent, confine, or mitigate damage or destruction to property.

(d) Subdivision (a) does not apply if the person in the back of the truck is being transported in an enclosed camper or camper shell

that prevents the person from being discharged.

(e) This section does not affect requirements imposed by the Labor Code or by any other state or federal law or regulation regarding the transportation of employees in a motortruck.

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 amend Sections 5093.547, 5093.548, 5093.55, and 5093.56 of, and to repeal Section 5093.65 of, the Public Resources Code, relating to wild and scenic rivers, and making an appropriation therefor.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 5093.547 of the Public Resources Code is amended to read:

5093.547. (a) (1) The secretary shall study and submit to the Governor and the Legislature reports on the suitability or nonsuitability for addition to the system of rivers or segments thereof which are designated by the Legislature as potential additions to the system. The secretary shall report to the Legislature his or her recommendations and proposals with respect to the designation of a river or segment.

(2) With respect to the rivers and segments thereof designated in Section 5093.548, the secretary shall complete the studies and submit the reports to the Governor and the Legislature on or before January 1, 1995. Prior to submitting the reports, the secretary shall conduct one or more hearings within the local area for the purpose of receiving public comments and suggestions with respect to the suitability or nonsuitability of the river and river segments designated as potential additions to the system.

(b) Each report, including maps and illustrations, shall show, among other things, the area included within the report, the characteristics which do or do not make the area a worthy addition to the system, the current status of land ownership and use in the

immediate environment, and the reasonably foreseeable potential uses of the land and water which will be enhanced, foreclosed, or curtailed if the river or river segment were included in the system. Each report shall also specifically address the need for future flood control facilities or improvements, potential conjunctive uses of water within the region and the Sacramento-San Joaquin Delta, local groundwater management planning studies or programs, and any fishery restoration projects or facilities that will be enhanced, foreclosed, or curtailed if the river or river segment is included in the system.

SEC. 2. Section 5093.548 of the Public Resources Code is amended to read:

5093.548. The following rivers and segments thereof are hereby designated for potential addition to the system:

(a) Mill Creek. The main stem from its source near Mt. Lassen within Section 15 T30N R4E to the confluence with the Sacramento River.

(b) Deer Creek. The main stem from its source at Butt Mountain from the southern boundary of Section 10 T28N R5E to the confluence with the Sacramento River.

SEC. 3. Section 5093.55 of the Public Resources Code is amended to read:

5093.55. (a) Other than temporary flood storage facilities permitted pursuant to Section 5093.57, no dam, reservoir, diversion, or other water impoundment facility shall be constructed on any river and segment thereof designated in Section 5093.54; nor shall any water diversion facility be constructed on the river and segment unless and until the secretary determines that the facility is needed to supply domestic water to the residents of the county or counties through which the river and segment flows, and unless and until the secretary determines that the facility will not adversely affect the free-flowing condition and natural character of the river and segment.

(b) No dam, reservoir, diversion, or other water impoundment facility shall be constructed on any river and segment thereof designated in Section 5093.548 for study by the secretary as a potential addition to the system until January 1, 1996.

SEC. 4. Section 5093.56 of the Public Resources Code is amended to read:

5093.56. No department or agency of the state shall assist or cooperate, whether by loan, grant, license, or otherwise, with any department or agency of the federal, state, or local government, in the planning or construction of any dam, reservoir, diversion, or other water impoundment facility that could have an adverse effect on the free-flowing condition and natural character of (1) the river and segments thereof designated in Section 5093.54 as included in the system, and (2) the rivers and segments thereof designated in Section 5093.548 for study by the secretary as potential additions to the system until January 1, 1996.

SEC. 5. Section 5093.65 of the Public Resources Code is repealed.

SEC. 6. Notwithstanding Sections 3 and 4 of this act or any other provision of law, nothing in this act shall prejudice, alter, affect in any way, or interfere with, the exercise of existing water rights.

SEC. 7. Notwithstanding Sections 3 and 4 of this act or any other provision of law, nothing in this act shall prejudice, alter, affect in any way, or interfere with, the ability of public agencies or private landowners to maintain existing flood control facilities and projects or undertake emergency flood control activities or repairs required due to acts of God, provided that those activities or projects do not interfere with the passage of migrating anadromous fish.

SEC. 8. Notwithstanding Sections 3 and 4 of this act, nor any other provision of law, nothing in this act shall prejudice, alter, affect in any way, or interfere with, the implementation or construction of any fishery restoration or improvement project that is authorized, required, or recommended pursuant to the Central Valley Improvement Act (Public Law 102-575) or the upper Sacramento River Fisheries and Riparian Habitat Management Plan development pursuant to Chapter 885 of the Statutes of 1986, or of any other fishery restoration or improvement project, including, but not limited to, those developed and implemented by the Spring-Run Salmon Restoration Action Plan Committee.

SEC. 9. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the Public Resources Account in the Cigarette and Tobacco Products Surtax Fund to the Secretary of the Resources Agency for expenditure in the 1993–94 and 1994–95 fiscal years for the conduct of suitability studies and the preparation and submission of reports pursuant to Section 5093.547 of the Public Resources Code for the creeks designated for potential addition to the California Wild and Scenic Rivers System in Section 5093.548 of the Public Resources Code.

CHAPTER 897

An act to amend Section 18025 of the Education Code, relating to libraries.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 18025 of the Education Code is amended to read:

18025. (a) For the 1982–83 fiscal year and each fiscal year thereafter, the State Librarian shall determine the amount to which each public library is entitled for support of the library during the fiscal year. The amount shall be equal to 10 percent of the cost of the

foundation program as determined pursuant to Section 18022.

(b) If local revenues appropriated for a public library for the 1982–83 fiscal year and each fiscal year thereafter, including tax revenues made available under Chapter 282 of the Statutes of 1979, total less than 90 percent of the cost of the foundation program as determined pursuant to Section 18022, the state allocation for that fiscal year shall be reduced proportionately.

(c) If local revenues appropriated for a public library for the 1982–83 fiscal year and each fiscal year thereafter, including tax revenues made available under the provisions of Chapter 282 of the Statutes of 1979, total more than 90 percent of the cost of the foundation program as determined pursuant to Section 18022, the state allocation for that fiscal year shall remain at 10 percent of the cost of the foundation program as determined pursuant to Section 18022.

(d) In order for a public library to receive state funds under this chapter in the 1983–84 fiscal year and any fiscal year thereafter, the total amount of local revenues appropriated for the public library for that fiscal year, including tax revenues made available under Chapter 282 of the Statutes of 1979 and other revenues deemed to be local revenues according to Section 18023, shall be equal to at least the total amount of local revenues, as defined, appropriated for the public library in the previous fiscal year. State funds provided under this chapter shall supplement, but not supplant, local revenues appropriated for the public library.

(e) (1) Notwithstanding subdivision (d), or any other provision of law, in the 1993–94 fiscal year, any city, county, district, or city and county, that reduces local revenues appropriated for the public library for the 1993–94 fiscal year shall continue to receive state funds appropriated under this chapter for the 1993–94 fiscal year only, provided that the amount of the reduction to the appropriation to that public library for the 1993–94 fiscal year is no more than 20 percent of the 1992–93 fiscal year appropriation made to that public library as certified by the fiscal officer of the public library and transmitted to the State Librarian pursuant to Section 18023.

(2) Commencing with the 1993–94 fiscal year, and each fiscal year thereafter, any city, county, district, or city and county may request from the State Librarian a waiver of the requirements of subdivision (d) or of paragraph (1) by demonstrating that the percentage of the reduction in local revenues appropriated for the public library is no greater than the percentage of the reduction of local revenues received by the city, county, district, or city and county operating the public library as a result of changes made to Chapter 6 (commencing with Section 95) of Part 0.5 of the Revenue and Taxation Code by statutes enacted during or after the 1991–92 Regular Session having the effect of shifting property tax revenues from cities, counties, special districts, and redevelopment agencies to school districts and community colleges. Requests for the waiver and the substantiating documentation shall be submitted to the State Librarian along with

the annual report of appropriation required by Section 18023 or any other report of appropriations applying to public libraries required by any other provision of law.

(f) In the event that the state allocations computed pursuant to this section exceed the total amount of funds appropriated for such purposes in any fiscal year, the State Librarian shall adjust on a pro rata basis public library allocations prescribed by this section so that the total amount in each fiscal year does not exceed this amount.

CHAPTER 898

An act to amend Sections 8172, 8173, 8174, 8178, 8179, and 8180 of, to amend the heading of Chapter 1.9 (commencing with Section 8180) of Part 6 of, and to add Sections 8181 and 8182 to, the Education Code, relating to child care, and making an appropriation therefor.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 8172 of the Education Code is amended to read:

8172. (a) The Department of Justice shall establish a trustline registry pursuant to this chapter. Upon submission of the trustline application and fingerprints pursuant to subdivision (a) of Section 8171, the Department of Justice shall enter into the trustline registry the provider's name, identification card number, and an indicator that the provider has submitted an application and fingerprints. This provider shall be known as a "trustline applicant."

(b) Upon completion of the searches of the California Criminal History System and the California Child Abuse Central Index, if no reported criminal conviction or substantiated child abuse information that would disqualify the provider from being licensed by the State Department of Social Services as a child care provider is found, the Department of Justice shall enter that finding in the provider's record in the trustline registry and shall notify the provider of the action. This provider shall be known as a "registered trustline child care provider."

(c) If, in any of the two searches, or in any report that is received by the Department of Justice subsequent to these searches, reported criminal conviction or substantiated child abuse information for which the provider could not request an exemption from the Director of Social Services for a license as a child care provider is found, the Department of Justice shall notify the provider that he or she is not eligible to be a registered trustline child care provider, or in the case where a provider was previously registered, that he or she is no longer eligible to be a registered trustline child care provider.

Also the provider's record as a trustline applicant or a registered child care provider shall be removed from the registry.

(d) (1) If, in any of the two searches, or in any report that is received by the Department of Justice subsequent to these searches, reported criminal conviction or substantiated child abuse information for which the provider could request an exemption from the Director of Social Services for a license as a child care provider is found, the Department of Justice shall review the information and either register the person as a registered trustline child care provider or deny the registration. In either case, the Department of Justice shall notify the provider of its action. In the event of a denial, the Department of Justice shall remove the provider's record as a trustline applicant from the registry.

(2) If the Department of Justice denies registration pursuant to paragraph (1), it shall advise the provider of the right to appeal. The provider shall have 15 days to appeal the denial. Upon receipt by the Department of Justice of the appeal, the appeal shall be set for hearing. The hearing 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 has all the powers granted in that chapter.

(e) (1) The Department of Justice shall adopt regulations that are parallel to those used by the State Department of Social Services in determining whether a person applying for a license for a child day care facility may be granted an exemption to work in a day care facility despite a criminal conviction or a determination of substantiated child abuse. If an appeal is requested, the Department of Justice shall make the determination within 30 days, based upon the regulations adopted.

(2) Notwithstanding paragraph (1), the background examination required pursuant to this chapter shall not include review of the Automated Name Index of the Department of Motor Vehicles.

(3) In order to expedite the implementation of this chapter, regulations adopted for the purposes of Chapter 3.65 (commencing with Section 1597.80) shall be used for the purposes of this chapter to the extent that those regulations are consistent with this chapter.

(f) The Department of Justice may charge a provider initiating a background examination a fee. Apportionment of the proceeds collected by the Department of Justice from this fee will occur on a percentage basis with a portion of the fee being allocated to the Department of Justice and the remainder to the State Department of Education. The percentages allocated will be reviewed annually by the Department of Justice, the State Department of Education, and the California Child Care Resource Referral Network. The Department of Justice and the State Department of Education shall enter into an interagency agreement for the purpose of transferring funds to offset the costs incurred by the California Child Care Resource and Referral Network to implement the trustline program pursuant to this chapter. The maximum fee may not exceed the total

actual costs of all of the following:

(1) The searches of the California Criminal History System and the California Child Abuse Central Index performed by the Department of Justice.

(2) The information and technical assistance provided by the California Child Care Resource and Referral Network to parents, providers, and employment agencies.

(3) The implementation by the local child care resource and referral programs of the trustline program.

All moneys collected by the Department of Justice to implement this chapter shall be continuously appropriated without regard to fiscal year for expenditure pursuant to the provisions of this chapter.

(g) The Department of Justice shall maintain and continually update an index of reports of substantiated child abuse by, and pertinent criminal convictions of, providers and shall review the reports received from the child abuse index pursuant to Section 11170 of the Penal Code to determine if the child abuse of the provider is substantiated. The Department of Justice shall continually update the trustline registry pursuant to the actions required in subdivisions (c) and (d) of this section.

(h) The Department of Justice shall provide the California Child Care Resource and Referral Network with a continually updated record of the trustline applicants and the registered trustline child care providers.

(i) Notwithstanding any provision of law to the contrary, including Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code, state officers or employees shall not be liable for any damages caused by their conduct pursuant to this chapter except for intentional acts or gross negligence.

(j) Nothing in this chapter shall preclude the Superintendent of Public Instruction from compiling additional information from any source concerning the employment of any child care provider who is compensated with funds administered by the State Department of Education.

SEC. 2. Section 8173 of the Education Code is amended to read:

8173. (a) The State Department of Education shall enter into a contract with the California Child Care Resource and Referral Network to administer the trustline.

(b) The California Child Care Resources and Referral Network may subcontract with local resource and referral programs for the implementation of the trustline program at the local level as it relates to providers paying a fee pursuant to subdivision (f) of Section 8172.

SEC. 3. Section 8174 of the Education Code is amended to read:

8174. (a) The California Child Care Resource and Referral Network shall have the following responsibilities:

(1) Establish and maintain a toll-free telephone line to allow parents, employment agencies, child care referral groups and registries, alternative payment programs, and others to determine if a provider is a trustline applicant or a registered trustline child care

provider.

(2) Develop a statewide promotion plan, publicize statewide the existence, benefits, and methods of accessing the trustline for both parents and providers, and distribute trustline applications statewide.

(3) Monitor and provide assistance to the child care resource and referral agencies in carrying out their trustline responsibilities.

(4) Collect data for the purposes of Section 8179.

(5) Seek private financial support for the trustline.

(6) Ensure that the trustline is accessible to all persons in the state, regardless of their ability to speak English.

(b) Officers or employees of the California Child Care Resource and Referral Network shall not be liable for any injury caused by their conduct pursuant to paragraph (1) of subdivision (a), except for intentional conduct or gross negligence.

SEC. 4. Section 8178 of the Education Code is amended to read:

8178. A child care resource and referral agency established pursuant to Article 2 (commencing with Section 8210) of Chapter 2 shall have the following responsibilities in the administration of the trustline within its local geographic area of service:

(a) Implement the local elements of the promotion plan designed by the California Child Care Resource and Referral Network pursuant to Section 8174. Publicize the availability, purpose, and benefits of the trustline to parents, child care providers, prospective child care providers, and institutions and agencies which have frequent contact with parents and providers.

(b) Cooperate with the California Child Care Resource and Referral Network in promotional and data collection efforts.

(c) Report annually to the California Child Care Resource and Referral Network on local promotional efforts, problems encountered, and recommendations for program improvement.

(d) Ensure that the trustline is accessible to all persons in the state, regardless of their ability to speak English.

(e) Provide information and technical assistance on the trustline process to parents, child care providers, and other interested parties.

SEC. 5. Section 8179 of the Education Code is amended to read:

8179. (a) The State Department of Education shall, in consultation with the representatives pursuant to Section 8175, select, contract with, and monitor a private consultant for the purpose of evaluating the trustline. The evaluation shall at a minimum address the following:

(1) The extent to which the trustline's registration system identifies persons seeking child care employment who have a reported criminal conviction or about whom there is substantiated child abuse information.

(2) The level of participation by parents, guardians, and child care providers.

(3) Obstacles to maximizing the benefits of the trustline registry.

(4) The total public cost per applicant.

(b) The State Department of Education shall transmit interim evaluation reports to the Legislature on or before September 30 of the second calendar year in which the program established by this chapter is in operation, and on or before September 30 of each subsequent year in which this program is in operation. The State Department of Education shall transmit the final evaluation report developed pursuant to subdivision (a), along with conclusions and recommendations that it develops in consultation with the Child Care Resource and Referral Network and the representatives pursuant to Section 8175, to the Legislature on or before January 1 of the fifth year in which the program is in operation.

SEC. 6. The heading of Chapter 1.9 (commencing with Section 8180) of Part 6 of the Education Code is amended to read:

CHAPTER 1.9. REGISTRATION OF CHILD CARE PROVIDERS FUNDED THROUGH THE ALTERNATIVE PAYMENT PROGRAM OR A FEDERAL PROGRAM

SEC. 7. Section 8180 of the Education Code is amended to read:

8180. (a) Each child care provider, as defined pursuant to Section 8170, who is compensated, in whole or in part, with funds provided pursuant to the Alternative Payment Program (Article 3 (commencing with Section 8220) of Chapter 2 of Part 6 of the Education Code) or pursuant to the federal Child Care and Development Block Grant Program, except a provider who is, by marriage, blood, or court decree, the grandparent, aunt, or uncle of the child in care, shall be registered pursuant to Sections 8171 and 8172 in order to be eligible to receive this compensation. Registration under this chapter shall be required for providers who receive funds under Section 601 and following of Title 42 of the United States Code only to the extent permitted by that law and the regulations adopted pursuant thereto. Registration under this chapter shall be required for providers who receive funds under the federal Child Care and Development Block Grant Program only to the extent permitted by that program and the regulations adopted pursuant thereto.

(b) For the purposes of registration of the providers identified in subdivision (a), the following procedures shall apply:

(1) Notwithstanding subdivision (a) of Section 8171, the provider shall submit the fingerprints and trustline application to the local child care resource and referral agency established pursuant to Article 2 (commencing with Section 8210) of Chapter 2 of Part 6 of the Education Code. The local child care resource and referral agency shall transmit the fingerprints and completed trustline applications to the Department of Justice and address any local problems that occur in the registration system. If a fee is charged by the local child care resource and referral agency that takes a provider's fingerprints, the provider shall be reimbursed for this charge by the State Department of Education, through the local child care resource and referral agency, from federal Child Care and

Development Block Grant funds to the extent that those funds are available.

(2) The Department of Justice shall adhere to the requirements of Sections 8171 and 8172 and shall notify the California Child Care Resource and Referral Network of any action it takes pursuant to Section 8172.

(3) The California Child Care Resource and Referral Network shall notify the applicable local child care resource and referral agencies, alternative payment programs, and county welfare departments of the status of the trustline applicants and registered trustline child care providers. The network shall maintain a toll-free telephone line to provide information to the local resource and referral agencies, the alternative payment programs, and the child care recipients of the status of providers.

(c) This chapter shall become operative only if funds appropriated for the purposes of this chapter from Item 6110-196-890 of Section 2 of the Budget Act of 1991 are incorporated into and approved as part of the state plan that is required pursuant to Section 658(E)(a) of the federal Child Care Block Grant Act of 1990 (Sec. 5082, P.L. 101-508).

SEC. 8. Section 8181 is added to the Education Code, to read:

8181. (a) Each child care provider, as defined by Section 8170, who is compensated, in whole or in part, with funds provided pursuant to the Greater Avenues for Independence (GAIN) program (Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code), Transitional Child Care (TCC) program (Article 8 (commencing with Section 11500) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code), Non-Gain Education Training (NET), or the At Risk Child Care program (Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6), except a provider who is, by marriage, blood, or court decree, the grandparent, aunt, or uncle of the child in care, shall be registered pursuant to Sections 8171 and 8172 in order to be eligible to receive this compensation. Registration is required for providers who receive funds under Section 601 and following of Title 42 of the United States Code only to the extent permitted by that law and the regulations adopted pursuant thereto. This section applies only to child care providers, as defined by Section 8170, who register for payment from the Greater Avenues for Independence (GAIN) program, Transitional Child Care (TCC) program, Non-Gain Education Training (NET), or the At Risk Child Care program after the implementation of the trustline registration system and does not apply to providers who had been receiving payment prior to implementation.

(b) Except as set forth in subdivisions (c) and (d), subdivision (a) shall not be implemented unless funding is specifically provided in the Budget Act or in other legislation.

(c) To the extent that funding is available through the At Risk Child Care program, subdivision (a) shall apply only to child care

providers compensated with funds provided by that program. If funding through the At Risk Child Care program is not available, the Department of Social Services shall notify the State Department of Education 90 days after this legislation is enacted and this subdivision shall not be implemented. If funding through the At Risk Child Care program is available and to the extent that funding for trustline registration is allowable according to federally approved cost-sharing principles, the Department of Justice and the California Child Care Resource and Referral Network shall enter into an agreement with the Department of Social Services to fund the duties specified in this subdivision for the At Risk Child Care program.

(d) Notwithstanding any other provision of law, if funding for subdivision (c) is not available from the At Risk Child Care program for the 1993-94 fiscal year, the State Department of Education may provide interim funding for this program from the federal Child Care and Development Block Grant in an amount not to exceed two hundred fifty thousand dollars ($250,000) to the extent that funds are available and their use does not violate any federal regulations and is in accordance with the Child Care and Development Block Grant State Plan. If this subdivision is implemented, the Department of Justice and the California Child Care Resource and Referral Network shall enter into an agreement with the State Department of Education to fund the duties specified in this section for the At Risk Child Care program.

SEC. 9. Section 8182 is added to the Education Code, to read:

8182. The State Department of Education shall evaluate the trustline registration system as it relates to the At Risk Child Care program and, if funded, the Greater Avenues for Independence (GAIN) program, Transitional Child Care (TCC) program, and Non-Gain Education Training (NET). The department shall complete its evaluation no later than 28 months after the trustline registration system as it relates to the At Risk Child Care program has begun to be implemented. The evaluation shall at a minimum address the following:

(a) The extent to which the trustline registration system identifies child care providers compensated with funds provided by the At Risk Child Care program who have a reported criminal conviction or about whom there is substantiated child abuse information.

(b) The level of participation by parents, guardians, and child care providers.

(c) Obstacles to maximizing the benefits of the trustline registry.

(d) The total public cost per applicant.

SEC. 10. The State Department of Education shall identify, and report to the State Department of Finance and the office of the Legislative Analyst, federal Child Care and Development Block Grant funds and work with the California Child Care Resource and Referral Network to develop a funding plan to implement subdivision (d) of Section 8181 of the Education Code by February

1, 1994.

CHAPTER 899

An act to amend Sections 12810, 13353.2, 13353.3, 13551, 13557, 13558, 23158.2, and 23159.5 of, to add Sections 12802.5, 13353.1, and 13353.8 to, and to add Article 1.3 (commencing with Section 23136) to Chapter 12 of Division 11 of, the Vehicle Code, relating to driver's licenses.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

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

(a) The "drinking age" in all 50 states is 21 years, and it is illegal in all 50 states for persons under that age to purchase or possess alcoholic beverages.

(b) Currently, there is no penalty for persons under 18 years of age who drive a motor vehicle with a blood alcohol content of less than 0.05 percent, by weight; nor is there a penalty for persons between 18 and 21 years of age who drive a motor vehicle with a blood alcohol content of less than 0.08 percent, by weight.

(c) Every year, drinking drivers under 21 years of age maim and kill other drivers or pedestrians, causing not only untold grief and suffering, but also causing unnecessary increases in automobile insurance rates. In 1990 alone, this group of drivers killed 60 Californians and injured an additional 1,591 persons.

(d) It is the intent of the Legislature, in enacting this act, to close this loophole, thereby enhancing the safety of our highways, by prohibiting any person under 21 years of age from driving a motor vehicle for one year if that person drove with a blood-alcohol concentration of 0.01 percent or greater, as measured by a preliminary alcohol screening test.

SEC. 2. Section 12802.5 is added to the Vehicle Code, to read:

12802.5. Before issuing a driver's license or permit to any person under 21 years of age, both of the following shall occur:

(a) The department shall inform the applicant of the following, pursuant to Article 1.3 (commencing with Section 23136) of Chapter 12 of Division 11:

(1) It is unlawful to drive with a blood-alcohol concentration of 0.01 percent or greater, as measured by a preliminary alcohol screening test.

(2) The penalty for so driving is a one-year suspension of the driving privilege.

(3) A refusal to take, or a failure to complete, a preliminary

alcohol screening test for the purpose of determining the level of alcohol pursuant to Section 23137 shall result in a one-year suspension of the driving privilege.

(4) The fee for reissuance of a driver's license after suspension for a violation of Section 23136 is one hundred dollars ($100). This fee is in addition to any other fees that may be imposed by the department in connection with reissuance of a driver's license.

(b) The applicant shall sign a statement that acknowledges that he or she has been notified of the information specified in subdivision (a).

SEC. 3. Section 12810 of the Vehicle Code is amended to read:

12810. In determining the violation point count, the following shall apply:

(a) Any conviction of failure to stop in the event of an accident in violation of Section 20001 or 20002 shall be given a value of two points.

(b) Any conviction of a violation of Section 23152 or 23153 shall be given a value of two points.

(c) Any conviction of reckless driving shall be given a value of two points.

(d) (1) Any conviction of a violation of subdivision (c) of Section 192 of the Penal Code, or of Section 2800.2, subdivision (b) of Section 21651, subdivision (b) of Section 22348, subdivision (a) of Section 23109, subdivision (c) of Section 23109, or Section 31602 of this code, shall be given a value of two points.

(2) Any conviction of a violation of subdivision (a) or (b) of Section 23140 shall be given a value of two points.

(e) Except as provided in subdivision (g), any other traffic conviction involving the safe operation of a motor vehicle upon the highway shall be given a value of one point.

(f) Any accident in which the operator is deemed by the department to be responsible shall be given a value of one point.

(g) (1) A violation of paragraph (1), (2), (3), or (5) of subdivision (b) of Section 40001 shall not result in a violation point count being given to the driver if the driver is not the owner of the vehicle.

(2) Any conviction of a violation of subdivision (a) of Section 21116, Section 21207.5, 21708, 21710, 21716, 23120, 24800, or 26707 shall not be given a violation point count.

(3) A violation of Section 23136 shall not result in a violation point count.

(h) A conviction for only one violation arising from one occasion of arrest or citation shall be counted in determining the violation point count for the purposes of this section.

(i) Any conviction of a violation of Section 14601, 14601.1, 14601.2, or 14601.3 shall be given a value of two points.

(j) Any conviction of a violation of Section 27360 within a 37-month period shall be given a value of one point.

SEC. 4. Section 13353.1 is added to the Vehicle Code, to read:

13353.1. (a) If any person refuses an officer's request to submit

to, or fails to complete, a preliminary alcohol screening test pursuant to Section 23137, upon receipt of the officer's sworn statement, submitted pursuant to Section 23158.2, that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23136, and that the person had refused to submit to, or did not complete, the test after being requested by the officer, the department immediately shall suspend the person's privilege to operate a motor vehicle for a period of one year.

(b) The notice of the order of suspension or revocation under this section shall be served on the person by the peace officer pursuant to Section 23137. The notice of the order of suspension or revocation shall be on a form provided by the department. If the notice of the order of suspension or revocation has not been served by the peace officer pursuant to Section 23137, the department immediately shall notify the person in writing of the action taken. The peace officer who serves the notice, or the department, if applicable, also shall provide, if the officer or department, as the case may be, determines that it is necessary to do so, the person with the appropriate non-English notice developed pursuant to subdivision (d) of Section 14100.

(c) Upon receipt of the officer's sworn statement, the department shall review the record. For purposes of this section, the scope of the administrative review shall cover all of the following issues:

(1) Whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23136.

(2) Whether the person was lawfully detained.

(3) Whether the person refused to submit to, or did not complete, the test after being requested by a peace officer.

(d) The person may request an administrative hearing pursuant to Section 13558. Except as provided in subdivision (e) of Section 13558, the request for an administrative hearing does not stay the order of suspension or revocation.

SEC. 5. Section 13353.2 of the Vehicle Code is amended to read:

13353.2. (a) The department shall immediately suspend the privilege of any person to operate a motor vehicle if the person was driving a motor vehicle when the person was 21 years of age or older and had 0.08 percent or more, by weight, of alcohol in his or her blood, or when the person was under 21 years of age and had a blood-alcohol concentration of 0.01 percent or greater, as measured by a preliminary alcohol screening test.

(b) The notice of the order of suspension under this section shall be served on the person by a peace officer pursuant to Section 23137 or 23158.5. The notice of the order of suspension shall be on a form provided by the department. If the notice of the order of suspension has not been served upon the person by the peace officer pursuant to Section 23137 or 23158.5, upon the receipt of the report of a peace officer submitted pursuant to Section 23158.2, the department shall mail written notice of the order of the suspension to the person at the last known address shown on the department's records and, if the

address of the person provided by the peace officer's report differs from the address of record, to that address.

(c) The notice of the order of suspension shall clearly specify the reason and statutory grounds for the suspension, the effective date of the suspension, the right of the person to request an administrative hearing, the procedure for requesting an administrative hearing, and the date by which a request for an administrative hearing shall be made in order to receive a determination prior to the effective date of the suspension.

(d) The department shall make a determination of the facts in subdivision (a) on the basis of the report of a peace officer submitted pursuant to Section 23158.2. The determination of the facts, after administrative review pursuant to Section 13557, by the department is final, unless an administrative hearing is held pursuant to Section 13558 and any judicial review of the administrative determination after the hearing pursuant to Section 13559 is final.

(e) The determination of the facts in subdivision (a) is a civil matter which is independent of the determination of the person's guilt or innocence, shall have no collateral estoppel effect on a subsequent criminal prosecution, and shall not preclude the litigation of the same or similar facts in the criminal proceeding. If a person is acquitted of criminal charges relating to a determination of facts under subdivision (a), or if the person's driver's license was suspended pursuant to Section 23137 and the department finds no basis for a suspension pursuant to that section, the department shall immediately reinstate the person's privilege to operate a motor vehicle if the department has suspended it administratively pursuant to subdivision (a), and the department shall return or reissue for the remaining term any driver's license which has been taken from the person pursuant to Section 23158.5 or otherwise. No fee shall be imposed pursuant to Section 14905 for the return or reissuing of a driver's license pursuant to this subdivision. The disposition of a suspension action under this section does not affect any action to suspend or revoke the person's privilege to operate a motor vehicle under any other provision of this code, including, but not limited to, Section 13352 or 13353, or Chapter 3 (commencing with Section 13800).

SEC. 5.1. Section 13353.2 of the Vehicle Code is amended to read:

13353.2. (a) The department shall immediately suspend the privilege of any person to operate a motor vehicle if the person was driving a motor vehicle when the person was 21 years of age or older and had 0.08 percent or more, by weight, of alcohol in his or her blood, or when the person was under 21 years of age and had a blood-alcohol concentration of 0.01 percent or greater, as measured by a preliminary alcohol screening test.

(b) The notice of the order of suspension under this section shall be served on the person by a peace officer pursuant to Section 23137 or 23158.5. The notice of the order of suspension shall be on a form provided by the department. If the notice of the order of suspension

has not been served upon the person by the peace officer pursuant to Section 23137 or 23158.5, upon the receipt of the report of a peace officer submitted pursuant to Section 23158.2, the department shall mail written notice of the order of the suspension to the person at the last known address shown on the department's records and, if the address of the person provided by the peace officer's report differs from the address of record, to that address.

(c) The notice of the order of suspension shall clearly specify the reason and statutory grounds for the suspension, the effective date of the suspension, the right of the person to request an administrative hearing, the procedure for requesting an administrative hearing, and the date by which a request for an administrative hearing shall be made in order to receive a determination prior to the effective date of the suspension.

(d) The department shall make a determination of the facts in subdivision (a) on the basis of the report of a peace officer submitted pursuant to Section 23158.2. The determination of the facts, after administrative review pursuant to Section 13557, by the department is final, unless an administrative hearing is held pursuant to Section 13558 and any judicial review of the administrative determination after the hearing pursuant to Section 13559 is final.

(e) The determination of the facts in subdivision (a) is a civil matter which is independent of the determination of the person's guilt or innocence, shall have no collateral estoppel effect on a subsequent criminal prosecution, and shall not preclude the litigation of the same or similar facts in the criminal proceeding. If a person is acquitted of criminal charges relating to a determination of facts under subdivision (a), or if the person's driver's license was suspended pursuant to Section 23137 and the department finds no basis for a suspension pursuant to that section, the department shall immediately reinstate the person's privilege to operate a motor vehicle if the department has suspended it administratively pursuant to subdivision (a), and the department shall return or reissue for the remaining term any driver's license which has been taken from the person pursuant to Section 23158.5 or otherwise. Notwithstanding subdivision (b) of Section 13558, if criminal charges under Section 23152 or 23153 are not filed by the district attorney because of a lack of evidence, or if those charges are filed but are subsequently dismissed by the court because of an insufficiency of evidence, the person has a renewed right to request an administrative hearing before the department. The request for a hearing shall be made within one year from the date of arrest.

(f) The department shall furnish a form that requires a detailed explanation specifying which evidence was defective or lacking and detailing why that evidence was defective or lacking. The form shall be made available to the person to provide to the district attorney. The department shall hold an administrative hearing, and the hearing officer shall consider the reasons for the failure to prosecute given by the district attorney on the form provided by the

department. If applicable, the hearing officer shall consider the reasons stated on the record by a judge who dismisses the charges. No fee shall be imposed pursuant to Section 14905 for the return or reissuing of a driver's license pursuant to this subdivision. The disposition of a suspension action under this section does not affect any action to suspend or revoke the person's privilege to operate a motor vehicle under any other provision of this code, including, but not limited to, Section 13352 or 13353, or Chapter 3 (commencing with Section 13800).

SEC. 6. Section 13353.3 of the Vehicle Code, as amended by Section 6 of Chapter 1281 of the Statutes of 1992, is amended to read:

13353.3. (a) An order of suspension of a person's privilege to operate a motor vehicle pursuant to Section 13353.2 shall become effective 30 days after the person is served with the notice pursuant to Section 23137 or 23158.5, or subdivision (b) of Section 13353.2.

(b) The period of suspension of a person's privilege to operate a motor vehicle under Section 13353.2 is as follows:

(1) Except as provided in Section 13353.6, if the person has not been convicted of a separate violation of Section 23103 as specified in Section 23103.5, or of Section 23152 or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, or the person has not been administratively determined to have refused chemical testing pursuant to Section 13353 or to have been driving with an excessive concentration of alcohol pursuant to Section 13353.2 on a separate occasion, which offense or occurrence occurred within seven years of the occasion in question, the person's privilege to operate a motor vehicle shall be suspended for four months.

(2) If the person has been convicted of one or more separate violations of Section 23103 as specified in Section 23103.5, or of Section 23152 or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, or the person has been administratively determined to have refused chemical testing pursuant to Section 13353 or to have been driving with an excessive concentration of alcohol pursuant to Section 13353.2 on a separate occasion, which offense or occasion occurred within seven years of the occasion in question, the person's privilege to operate a motor vehicle shall be suspended for one year.

(3) Notwithstanding any other provision of law, if a person has been administratively determined to have been driving in violation of Section 23136, the period of suspension shall not be for less than one year.

(c) If a person's privilege to operate a motor vehicle is suspended pursuant to Section 13353.2 and the person is convicted of a violation of Section 23152 or 23153, including a violation described in Section 23156, arising out of the same occurrence, both the suspension under Section 13353.2 and the suspension or revocation under Section 13352 shall be imposed, except that, notwithstanding Section 13354, the periods of suspension or revocation shall run concurrently, and the total period of suspension or revocation shall not exceed the longer

of the two suspension or revocation periods. This subdivision shall not affect a suspension or revocation pursuant to Section 13353 for refusal to submit to chemical testing or the imposition of consecutive periods of suspension or revocation pursuant to Section 13354 for that refusal.

(d) This section shall become operative on July 1, 1993.

SEC. 7. Section 13353.8 is added to the Vehicle Code, to read:

13353.8. (a) Notwithstanding any other provision of law, after the department has issued an order suspending or delaying driving privileges as a result of a violation of Section 23136, the department, upon petition of the person affected, may review the order and may impose restrictions on the person's privilege to drive based upon a showing of a critical need to drive.

(b) As used in this section, "critical need to drive" means the circumstances which are required to be shown for the issuance of a junior permit pursuant to Section 12513.

(c) The restriction shall remain in effect for the balance of the period of suspension or restriction in this section.

SEC. 8. Section 13551 of the Vehicle Code is amended to read:

13551. (a) Whenever the department revokes or suspends the privilege of any person to operate a motor vehicle, the revocation or suspension shall apply to all driver's licenses held by that person, and, unless previously surrendered to the court, all of those licenses shall be surrendered to the department, or, pursuant to Section 23137, 23157, or 23158.5, to a peace officer on behalf of the department. Whenever the department cancels a driver's license, the license shall be surrendered to the department. All suspended licenses shall be retained by the department. The department shall return the license to the licensee, or may issue the person a new license upon the expiration of the period of suspension or revocation, if the person is otherwise eligible for a driver's license.

(b) The department shall return the license to the licensee, or may issue the person a new license, whenever the department determines that the grounds for suspension, revocation, or cancellation did not exist at the time the action was taken, if the person is otherwise eligible for a driver's license.

SEC. 9. Section 13557 of the Vehicle Code is amended to read:

13557. (a) The department shall review the determination made pursuant to Section 13353, 13353.1, or 13353.2 relating to any person who has received a notice of an order of suspension or revocation of the person's privilege to operate a motor vehicle pursuant to Section 13353, 13353.1, 13353.2, 23137, 23157, or 23158.5. The department shall consider the sworn report submitted by the peace officer pursuant to Section 23157 or 23158.2 and any other evidence accompanying the report.

(b) (1) If the department determines in the review of a determination made under Section 13353 or 13353.1, by a preponderance of the evidence, all of the following facts, the department shall sustain the order of suspension or revocation:

(A) That the peace officer had reasonable cause to believe that the person had been driving a motor vehicle in violation of Section 23137, 23152, or 23153.

(B) That the person was placed under arrest or, if the alleged violation was of Section 23236, that the person was lawfully detained.

(C) That the person refused or failed to complete the chemical test or tests after being requested by a peace officer.

(D) That, except for the persons described in Section 23157 who are incapable of refusing, the person had been told that his or her privilege to operate a motor vehicle would be suspended or revoked if he or she refused to submit to, and complete, the required testing.

If the department determines, by a preponderance of the evidence, that any of those facts were not proven, the department shall rescind the order of suspension or revocation and, provided the person is otherwise eligible, return or reissue the person's driver's license pursuant to Section 13551. The determination of the department upon administrative review is final unless a hearing is requested pursuant to Section 13558.

(2) If the department determines in the review of a determination made under Section 13353.2, by the preponderance of the evidence, all of the following facts, the department shall sustain the order of suspension or revocation, or if the person is under 21 years of age and does not yet have a driver's license, the department shall delay issuance of that license for one year:

(A) That the peace officer had reasonable cause to believe that the person had been driving a motor vehicle in violation of Section 23136, 23152, or 23153.

(B) That the person was placed under arrest or, if the alleged violation was of Section 23136, that the person was lawfully detained.

(C) That the person was driving a motor vehicle when the person was 21 years of age or over and had 0.08 percent or more, by weight, of alcohol in his or her blood, or when the person was under 21 years of age and had a blood-alcohol concentration of 0.01 percent or greater, as measured by a preliminary alcohol screening test.

If the department determines that any of those facts were not proven by the preponderance of the evidence, the department shall rescind the order of suspension or revocation and, provided that the person is otherwise eligible, return or reissue the person's driver's license pursuant to Section 13551. For persons under 21 years of age, the determination of the department pursuant to this paragraph is final unless a hearing is requested within 10 days of the determination, which hearing shall be conducted according to the provisions of Section 13558. For persons over 21 years of age, the determination of the department upon administrative review is final unless a hearing is requested pursuant to Section 13558.

(c) The department shall make the determination upon administrative review before the effective date of the order of suspension or revocation.

(d) The administrative review does not stay the suspension or

revocation of a person's privilege to operate a motor vehicle. If the department is unable to make a determination on administrative review within the time limit in subdivision (c), the department shall stay the effective date of the order of suspension or revocation pending the determination and, if the person's driver's license has been taken by the peace officer pursuant to Section 23137, 23157, or 23158.5, the department shall notify the person before the expiration date of the temporary permit issued pursuant to Section 23137, 23157, or 23158.5, or the expiration date of any previous extension issued pursuant to this subdivision, in a form that permits the person to establish to any peace officer that his or her privilege to operate a motor vehicle is not suspended or revoked.

(e) A person may request and be granted a hearing pursuant to Section 13558 without first receiving the results of an administrative review pursuant to this section. After receiving a request for a hearing, the department is not required to conduct an administrative review of the same matter pursuant to this section.

(f) A determination of facts by the department under this section has no collateral estoppel effect on a subsequent criminal prosecution and does not preclude litigation of those same facts in the criminal proceeding.

SEC. 10. Section 13558 of the Vehicle Code is amended to read:

13558. (a) Any person, who has received a notice of an order of suspension or revocation of the person's privilege to operate a motor vehicle pursuant to Section 13353, 13353.2, 23137, 23157, or 23158.5 or a notice pursuant to Section 13557, may request a hearing on the matter pursuant to Article 3 (commencing with Section 14100) of Chapter 3, except as otherwise provided in this section.

(b) If the person wishes to have a hearing before the effective date of the order of suspension or revocation, the request for a hearing shall be made within ten days of the receipt of the notice of the order of suspension or revocation. The hearing shall be held at a place designated by the department as close as practicable to the place where the arrest occurred, unless the parties agree to a different location. Any evidence at the hearing shall not be limited to the evidence presented at an administrative review pursuant to Section 13557.

(c) (1) The only issues at the hearing on an order of suspension or revocation pursuant to Section 13353 or 13353.1 shall be those facts listed in paragraph (1) of subdivision (b) of Section 13557. Notwithstanding Section 14106, the period of suspension or revocation specified in Section 13353 or 13353.1 shall not be reduced and, notwithstanding Section 14105.5, the effective date of the order of suspension or revocation shall not be stayed pending review at a hearing pursuant to this section.

(2) The only issues at the hearing on an order of suspension pursuant to Section 13353.2 shall be those facts listed in paragraph (2) of subdivision (b) of Section 13557. Notwithstanding Section 14106, the period of suspension specified in Section 13353.3 shall not be

reduced.

(d) The department shall hold the administrative hearing before the effective date of the order of suspension or revocation if the request for the hearing is postmarked or received by the department on or before ten days after the person's receipt of the service of the notice of the order of suspension or revocation pursuant to Section 13353.2, 23137, or 23158.5.

(e) A request for an administrative hearing does not stay the suspension or revocation of a person's privilege to operate a motor vehicle. If the department does not conduct an administrative hearing and make a determination after an administrative hearing within the time limit in subdivision (d), the department shall stay the effective date of the order of suspension or revocation pending the determination and, if the person's driver's license has been taken by the peace officer pursuant to Section 23137, 23157, or 23158.5, the department shall notify the person before the expiration date of the temporary permit issued pursuant to Section 23137, 23157, or 23158.5, or the expiration date of any previous extension issued pursuant to this subdivision, provided the person is otherwise eligible, in a form that permits the person to establish to any peace officer that his or her privilege to operate a motor vehicle is not suspended or revoked.

(f) The department shall give written notice of its determination pursuant to Section 14105. If the department determines, upon a hearing of the matter, to suspend or revoke the person's privilege to operate a motor vehicle, notwithstanding the term of any temporary permit issued pursuant to Section 23137, 23157, or 23158.5, the temporary permit shall be revoked and the suspension or revocation of the person's privilege to operate a motor vehicle shall become effective five days after notice is given. If the department sustains the order of suspension or revocation, the department shall include notice that the person has a right to review by the court pursuant to Section 13559.

(g) A determination of facts by the department upon a hearing pursuant to this section has no collateral estoppel effect on a subsequent criminal prosecution and does not preclude litigation of those same facts in the criminal proceeding.

SEC. 11. Article 1.3 (commencing with Section 23136) is added to Chapter 12 of Division 11 of the Vehicle Code, to read:

Article 1.3. Offenses by Persons Under 21 Years of Age Involving Alcohol

23136. (a) Notwithstanding Sections 23152 and 23153, it is unlawful for a person under the age of 21 years who has a blood-alcohol concentration of 0.01 percent or greater, as measured by a preliminary alcohol screening test, to drive a vehicle. However, this section shall not be a bar to prosecution under Section 23152 or 23153 or any other provision of law.

(b) A person shall be found to be in violation of subdivision (a) if

the person was, at the time of driving, under the age of 21 years, and the trier of fact finds that the person had consumed an alcoholic beverage and was driving a vehicle with a blood-alcohol concentration of 0.01 percent or greater, as measured by a preliminary alcohol screening test.

(c) (1) Any person under the age of 21 years who drives a motor vehicle is deemed to have given his or her consent to a preliminary alcohol screening test for the purpose of determining the presence of alcohol in the person, if lawfully detained for an alleged violation of subdivision (a).

(2) The testing shall be incidental to a lawful detention and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of subdivision (a).

(3) The person shall be told that his or her failure to submit to, or the failure to complete, a preliminary alcohol screening test as requested will result in the suspension of the person's privilege to operate a motor vehicle for a period of one year.

23137. (a) (1) If a peace officer lawfully detains a person under 21 years of age who is driving a motor vehicle, and the officer has reasonable cause to believe that the person is in violation of Section 23136, the officer shall request that the person take a preliminary alcohol screening test to determine the presence of alcohol in the person, if a preliminary alcohol screening test device is immediately available.

(2) If a preliminary alcohol screening test device is not immediately available, this section shall not apply to a person between 18 and 21 years of age with a blood-alcohol concentration of less than 0.08 percent, by weight, nor to a person under 18 years of age with a blood-alcohol concentration of less than 0.05 percent, by weight.

(b) If the person refuses to take, or fails to complete, the preliminary alcohol screening test or if the person takes the preliminary alcohol screening test and that test reveals a blood-alcohol concentration of 0.01 percent or greater, the officer shall proceed as follows:

(1) The officer, acting on behalf of the department, shall serve the person with a notice of an order of suspension of the person's driving privilege for one year.

(2) The officer shall take possession of any driver's license issued by this state which is held by the person. When the officer takes possession of a valid driver's license, the officer shall issue, on behalf of the department, a temporary driver's license. The temporary driver's license shall be an endorsement on the notice of the order of suspension and shall be valid for 30 days from the date of issuance, or until receipt of the order of suspension from the department, whichever occurs first.

(3) The officer immediately shall forward a copy of the completed notice of order of suspension form, and any driver's license taken into

possession under paragraph (2), with the report required by Section 23158.2, to the department. For purposes of this section, "immediately" means on or before the end of the fifth ordinary business day after the notice of order of suspension was served.

(c) For the purposes of this section, a preliminary alcohol screening test device is an instrument designed and used to measure the presence of alcohol in a person based on a breath sample.

23138. Notwithstanding Section 40000.1, a violation of Section 23136 is neither an infraction nor a public offense, as defined in Section 15 of the Penal Code. A violation of Section 23136 is only subject to civil penalties. Those civil penalties shall be administered by the department through the civil administrative procedures set forth in this code.

23139. Any person whose license is suspended or delayed issuance pursuant to Section 23137 shall pay to the department, in addition to any other fees required for the reissuance or issuance of a driver's license, one hundred dollars ($100) for the reissuance or issuance of his or her driver's license.

SEC. 12. Section 23158.2 of the Vehicle Code is amended to read:

23158.2. (a) If a peace officer serves a notice of an order of suspension pursuant to Section 23137, or arrests any person for a violation of Section 23152 or 23153, the peace officer shall immediately forward to the department a sworn report of all information relevant to the enforcement action, including information which adequately identifies the person, a statement of the officer's grounds for belief that the person violated Section 23136, 23152, or 23153, a report of the results of any chemical tests which were conducted on the person or the circumstances constituting a refusal to submit to or complete the chemical testing pursuant to Section 23137 or 23157, a copy of any notice to appear under which the person was released from custody, and, if immediately available, a copy of the complaint filed with the court. For purposes of this section, subdivision (b) of Section 23137, and subdivision (g) of Section 23157, "immediately" means on or before the end of the fifth ordinary business day following the arrest.

(b) The peace officer's sworn report shall be made on forms furnished or approved by the department.

SEC. 13. Section 23159.5 of the Vehicle Code is amended to read:

23159.5. (a) The Department of Motor Vehicles shall not issue or renew a driver's license to any person unless the person consents in writing to submit to a chemical test or tests of that person's blood, breath, or urine pursuant to Section 23157, or a preliminary alcohol screening test pursuant to Section 23136, when requested to do so by a peace officer.

(b) All application forms for driver's license or driver's license renewal notices shall include a requirement that the applicant sign the following declaration as a condition of licensure:

"I agree to submit to a chemical test of my blood, breath, or urine for the purpose of determining the alcohol or drug content of my

blood when testing is requested by a peace officer acting in accordance with Section 23137 or 23157 of the Vehicle Code."

(c) The Department of Motor Vehicles is not, incident to this section, required to maintain, copy, or store any information other than that to be incorporated into the standard application form.

SEC. 14. Section 5.1 of this bill incorporates amendments to Section 13353.2 of the Vehicle Code proposed by both this bill and SB 126. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 13353.2 of the Vehicle Code, and (3) this bill is enacted after SB 126, in which case Section 5 of this bill shall not become operative.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 900

An act to add Section 97.038 to the Revenue and Taxation Code, relating to local government finance.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 97.038 is added to the Revenue and Taxation Code, to read:

97.038. Notwithstanding Section 97.035, the amount of property tax revenues of a community service district that is subject to reduction pursuant to that section shall not include those property tax revenues, up to the amount of ninety thousand dollars ($90,000), that are allocated by that district to "police protection and personal safety" activities, as indicated in the 1989–90 edition of the State Controller's Report on the Financial Transactions of Special Districts in California.

CHAPTER 901

An act to add Section 97.036 to the Revenue and Taxation Code, and to amend Section 99 of the Tahoe-Truckee Sanitation Agency Act (Chapter 1560 of the Statutes of 1971), relating to Tahoe water quality districts.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 97.036 is added to the Revenue and Taxation Code, to read:

97.036. (a) Notwithstanding any other provision of this chapter, the water quality control compliance costs of a qualified special district for the relevant fiscal year shall be deducted from the amount of property tax revenue subject to reduction with respect to that district under Section 97.03 for the 1992–93 fiscal year, under Section 97.035 for the 1993–94 fiscal year, and under any statute with respect to any subsequent fiscal year that would reduce the amount of property tax revenue deemed allocated in the prior fiscal year to that district for purposes of increasing the amount of property tax revenue allocated to another jurisdiction.

(b) For purposes of this section:

(1) A "qualified special district" means any special district that is required to comply with Chapter 12 (commencing with Section 13950) of Division 7 of the Water Code.

(2) "Water quality control compliance costs" mean those costs, including, but not limited to, reserves for nongrowth facility augmentation and replacement and environmental protection, that are determined by the county auditor in accordance with subdivision (a) to have been incurred by a qualified special district in complying with Chapter 12 (commencing with Section 13950) of Division 7 (commencing with Section 13000) of the Water Code.

(c) The auditor may assess each qualified special district its share of the auditor's actual and reasonable costs of complying with this section. For purposes of this subdivision, each share of costs shall be determined in accordance with that district's proportional share of the total amount of water quality control compliance costs determined by the auditor for purposes of this section for each fiscal year.

SEC. 2. Section 99 of the Tahoe-Truckee Sanitation Agency Act (Chapter 1560 of the Statutes of 1971) is amended to read:

Sec. 99. (a) Each member of the board of directors shall receive the compensation prescribed, by ordinance, by the board, which may not exceed the maximum amount specified in Section 6489 of the Health and Safety Code.

(b) Members of the board of directors may receive

reimbursement from the agency for travel expenses expended on behalf of the agency.

(c) The members of the board of directors may not receive compensation from more than one public agency for attendance at a board meeting or for each day of service rendered as a member of the board.

SEC. 3. No reimbursement is required by Section 1 of 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 Section 1 of this act. In addition, no reimbursement is required by Section 2 of 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 Section 2 of this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 902

An act to add Article 13 (commencing with Section 53595) to Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code, and to add Sections 33681.6 and 33682.1 to the Health and Safety Code, relating to local agencies, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Article 13 (commencing with Section 53595) is added to Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code, to read:

Article 13. Collateralized Borrowing

53595. As used in this article:

(a) "Debt instruments" means bonds, notes, certificates of participation, or other evidences of indebtedness issued by a local agency pursuant to this article.

(b) "Indenture" means the instrument providing the terms and conditions for the issuance of the debt instruments, and may be a resolution, order, agreement, or other instrument.

(c) "Legislative body" means the city council, board of supervisors, or other legislative or governing body of a local agency.

(d) "Local agency" means any city, county, city and county, district, including, but not limited to, a school district or other public entity authorized to enter into a tax increment agreement.

(e) "Redevelopment agency" means a redevelopment agency established pursuant to Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code and includes a community development commission exercising the powers granted to a redevelopment agency pursuant to Section 34141 of the Health and Safety Code.

(f) "Tax increment" means that portion of tax revenues allocated to a redevelopment agency pursuant to subdivision (b) of Section 33670 of the Health and Safety Code.

(g) "Tax increment agreement" means any agreement between a local agency and a redevelopment agency which allocates tax increment to the local agency pursuant to Section 33401 of the Health and Safety Code.

(h) "Tax increment revenues" means tax increment received or receivable by a local agency pursuant to a tax increment agreement.

53595.5. This article shall apply only to local agencies located within a county with a population of over 4,000,000 persons.

53595.10. A local agency may pledge, sell, transfer, assign, or otherwise dispose of tax increment revenues for any purpose for which the general funds of the local agency may be expended.

53595.15. (a) A pledge by a local agency of tax increment revenues received pursuant to a tax increment agreement shall be valid and binding upon the local agency from the time the pledge is made for the benefit of pledgees and successors in interest thereof. The tax increment revenues pledged by the local agency or its assignees shall immediately, upon receipt by the local agency from the redevelopment agency, be subject to the lien of the pledge without physical delivery or further act.

(b) Except as otherwise specified in this section, the lien of the pledge shall be valid and binding against all parties, irrespective of whether the parties have notice of the claim. The indenture by which the pledge is created need not be recorded. The pledge shall remain a valid and binding pledge until the debt instruments secured by the pledge are no longer outstanding.

(c) Nothing in this article affects the rights, duties, or obligations of a redevelopment agency with regard to the allocation of tax increment by a redevelopment agency to a local agency pursuant to a tax increment agreement, the terms of which shall exclusively govern the rights, duties, and obligations of the redevelopment agency. This article does not vest in any pledgee, holder of debt instruments, successor in interest thereof, or any person, other than the local agency, any lien, right, claim, interest, or cause of action against a redevelopment agency for tax increment revenues held by, or to be received by, the redevelopment agency.

53595.20. (a) A local agency may, from time to time, issue its negotiable debt instruments payable from, secured by, collateralized

by, or representing interests in, tax increment revenues. The debt instruments may be issued to provide funds for capital expenditures, payment of rent or debt service, purchases of fixed assets, deposits into reserves created to improve the financial condition of the local agency, or other similar expenditures. The debt instrument proceeds may also be used to pay operating costs of the local agency if that use has been approved by a four-fifths vote of all the members of the governing body of the local agency. In no case, however, shall the proceeds of any debt instrument be used to pay for increased salary or benefit for officers or employees of a local agency.

(b) (1) The debt instruments may be issued as serial debt instruments, term debt instruments, or both, and may be issued in those series or classes as the legislative body of the local agency may determine. The debt instruments shall bear the date or dates, mature at the time or times, bear interest at the rate or rates, fixed or variable, be payable at the time or times, be in the denominations, be in the form, either coupon or registered, carry the registration privileges, be executed in the manner, be payable in lawful money of the United States of America at the place or places, and be subject to terms of redemption, as the indenture relating to the debt instruments may provide.

(2) The debt instruments may be sold at public or private sale, for the price or prices and upon these terms and conditions as the legislative body of the local agency shall determine. The local agency may sell the debt instruments at a price below the par value thereof. Pending preparation of the definitive debt instruments, the local agency may issue interim receipts or certificates or temporary debt instruments which shall be exchanged for the definitive debt instruments. The recitals of regularity of proceedings in any debt instrument issued or sold under this article shall be conclusive evidence of compliance with this article and of the validity of the debt instrument.

(c) The debt instruments shall be signed by the chairperson of the legislative body and by any authorized officer of the local agency by manual or facsimile signature. Neither the members of the legislative body of a local agency nor any person executing the debt instruments shall be personally liable on the debt instruments or be subject to any personal liability or accountability by reason of the issuance or execution thereof.

(d) The local agency shall have the power to purchase its debt instruments out of any funds available therefor. The local agency may hold, pledge, cancel, or resell the debt instruments, subject to, and in accordance with, agreements with holders of debt instruments.

53595.25. (a) A local agency may provide for the issuance of debt instruments for the purpose of refunding any debt instruments or any class, series, or issue of debt instruments of the local agency then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of

redemption, purchase, or maturity of debt instruments.

(b) The proceeds of any debt instruments issued for the purpose of refunding of outstanding debt instruments may, in the discretion of the local agency, be (1) applied to the purchase, redemption prior to maturity, or retirement at maturity of any outstanding debt instruments on their redemption date or dates, or (2) paid to a third person to assume the local agency's obligation to make the payments, and may, pending that application, be placed in escrow to be reapplied to the purchase, retirement at maturity, or redemption on the date or dates determined by the local agency.

(c) Any proceeds placed in escrow may, pending their use, be invested and reinvested in obligations or securities authorized by resolutions of the legislative body of the local agency, payable or maturing at the time or times as are appropriate to ensure the prompt payment of the principal, interest, and redemption premium if any, of the outstanding debt instruments to be refunded. The interest, income, and profits, if any, earned or realized on this investment may also be applied to the payment of the outstanding debt instruments to be refunded or to the payment of interest on the refunding debt instruments. After the terms of the escrow have been fully satisfied and carried out, any balance of the proceeds and interest, income, and profits, if any, earned or realized on the investment thereof may be returned to the local agency for use by the local agency.

(d) All of the refunding debt instruments are subject to this article in the same manner, and to the same extent, as other debt instruments issued pursuant to this article.

53595.30. (a) All moneys received pursuant to this article and pledged to the payment of any class, series, or issue of debt instruments, whether as tax increment revenues or from any other source, shall be deemed to be trust funds to be held and applied solely as provided in this article. Until the funds are applied as provided by this article, and notwithstanding any other provision of law, the moneys may be invested in obligations or securities authorized by resolutions of the legislative body of the local agency authorizing the issuance of debt instruments.

(b) Any officer with whom, or any bank or trust company with which, the moneys are deposited shall act as trustee of the moneys and shall hold and apply the moneys for the purpose of this article, subject to any regulations of the local agency adopted pursuant to this article and the indenture securing the bonds.

53595.35. (a) In the discretion of the legislative body of a local agency, any debt instruments issued under this article may be secured by an indenture by and between the local agency and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within or without the state. The indenture or resolution providing for the issuance of the debt instruments may pledge or assign the tax increment revenues or the interest of the local agency therein. The indenture may

contain provisions for protecting and enforcing the rights and remedies of the holders of debt instruments as may be reasonable and proper and not in violation of law, including particular provisions specifically authorized by law to be included in any indenture of the local agency authorizing debt instruments pursuant to this article. The indenture may set forth the rights and remedies of the holders of debt instruments and of the trustee or trustees, and may restrict rights of action of holders of debt instruments. In addition to the foregoing, the indenture may contain other provisions as the local agency may deem necessary or desirable to facilitate the issuance and sale of the debt instruments or for the protection and security of the holders of debt instruments.

(b) Any holder of debt instruments issued under this article or any of the coupons appertaining thereto, and the trustee or trustees under any indenture, except to the extent the rights herein given may be restricted by any indenture securing the debt instruments, may, either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of the state or granted by this article or under indenture, and may enforce and compel the performance of all duties required by this article or by the indenture to be performed by the local agency or by any officer, employee, or agent thereof.

53595.40. (a) Debt instruments issued under this article shall be payable solely from the tax increment revenues herein provided and not from any other assets or revenues of the issuing local agency.

(b) The local agency issuing the debt instruments shall not pledge the faith or credit of the state or of any municipality or political subdivision thereof to secure the debt instruments. All debt instruments shall contain on the face thereof a statement to the effect that neither the State of California nor the local agency issuing the debt instruments shall be obligated to pay the principal of, premium, if any, or interest on the debt instruments, except from the revenues of the local agency pledged for payment, and that neither the faith and credit nor the taxing power of the State of California nor of any municipality or political subdivision thereof is pledged to the payment of the principal of, premium, if any, or interest on the debt instruments.

(c) The issuance of debt instruments under this article shall not directly or indirectly or contingently obligate the state, a municipality, or any political subdivision of the state to levy or pledge any form of taxation whatever therefor or to make any appropriation for the payment thereof.

53595.45. (a) Debt instruments issued by a local agency under this article are hereby made securities in which all (1) banks, bankers, savings banks, trust companies, and other persons carrying on a banking business, (2) all insurance companies, insurance associations, and other persons carrying on an insurance business, (3) all administrators, executors, guardians, trustees, and other fiduciaries, and (4) all other persons whatsoever who now are or may

hereafter be authorized to invest in debt instruments or other obligations of the state, may properly and legally invest any funds, including capital belonging to them or within their control.

(b) The debt instruments are hereby made securities which may properly and legally be deposited with, and received by, any state or municipal officers or agency of the state or municipality or political subdivision thereof for any purpose for which the deposit of debt instruments or other obligations of the state is now, or may hereafter be, authorized by law.

53595.50. Any debt instruments issued under this article, their transfer, and in the income therefrom shall at all times be free from taxation of every kind by the state and by all municipalities and political subdivisions in the state.

53595.55. This article shall be deemed to provide a complete, additional, and alternative method for doing the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws. This article shall be liberally construed so as to effectuate its purposes. To the extent that this article is inconsistent with any other general statute or special act or parts thereof, this article shall be deemed controlling.

SEC. 2. Section 33681.6 is added to the Health and Safety Code, to read:

33681.6. Notwithstanding any other provision of this article to the contrary, the amounts determined pursuant to subparagraphs (A) and (B) of paragraph (2) of subdivision (a) of Section 33681.5 shall not include any tax increment apportioned to the downtown project area of a charter city meeting all of the criteria specified in Section 33608.

SEC. 3. Section 33682.1 is added to the Health and Safety Code, to read:

33682.1. For the purposes of Section 33682, "existing indebtedness" also means an obligation incurred pursuant to a reimbursement agreement made for the purpose of funding an unfunded liability of a fire and police retirement system of a charter city meeting all of the criteria specified in Section 33608. This section shall not be applied retroactively.

SEC. 4. Notwithstanding any other provision of law, if Assembly Bill 1519 is chaptered and takes effect during the 1993 calendar year, both of the following shall occur whether Assembly Bill 1519 is chaptered prior to, or subsequent to, this act:

(a) Section 2 of this act shall prevail over any section of Assembly Bill 1519 that adds Section 33681.6 to the Health and Safety Code.

(b) Section 3 of this act shall prevail over any section of Assembly Bill 1519 that adds Section 33682.1 to the Health and Safety Code.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to enhance the ability of local governments to better

finance their operations without delay, it is necessary that this act take effect immediately.

CHAPTER 903

An act to amend Section 14070 of the Corporations Code, relating to small business.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 14070 of the Corporations Code is amended to read:

14070. (a) The corporate guarantee shall be backed by funds on deposit in the corporation's corporate fund established pursuant to Section 14040.

(b) Loan guarantees shall be secured by a reserve of at least 25 percent to be determined by the executive director with the approval of the board. The guarantee percentage rate shall be set by the executive director upon approval of the board.

(c) The corporation shall guarantee loans wherever possible. However, earnings from the trust funds may be used for direct lending provided that corporate direct loan funds do not constitute more than one-third of the loan.

Any corporation located in a rural area that is making a direct loan to a farmer or farm corporation is exempt from the one-third limitation and may use trust funds from both the income and trust account, provided that the direct loan is guaranteed or that at least 50 percent of the direct loan portfolio is guaranteed by a governmental agency, excluding any state government agency. The total trust funds committed by a corporation shall not exceed 50 percent of the trust fund, including trust income, as determined at the time each loan is made. Only unencumbered funds shall be available for direct lending. Each corporation located in a rural area shall submit an application to the department for participation in the direct loan program under this section. In its capacity as a direct lender, the corporation may sell in the secondary market the guaranteed portion of each loan so as to raise additional funds for direct lending. Funds raised through the secondary market, and funds repaid by the borrower and ineligible for reborrowing, shall not be considered in determining the maximum drawings of trust funds by a corporation. Any direct loan made by a corporation under this section shall not exceed three hundred fifty thousand dollars ($350,000). The department, in consultation with the board, shall issue regulations governing these direct loans.

(d) In furtherance of the purposes of this part, up to one-half of

the corporate funds may be used to guarantee loans utilized to establish a Business and Industrial Development Corporation (BIDCO) under Division 15 (commencing with Section 33000) of the Financial Code.

(e) To execute the direct loan programs established in this chapter, the Office of Small Business may loan trust funds to a corporation located in a rural area for the express purpose of lending those funds to an identified borrower. The loan by the Office of Small Business to the corporation shall be up to the amount of, and on terms similar to, the loan between the corporation and the borrower. The loan between the Office of Small Business and the corporation shall be evidenced by a credit agreement. In the event that the loan between the corporation and borrower is not guaranteed by a governmental agency, the credit agreement shall be secured by assignment of any note, executed in favor of the corporation by the borrower to the Office of Small Business. The terms and conditions of the credit agreement shall be similar to the loan agreement between the corporation and the borrower which shall be collateralized by the note between the corporation and the borrower. In the absence of fraud on the part of the corporation, the liability of the corporation to repay the loan to the Office of Small Business is limited to the repayment received by the corporation from the borrower, except in a case where the Farmers Home Administration requires exposure by the corporation in rule or regulation. The corporation may use trust funds for loan repayment to the Office of Small Business if the corporation has exhausted a loan loss reserve created for this purpose. Interest and principal received by the Office of Small Business from the corporation shall be deposited in the small business development corporation loan guarantee account of that corporation.

(f) Upon the approval of the executive director, a corporation shall be authorized to borrow trust funds from the Office of Small Business for the purpose of relending those funds to small businesses. A corporation shall demonstrate to the executive director that it has the capacity to administer a direct loan program, and has procedures in place to limit the default rate for loans to startup businesses. Not more than 25 percent of any trust fund shall be used for the direct lending established pursuant to this subdivision. A loan to a corporation shall not exceed the amount of funds likely to be lent to small businesses within three months following the loan to the corporation. The maximum loan amount to a small business is fifty thousand dollars ($50,000). In the absence of fraud on the part of the corporation, the repayment obligation pursuant to the loan to the corporation shall be limited to the amount of funds received by the corporation for the loan to the small business and any other funds received from the Office of Small Business that are not disbursed. The corporation shall be authorized to charge a fee to the small business borrower, in an amount determined by the Office of Small Business pursuant to regulation. The program provided for in this

subdivision shall be available in all geographic areas of the state.

SEC. 2. Section 14070 of the Corporations Code is amended to read:

14070. (a) The corporate guarantee shall be backed by funds on deposit in the corporation's corporate fund and the expansion fund established pursuant to Section 14040.

(b) Loan guarantees shall be secured by a reserve of at least 25 percent to be determined by the executive director with the approval of the board. The guarantee percentage rate shall be set by the executive director upon approval of the board.

(c) The expansion fund and corporate accounts shall be used exclusively to guarantee obligations and pay the administrative costs of the corporations, except that a corporation located in a rural area may utilize the funds for direct lending to farmers as long as at least 90 percent of the corporate fund farm loans, calculated by dollar amount, and all expansion fund farm loans are guaranteed by the United States Farmers Home Administration. The amount of funds available for direct farm lending shall be determined by the executive director. In its capacity as a direct lender, the corporation may sell in the secondary market the guaranteed portion of each loan so as to raise additional funds for direct lending. The agency, in consultation with the board, shall issue regulations governing these direct loans, including the maximum amount of these loans.

(d) In furtherance of the purposes of this part, up to one-half of the corporate funds may be used to guarantee loans utilized to establish a Business and Industrial Development Corporation (BIDCO) under Division 15 (commencing with Section 33000) of the Financial Code.

(e) To execute the direct loan programs established in this chapter, the Office of Small Business may loan trust funds to a corporation located in a rural area for the express purpose of lending those funds to an identified borrower. The loan by the Office of Small Business to the corporation shall be on terms similar to the loan between the corporation and the borrower. The amount of the loan may be in excess of the amount of a loan to any individual farm borrower, but actual disbursements pursuant to the Office of Small Business loan agreement shall be required to be supported by a loan agreement between the farm borrower and the corporation in an amount at least equal to the requested disbursement. The loan between the Office of Small Business and the corporation shall be evidenced by a credit agreement. In the event that any loan between the corporation and borrower is not guaranteed by a governmental agency, the portion of the credit agreement attributable to that loan shall be secured by assignment of any note, executed in favor of the corporation by the borrower to the Office of Small Business. The terms and conditions of the credit agreement shall be similar to the loan agreement between the corporation and the borrower which shall be collateralized by the note between the corporation and the borrower. In the absence of fraud on the part of the corporation, the

liability of the corporation to repay the loan to the Office of Small Business is limited to the repayment received by the corporation from the borrower except in a case where the Farmers Home Administration requires exposure by the corporation in rule or regulation. The corporation may use trust funds for loan repayment to the Office of Small Business if the corporation has exhausted a loan loss reserve created for this purpose. Interest and principal received by the Office of Small Business from the corporation shall be deposited into the same account from which the funds were originally borrowed.

(f) Upon the approval of the executive director, a corporation shall be authorized to borrow trust funds from the Office of Small Business for the purpose of relending those funds to small businesses. A corporation shall demonstrate to the executive director that it has the capacity to administer a direct loan program, and has procedures in place to limit the default rate for loans to startup businesses. Not more than 25 percent of any trust fund shall be used for the direct lending established pursuant to this subdivision. A loan to a corporation shall not exceed the amount of funds likely to be lent to small businesses within three months following the loan to the corporation. The maximum loan amount to a small business is fifty thousand dollars ($50,000). In the absence of fraud on the part of the corporation, the repayment obligation pursuant to the loan to the corporation shall be limited to the amount of funds received by the corporation for the loan to the small business and any other funds received from the Office of Small Business that are not disbursed. The corporation shall be authorized to charge a fee to the small business borrower, in an amount determined by the Office of Small Business pursuant to regulation. The program provided for in this subdivision shall be available in all geographic areas of the state.

SEC. 3. Section 2 of this bill incorporates amendments to Section 14070 of the Corporations Code proposed by both this bill and SB 852. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 14070 of the Corporations Code, and (3) this bill is enacted after SB 852, in which case Section 1 of this bill shall not become operative.

CHAPTER 904

An act to amend Section 97.035 of the Revenue and Taxation Code, relating to local government finance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 97.035 of the Revenue and Taxation Code, as amended by Chapter 130 of the Statutes of 1993, is amended to read:

97.035. Notwithstanding any other provision of this chapter, the computations and allocations made by each county pursuant to Section 97, as modified by Section 97.03 for the 1992–93 fiscal year, shall be modified for the 1993–94 fiscal year pursuant to subdivisions (a) to (c), inclusive, as follows:

(a) The amount of property tax revenue deemed allocated in the prior fiscal year to each county and city and county shall be reduced by an amount to be determined by the Director of Finance in accordance with the following:

(1) The total amount of the property tax reductions for counties and cities and counties determined pursuant to this section shall be one billion nine hundred ninety-eight million dollars ($1,998,000,000) in the 1993–94 fiscal year.

(2) The Director of Finance shall determine the amount of the reduction for each county or city and county as follows:

(A) The proportionate share of the property tax revenue reduction for each county or city and county that would have been imposed on all counties and cities and counties under the proposal specified in the "May Revision of the 1993–94 Governor's Budget" shall be determined by reference to the document entitled "Estimated County Property Tax Transfers Under Governor's May Revision Proposal," published by the Legislative Analyst's office on June 1, 1993.

(B) Each county or city and county's proportionate share of total taxable sales in all counties in the 1991–92 fiscal year shall be determined.

(C) An amount for each county and city and county shall be determined by applying its proportionate share determined pursuant to subparagraph (A) to the one billion nine hundred ninety-eight million dollar ($1,998,000,000) statewide reduction for counties and cities and counties.

(D) An amount for each county and city and county shall be determined by applying its proportionate share determined pursuant to subparagraph (B) to the one billion nine hundred ninety-eight million dollar ($1,998,000,000) statewide reduction for

counties and cities and counties.

(E) The Director of Finance shall add the amounts determined pursuant to subparagraphs (C) and (D) for each county and city and county, and divide the resulting figure by two. The amount so determined for each county and city and county shall be divided by a factor of 1.038. The resulting figure shall be the amount of property tax revenue to be subtracted from the amount of property tax revenue deemed allocated in the prior fiscal year.

(3) The Director of Finance shall, by July 15, 1993, report to the Joint Legislative Budget Committee its determination of the amounts determined pursuant to paragraph (2).

(4) On or before August 15, 1993, the Director of Finance shall notify the auditor of each county and city and county of the amount of property tax revenue reduction determined for each county and city and county.

(5) Notwithstanding any other provision of this subdivision, the amount of the reduction specified in paragraph (1) for any county or city and county that has first implemented, for the 1993–94 fiscal year, the alternative procedure for the distribution of property tax levies authorized by Chapter 2 (commencing with Section 4701) of Part 8 shall be reduced, for the 1993–94 fiscal year only, in the amount of any increased revenue allocated to school districts, county offices of education, and community college districts that would not have been allocated for the 1993–94 fiscal year but for the implementation of that alternative procedure.

(b) The amount of property tax revenue deemed allocated in the prior fiscal year to each city shall be reduced by an amount to be determined by the Director of Finance in accordance with the following:

(1) The total amount of the property tax reductions determined for cities pursuant to this section shall be two hundred eighty-eight million dollars ($288,000,000) in the 1993–94 fiscal year.

(2) The Director of Finance shall determine the amount of reduction for each city as follows:

(A) The amount of property tax revenue that is estimated to be attributable in the 1993–94 fiscal year to the amount of each city's state assistance payment received by that city pursuant to Chapter 282 of the Statutes of 1979 shall be determined.

(B) A factor for each city equal to the amount determined pursuant to subparagraph (A) for that city, divided by the total of the amounts determined pursuant to subparagraph (A) for all cities, shall be determined.

(C) An amount for each city equal to the factor determined pursuant to subparagraph (B), multiplied by three hundred eighty-two million five hundred thousand dollars ($382,500,000), shall be determined.

(D) In no event shall the amount for any city determined pursuant to subparagraph (C) exceed a per capita amount of nineteen dollars and thirty-one cents ($19.31), as determined in

accordance with that city's population on January 1, 1993, as estimated by the Department of Finance.

(E) The amount determined for each city pursuant to subparagraphs (C) and (D) shall be the amount of property tax revenue to be subtracted from the amount of property tax revenue deemed allocated in the prior year.

(3) The Director of Finance shall, by July 15, 1993, report to the Joint Legislative Budget Committee those amounts determined pursuant to paragraph (2).

(4) On or before August 15, 1993, the Director of Finance shall notify each county auditor of the amount of property tax revenue reduction determined for each city located within that county.

(c) (1) The amount of property tax revenue deemed allocated in the prior fiscal year to each special district, as defined pursuant to subdivision (m) of Section 95, shall be reduced by the amount determined for the district pursuant to paragraph (3) and increased by the amount determined for the district pursuant to paragraph (4). The total net amount of these changes is intended to equal two hundred forty-four million dollars ($244,000,000) in the 1993–94 fiscal year.

(2) Notwithstanding any other provision of this subdivision, no reduction shall be made pursuant to this subdivision with respect to any of the following special districts:

(A) A local hospital district as described in Division 23 (commencing with Section 32000) of the Health and Safety Code.

(B) A water agency that does not sell water at retail.

(C) A transit district.

(D) A special district that was a multicounty special district as of July 1, 1979.

(3) On or before September 15, 1993, the county auditor shall determine an amount for each special district equal to the amount of its allocation determined pursuant to Sections 96 or 97, and 98 for the 1992–93 fiscal year multiplied by the ratio determined pursuant to paragraph (1) of subdivision (a) of Section 98.6 as that section read on June 15, 1993. In those counties that were subject to Sections 98.65, 98.66, 98.67, and 98.68, the county auditor shall determine an amount for each special district that represents the current amount of its allocation determined pursuant to Sections 96 or 97, and 98 for the 1993–94 fiscal year that is attributed to the property tax shift from schools required by Chapter 282 of the Statutes of 1979. In determining this amount, the county auditor shall adjust for the influence of increased assessed valuation within each district, including the effect of jurisdictional changes, and the reductions in property tax allocations required in the 1992–93 fiscal year by Chapters 699 and 1369 of the Statutes of 1992. Notwithstanding any other provision of this paragraph, for a special district that is governed by a city council or whose governing board has the same membership as a city council, that is a subsidiary district as defined in subdivision (e) of Section 16271 of the Government Code, the

county auditor shall multiply the amount that otherwise would be calculated pursuant to this paragraph by 0.38 and the result shall be used in the calculations required by paragraph (5). In no event shall the amount determined by this paragraph be less than zero.

(4) (A) On or before September 15, 1993, the county auditor shall determine an amount for each special district which is engaged in fire protection activities, as reported to the Controller for inclusion in the 1989–90 edition of the Financial Transactions Report Concerning Special Districts under the heading of "Fire Protection," that is equal to the amount of revenue allocated to that special district from the Special District Augmentation Fund for fire protection activities in the 1992–93 fiscal year. In the case of a special district, other than a special district governed by the county board of supervisors or whose governing body is the same as the county board of supervisors, that is engaged in fire protection activities as reported to the Controller, the county auditor shall also determine the amount by which the district's amount determined pursuant to paragraph (3) exceeds the amount by which its allocation was reduced by operation of Section 98.6 in the 1992–93 fiscal year. This amount shall be added to the amount otherwise determined for the district under this paragraph. In those counties subject to Sections 98.65, 98.66, 98.67, and 98.68, the county auditor shall determine an amount which is equal to the amount by which the allocation of each special district for fire protection activities exceeds the allocation which would have been received by that district for fire protection activities had Section 98.6 continued to govern the allocation of property tax revenues to special districts in those counties.

(B) For purposes of this paragraph, a special district includes any special district that is allocated property tax revenue pursuant to this chapter and does not appear in the State Controller's Report on Financial Transactions Concerning Special Districts, but is engaged in fire protection activities and appears in the State Controller's Report on Financial Transactions Concerning Counties.

(5) The total amount of property taxes allocated to special districts by the county auditor as a result of paragraph (4) shall be subtracted from the amount of property tax revenues not allocated to special districts by the county auditor as a result of paragraph (3) to determine the amount to be deposited in the Education Revenue Augmentation Fund as specified in subdivision (d).

(6) On or before September 30, 1993, the county auditor shall notify the Director of Finance of the net amount determined for special districts pursuant to paragraph (5).

(d) (1) The amount of property tax revenues not allocated to the county, city and county, cities within the county, and special districts as a result of the reductions required by subdivisions (a), (b), and (c) shall instead be deposited in the Educational Revenue Augmentation Fund established in each county or city and county pursuant to Section 97.03. The amount of revenue in the Educational Revenue Augmentation Fund, derived from whatever source, shall be

allocated pursuant to paragraphs (2) and (3) to school districts and county offices of education, in total, and to community college districts, in total, in the same proportion that property tax revenues were distributed to school districts and county offices of education, in total, and community college districts, in total, during the 1992–93 fiscal year.

(2) The county auditor shall, based on information provided by the county superintendent of schools pursuant to this paragraph, allocate that proportion of the revenue in the Educational Revenue Augmentation Fund to be allocated to school districts and county offices of education only to those school districts and county offices of education within the county that are not excess tax school entities, as defined in Section 95.1. The county superintendent of schools shall determine the amount to be allocated to each school district in inverse proportion to the amounts of property tax revenue per average daily attendance in each school district. For each county office of education, the allocation shall be made based on the historical split of base property tax revenue between the county office of education and school districts within the county. In no event shall any additional money be allocated from the Educational Revenue Augmentation Fund to a school district or county office of education upon that district or county office of education becoming an excess tax school entity. If, after determining the amount to be allocated to each school district and county office of education, the county superintendent of schools determines there are still additional funds to be allocated, the county superintendent of schools shall determine the remainder to be allocated in inverse proportion to the amounts of property tax revenue, excluding Educational Revenue Augmentation Fund moneys, per average daily attendance in each remaining school district, and on the basis of the historical split described above for each county office of education, that is not an excess tax school entity until all funds that would not result in a school district or county office of education becoming an excess tax school entity are allocated. The county superintendent of schools may determine the amounts to be allocated between each school district and county office of education to ensure that all funds that would not result in a school district or county office of education becoming an excess tax school entity are allocated.

(3) The county auditor shall, based on information provided by the Chancellor of the California Community Colleges pursuant to this paragraph, allocate that proportion of the revenue in the Educational Revenue Augmentation Fund to be allocated to community college districts only to those community college districts within the county that are not excess tax school entities, as defined in Section 95.1. The chancellor shall determine the amount to be allocated to each community college district in inverse proportion to the amounts of property tax revenue per funded full-time equivalent student in each community college district. In no event shall any additional money be allocated from the

Educational Revenue Augmentation Fund to a community college district upon that district becoming an excess tax school entity.

(4) If, after making the allocation required pursuant to paragraph (2), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (3). If, after making the allocation pursuant to paragraph (3), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (2). If, after determining the amount to be allocated to each community college district, the Chancellor of the California Community Colleges determines that there are still additional funds to be allocated, the Chancellor of the California Community Colleges shall determine the remainder to be allocated to each community college district in inverse proportion to the amounts of property tax revenue, excluding Educational Revenue Augmentation Fund moneys, per funded full-time equivalent student in each remaining community college district that is not an excess tax school entity until all funds that would not result in a community college district becoming an excess tax school entity are allocated.

(5) For purposes of allocations made pursuant to Section 97 for the 1994–95 fiscal year, the amounts allocated from the Educational Revenue Augmentation Fund pursuant to this subdivision, other than those amounts deposited in the Educational Revenue Augmentation Fund pursuant to any provision of the Health and Safety Code, shall be deemed property tax revenue allocated to the Educational Revenue Augmentation Fund in the prior fiscal year.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide for the allocation of state and local governmental revenues in a manner consistent with the resolution of the current severe shortfall in state revenues, it is necessary that this act take effect immediately.

CHAPTER 905

An act to amend Sections 26220, 30052, and 30054 of, and to add Sections 24308 and 29300.5 to, the Government Code, to add Sections 33681.6 and 33682.1 to the Health and Safety Code, to add and repeal Section 1463.008 to the Penal Code, to amend Sections 75.41, 97.035, 2188.8, and 7285.3 of, and to add Sections 97.036, 97.07, and 97.09 to, the Revenue and Taxation Code, and to add Section 15200.99 to the Welfare and Institutions Code, relating to local government finance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 24308 is added to the Government Code, to read:

24308. (a) Notwithstanding Sections 24300 and 24304, the board of supervisors of any county may organize, pursuant to ordinance or charter, the delivery of any services for which county government is responsible under state law, into departments or agencies that provide multiple services, except those duties and responsibilities of other elected county officials mandated by the California Constitution or by statute. Any county board of supervisors that elects to organize the delivery of services may consolidate, integrate, or separate duties and functions of county offices and organizational units within departments, to the extent deemed necessary by the board of supervisors.

(b) All personnel, including the heads of units within departments organized pursuant to this section and formed from units formerly within other county departments, shall possess the particular qualifications required by the statutes governing provision of the services provided by those departments. These qualifications include standards of education and experience to assure competence appropriate for the direction of the departments or the local administration of county functions.

(c) This section shall not permit the occupant of a consolidated, integrated, or separated office to practice any profession or trade for the practice of which a license, permit, or registration is required, without that license, permit, or registration.

(d) This section shall not be construed to affect any other statutory or regulatory provision governing county services or programs, however reorganized or renamed, except for the organizational requirements specified in this section.

SEC. 2. Section 26220 of the Government Code is amended to read:

26220. (a) The board of supervisors may by a four-fifths vote of its members assign for purposes of collection under such terms and

conditions as the board may prescribe any or all delinquent bills, claims, and accounts, 30 days after the date upon which they are due and payable to the county, and any or all money judgments taken in the name of the county, to a collection agency duly licensed by the State of California.

(b) The board of supervisors may, by a four-fifths vote of its members, and with the approval of the tax collector, assign for purposes of collection under such terms and conditions as the board may prescribe, any or all delinquent unsecured taxes 90 days after the date upon which they are due and delinquent when, in the judgment of the tax collector, the remedy set forth in Section 2951 of the Revenue and Taxation Code will not be used by the tax collector.

(c) The board of supervisors may assign, for purposes of securing any financing of the same, any obligations arising out of any delinquent assessments or taxes levied on the secured roll by the county or any other political subdivision of the state. No assignment to a collection agency shall be made of obligations arising out of any delinquent assessments or taxes levied on the secured roll by the county or any other political subdivision of the state.

SEC. 3. Section 29300.5 is added to the Government Code, to read:

29300.5. (a) Notwithstanding any other provisions of law, for the 1993–94 fiscal year, unreserved and undesignated fund balances in county or city and county special funds may be transferred to the county or city and county general fund for the general purposes of the county or city and county, provided that the special fund was created pursuant to Sections 41901 and 41902 of the Public Resources Code.

(b) Notwithstanding any other provision of law, the legislative body of a county or city and county, which also acts as the legislative body of a special district, commencing with the 1993–94 fiscal year, may make transfers of unreserved and undesignated fund balances from the special district to the general fund of the county or city and county for the general purposes of the county or city and county, provided that the district contributed to the Special District Augmentation Fund during the 1990–91 fiscal year and received no distribution from that fund in the same fiscal year.

(c) No provision of this section shall be construed to permit the legislative body of a county or city and county to make transfers from a local hospital district, as described in Division 23 (commencing with Section 32000) of the Health and Safety Code, a water agency that does not sell water at retail other than an agency the primary function of which, as determined on the basis of total revenues, is flood control, a transit district, a police protection district formed pursuant to Part 1 (commencing with Section 20000) of Division 14 of the Health and Safety Code, a district engaged in fire protection activities, or a special district that was a multicounty special district as of July 1, 1979.

(d) A transfer of moneys pursuant to this section shall be authorized by a resolution adopted by a majority vote of the board of supervisors, specifying each fund and the amount of moneys in those funds that are to be transferred to the general fund.

(e) A transfer of moneys pursuant to this section shall not result in a county or city and county imposing or increasing any fee, assessment, or other charge to replace the moneys transferred to the general fund of the county or city and county.

SEC. 4. Section 30052 of the Government Code is amended to read:

30052. (a) Notwithstanding Section 13340, the two accounts in the Local Public Safety Fund created in Section 30051 are hereby continuously appropriated, without regard to fiscal years, to the Controller for allocation to each qualified county in proportion to its share of the total taxable sales in all qualified counties during the most recent calendar year for which sales have been reported by the State Board of Equalization. The amounts so allocated shall be available only for public safety services, and shall be allocated in each qualified county in the manner and amount determined pursuant to Section 30054.

(b) For purposes of this chapter:

(1) "Public safety services" includes, but is not limited to, sheriffs, police, fire protection, county district attorneys, county corrections, and ocean lifeguards. "Public safety services" does not include courts.

(2) "Qualified county" means:

(A) With respect to the Interim Public Safety Account, any county in which the board of supervisors, on or before August 1, 1993, adopts a resolution that does both of the following:

(i) Requests an allocation of revenue from the Local Public Safety Fund.

(ii) Ratifies the statewide imposition of an additional ½ percent rate of sales and use tax pursuant to Senate Constitutional Amendment 1 on the November 2, 1993, special election ballot.

(B) With respect to the Public Safety Account, any county in which the board of supervisors has adopted a resolution as described in subparagraph (A) or in which the tax levied pursuant to Section 35 of Article XIII of the California Constitution is approved by a majority of the county's voters voting on the issue at the November 2, 1993, special election.

(c) The board of supervisors of a qualified county shall send a copy of the resolution adopted pursuant to subdivision (b) to the Controller.

SEC. 5. Section 30054 of the Government Code is amended to read:

30054. (a) The amounts allocated pursuant to Sections 30052 and 30053 shall be available only for public safety services, and shall be allocated in each qualified county to local agencies as provided in subdivision (b).

(b) (1) Each county shall create a Public Safety Augmentation Fund that shall consist of all revenues received by the county as a result of the allocations pursuant to Sections 30052 and 30053.

(2) Except as provided in paragraph (3) or (4), for the 1993–94 fiscal year and each fiscal year thereafter, the augmentation fund described in paragraph (1) shall be allocated among the county and each city in the county that provides public safety services as follows:

(A) The auditor shall determine an allocation factor for each city within the county, the numerator of which shall be the amount of revenue shifted from that city to the Educational Revenue Augmentation Fund pursuant to Section 97.035 of the Revenue and Taxation Code for the 1993–94 fiscal year less the amount of vehicle license fee revenues allocated to the city pursuant to Section 11005.4 of the Revenue and Taxation Code for the 1993–94 fiscal year and the denominator of which shall be the amount of revenue shifted from all cities in the county and from the county to the Educational Revenue Augmentation Fund pursuant to Section 97.035 of the Revenue and Taxation Code for the 1993–94 fiscal year less the amount of vehicle license fee revenues allocated to the county and all cities in the county pursuant to Section 11005.4 of the Revenue and Taxation Code for the 1993–94 fiscal year.

(B) The auditor shall multiply the amount in the augmentation fund by the allocation factor determined in subparagraph (A) for each city.

(C) The allocation factor to be used for each city for the 1993–94 fiscal year shall not result in an allocation that exceeds 50 percent of the difference between the following:

(i) The amount by which the city's allocation of property tax revenues was reduced pursuant to Section 97.035 of the Revenue and Taxation Code for the 1993–94 fiscal year.

(ii) The amount of vehicle license fee revenues allocated to the city pursuant to Section 11005.4 of the Revenue and Taxation Code for the 1993–94 fiscal year.

(D) The allocation factor determined pursuant to this paragraph for the 1993–94 fiscal year shall also be applied in each fiscal year thereafter.

(3) Notwithstanding paragraph (2), for the 1993–94 fiscal year and each fiscal year thereafter, the amount in the augmentation fund established pursuant to paragraph (1) of each county described in subparagraph (C) shall be allocated to the cities in the county that provide public safety services as follows:

(A) The auditor shall determine an allocation factor for each city within the county, the numerator of which shall be the amount of the revenue shifted from that city to the Educational Revenue Augmentation Fund pursuant to Section 97.035 of the Revenue and Taxation Code for the 1993–94 fiscal year, and the denominator of which shall be the amount of revenue shifted from all cities in the county to the Educational Revenue Augmentation Fund pursuant to Section 97.035 of the Revenue and Taxation Code for the 1993–94

fiscal year.

(B) The auditor shall multiply 5 percent of the amount in the augmentation fund established pursuant to paragraph (1) by the allocation factor determined in subparagraph (A). The amount so computed shall be allocated to each respective city.

(C) This paragraph applies only to the Counties of Fresno, Kings, Merced, San Bernardino, San Diego, San Joaquin, Solano, and Yolo.

(D) This paragraph shall apply to a particular county described in subparagraph (C) only if the total amount allocated under this paragraph to all of the cities therein that provide public safety services is less than the amount that would otherwise be allocated to all of those cities pursuant to paragraph (2).

(4) Notwithstanding paragraph (2), for the 1993–94 fiscal year and each fiscal year thereafter, the amount in the augmentation fund established pursuant to paragraph (1) for the County of Alameda shall be allocated to the cities in the County of Alameda that provide public safety services as follows:

(A) The auditor shall determine an allocation factor for each city within the county, the numerator of which shall be the amount of the revenue shifted from that city to the Educational Revenue Augmentation Fund pursuant to Section 97.035 of the Revenue and Taxation Code for the 1993–94 fiscal year, and the denominator of which shall be the amount of revenue shifted from all cities in the County of Alameda to the Educational Revenue Augmentation Fund pursuant to Section 97.035 of the Revenue and Taxation Code for the 1993–94 fiscal year.

(B) The auditor shall multiply 6.1 percent of the amount in the augmentation fund established pursuant to paragraph (1) by the allocation factor determined in subparagraph (A). The amount so computed shall be allocated to each city.

(5) All moneys in the Public Safety Augmentation Fund not allocated to any city within the county pursuant to paragraph (2), (3), or (4) shall be allocated to the county.

SEC. 6. Section 33681.6 is added to the Health and Safety Code, to read:

33681.6. Notwithstanding any other provision of this article to the contrary, the amount determined pursuant to subparagraphs (A) and (B) of paragraph (2) of subdivision (a) of Section 33681.5 shall not include any tax increment apportioned to the downtown project area of a charter city meeting all of the criteria specified in Section 33608.

SEC. 7. Section 33682.1 is added to the Health and Safety Code, to read:

33682.1. For purposes of Section 33682, "existing indebtedness" also means an obligation incurred pursuant to a reimbursement agreement made for the purpose of funding an unfunded liability of a fire and police retirement system of a charter city meeting all of the criteria specified in Section 33608. This section shall not be applied retroactively.

SEC. 8. Section 1463.008 is added to the Penal Code, to read:

1463.008. (a) The County of San Diego may deduct and deposit in the county treasury, from revenues collected by means of the program authorized in Section 1463.007, and prior to making any distribution of revenues to any other governmental entities required by any other provision of law, the cost incurred to identify and collect fines and forfeitures that have not been paid after 30 days from the date on which they were due and payable, with or without warrant having been issued against the alleged violator, that are not being paid through time payments and for which the base fine excluding state and county penalties is at least one hundred dollars ($100), provided that the cost shall not exceed the direct and indirect amounts budgeted by the county for that comprehensive collection program in the 1993–94 fiscal year as adjusted annually for population growth and inflation.

(b) This section shall remain in effect only until June 30, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before June 30, 1996, deletes or extends that date.

SEC. 9. Section 75.41 of the Revenue and Taxation Code is amended to read:

75.41. (a) The auditor shall apply the current year's tax rate, as defined in Section 75.4, to the supplemental assessment or assessments, computing the amount of taxes that would be due for a full year. If the tax rate for the "roll being prepared" is known, the rate may be used with respect to the fiscal year to which it applies, rather than the current year's tax rate as defined in Section 75.4. If the tax rate for the "roll being prepared" is not known, the current year's tax rate as defined in Section 75.4 shall be used. For property on the supplemental roll, the taxes due shall be computed in two equal installments.

(b) The taxes due shall be adjusted by a proration factor to reflect the portion of the tax year remaining as determined by the date on which the change in ownership occurred or the new construction was completed. In computing the portion of the tax year remaining, the change in ownership or completion of new construction shall be presumed to have occurred on the first day of the month following the date on which change in ownership or completion of new construction occurred.

(c) (1) If the presumed date specified in subdivision (b) is April 1, the taxes on the supplemental assessment for the current roll shall be multiplied by 0.25; and the taxes on the supplemental assessment for the roll being prepared shall be multiplied by 1.00.

(2) If the presumed date specified in subdivision (b) is May 1, the taxes on the supplemental assessment for the current roll shall be multiplied by 0.17; and the taxes on the supplemental assessment for the roll being prepared shall be multiplied by 1.00.

(3) If the presumed date specified in subdivision (b) is June 1, the taxes on the supplemental assessment for the current roll shall be multiplied by 0.08; and the taxes on the supplemental assessment for

the roll being prepared shall be multiplied by 1.00.

(4) If the presumed date specified in subdivision (b) is July 1, no supplemental assessment shall be made on the current roll, and the taxes on the supplemental assessment for the roll being prepared shall be multiplied by 1.00.

(5) If the presumed date specified in subdivision (b) is on or after August 1, and on or before March 1, the following table of factors shall be used:

If the presumed date is:	The taxes on the supplemental assessment on the current roll shall be multiplied by:
August 1	0.92
September 1	0.83
October 1	0.75
November 1	0.67
December 1	0.58
January 1	0.50
February 1	0.42
March 1	0.33

(d) After computing the supplemental taxes due, if the total is twenty dollars ($20) or less, the auditor may cancel the amount as provided by Section 4986.8.

(e) If the supplemental assessment is a negative amount, the auditor shall follow the procedures of this section to determine the amount of refund to which the assessee may be entitled.

SEC. 10. Section 97.035 of the Revenue and Taxation Code, as amended by Chapter 130 of the Statutes of 1993, is amended to read:

97.035. Notwithstanding any other provision of this chapter, the computations and allocations made by each county pursuant to Section 97, as modified by Section 97.03 for the 1992–93 fiscal year, shall be modified for the 1993–94 fiscal year pursuant to subdivisions (a) to (c), inclusive, as follows:

(a) The amount of property tax revenue deemed allocated in the prior fiscal year to each county and city and county shall be reduced by an amount to be determined by the Director of Finance in accordance with the following:

(1) The total amount of the property tax reductions for counties and cities and counties determined pursuant to this section shall be one billion nine hundred ninety-eight million dollars ($1,998,000,000) in the 1993–94 fiscal year.

(2) The Director of Finance shall determine the amount of the reduction for each county or city and county as follows:

(A) The proportionate share of the property tax revenue reduction for each county or city and county that would have been imposed on all counties under the proposal specified in the "May Revision of the 1993–94 Governor's Budget" shall be determined by reference to the document entitled "Estimated County Property Tax

Transfers Under Governor's May Revision Proposal," published by the Legislative Analyst's Office on June 1, 1993.

(B) Each county's or city and county's proportionate share of total taxable sales in all counties in the 1991–92 fiscal year shall be determined.

(C) An amount for each county and city and county shall be determined by applying its proportionate share determined pursuant to subparagraph (A) to the one billion nine hundred ninety-eight million dollar ($1,998,000,000) statewide reduction for counties and cities and counties.

(D) An amount for each county and city and county shall be determined by applying its proportionate share determined pursuant to subparagraph (B) to the one billion nine hundred ninety-eight million dollar ($1,998,000,000) statewide reduction for counties and cities and counties.

(E) The Director of Finance shall add the amounts determined pursuant to subparagraphs (C) and (D) for each county and city and county, and divide the resulting figure by two. The amount so determined for each county and city and county shall be divided by a factor of 1.038. The resulting figure shall be the amount of property tax revenue to be subtracted from the amount of property tax revenue deemed allocated in the prior fiscal year.

(3) The Director of Finance shall, by July 15, 1993, report to the Joint Legislative Budget Committee its determination of the amounts determined pursuant to paragraph (2).

(4) On or before August 15, 1993, the Director of Finance shall notify the auditor of each county and city and county of the amount of property tax revenue reduction determined for each county and city and county.

(5) Notwithstanding any other provision of this subdivision, the amount of the reduction specified in paragraph (1) for any county or city and county that has first implemented, for the 1993–94 fiscal year, the alternative procedure for the distribution of property tax levies authorized by Chapter 2 (commencing with Section 4701) of Part 8 shall be reduced, for the 1993–94 fiscal year only, in the amount of any increased revenue allocated to school districts, county offices of education, and community college districts that would not have been allocated for the 1993–94 fiscal year but for the implementation of that alternative procedure.

(b) The amount of property tax revenue deemed allocated in the prior fiscal year to each city shall be reduced by an amount to be determined by the Director of Finance in accordance with the following:

(1) The total amount of the property tax reductions determined for cities pursuant to this section shall be two hundred eighty-eight million dollars ($288,000,000) in the 1993–94 fiscal year.

(2) The Director of Finance shall determine the amount of reduction for each city as follows:

(A) The amount of property tax revenue that is estimated to be

attributable in the 1993–94 fiscal year to the amount of each city's state assistance payment received by that city pursuant to Chapter 282 of the Statutes of 1979 shall be determined.

(B) A factor for each city equal to the amount determined pursuant to subparagraph (A) for that city, divided by the total of the amounts determined pursuant to subparagraph (A) for all cities, shall be determined.

(C) An amount for each city equal to the factor determined pursuant to subparagraph (B), multiplied by three hundred eighty-two million five hundred thousand dollars ($382,500,000), shall be determined.

(D) In no event shall the amount for any city determined pursuant to subparagraph (C) exceed a per capita amount of nineteen dollars and thirty-one cents ($19.31), as determined in accordance with that city's population on January 1, 1993, as estimated by the Department of Finance.

(E) The amount determined for each city pursuant to subparagraphs (C) and (D) shall be the amount of property tax revenue to be subtracted from the amount of property tax revenue deemed allocated in the prior year.

(3) The Director of Finance shall, by July 15, 1993, report to the Joint Legislative Budget Committee those amounts determined pursuant to paragraph (2).

(4) On or before August 15, 1993, the Director of Finance shall notify each county auditor of the amount of property tax revenue reduction determined for each city located within that county.

(c) (1) The amount of property tax revenue deemed allocated in the prior fiscal year to each special district, as defined pursuant to subdivision (m) of Section 95, shall be reduced by the amount determined for the district pursuant to paragraph (3) and increased by the amount determined for the district pursuant to paragraph (4). The total net amount of these changes is intended to equal two hundred forty-four million dollars ($244,000,000) in the 1993–94 fiscal year.

(2) Notwithstanding any other provision of this subdivision, no reduction shall be made pursuant to this subdivision with respect to any of the following special districts:

(A) A local hospital district as described in Division 23 (commencing with Section 32000) of the Health and Safety Code.

(B) A water agency that does not sell water at retail, but not including an agency the primary function of which, as determined on the basis of total revenues, is flood control.

(C) A transit district.

(D) A police protection district formed pursuant to Part 1 (commencing with Section 20000) of Division 14 of the Health and Safety Code.

(E) A special district that was a multicounty special district as of July 1, 1979.

(3) On or before September 15, 1993, the county auditor shall

determine an amount for each special district equal to the amount of its allocation determined pursuant to Sections 96 or 97, and 98 for the 1993–94 fiscal year multiplied by the ratio determined pursuant to paragraph (1) of subdivision (a) of Section 98.6 as that section read on June 15, 1993. In those counties that were subject to Sections 98.65, 98.66, 98.67, and 98.68, the county auditor shall determine an amount for each special district that represents the current amount of its allocation determined pursuant to Sections 96 or 97, and 98 for the 1993–94 fiscal year that is attributed to the property tax shift from schools required by Chapter 282 of the Statutes of 1979. In determining this amount, the county auditor shall adjust for the influence of increased assessed valuation within each district, including the effect of jurisdictional changes, and the reductions in property tax allocations required in the 1992–93 fiscal year by Chapters 699 and 1369 of the Statutes of 1992. In the case of a special district that has been consolidated or reorganized, the auditor shall determine the amount of its current property tax allocation that is attributable to the prior district's or districts' receipt of state assistance payments pursuant to Chapter 282 of the Statutes of 1979. Notwithstanding any other provision of this paragraph, for a special district that is governed by a city council or whose governing board has the same membership as a city council and that is a subsidiary district as defined in subdivision (e) of Section 16271 of the Government Code, the county auditor shall multiply the amount that otherwise would be calculated pursuant to this paragraph by 0.38 and the result shall be used in the calculations required by paragraph (5). In no event shall the amount determined by this paragraph be less than zero.

(4) On or before September 15, 1993, the county auditor shall determine an amount for each special district that is engaged in fire protection activities, as reported to the Controller for inclusion in the 1989–90 Edition of the Financial Transactions Report Concerning Special Districts under the heading of "Fire Protection," that is equal to the amount of revenue allocated to that special district from the Special District Augmentation Fund for fire protection activities in the 1992–93 fiscal year. In the case of a special district, other than a special district governed by the county board of supervisors or whose governing body is the same as the county board of supervisors, that is engaged in fire protection activities as reported to the Controller, the county auditor shall also determine the amount by which the district's amount determined pursuant to paragraph (3) exceeds the amount by which its allocation was reduced by operation of Section 98.6 in the 1992–93 fiscal year. This amount shall be added to the amount otherwise determined for the district under this paragraph. In any county subject to Section 98.65, 98.66, 98.67, or 98.68, the county auditor shall determine for each special district that is engaged in fire protection activities an amount that is equal to the amount determined for that district pursuant to paragraph (3).

(5) The total amount of property taxes allocated to special

districts by the county auditor as a result of paragraph (4) shall be subtracted from the amount of property tax revenues not allocated to special districts by the county auditor as a result of paragraph (3) to determine the amount to be deposited in the Education Revenue Augmentation Fund as specified in subdivision (d).

(6) On or before September 30, 1993, the county auditor shall notify the Director of Finance of the net amount determined for special districts pursuant to paragraph (5).

(d) (1) The amount of property tax revenues not allocated to the county, city and county, cities within the county, and special districts as a result of the reductions required by subdivisions (a), (b), and (c) shall instead be deposited in the Educational Revenue Augmentation Fund established in each county or city and county pursuant to Section 97.03. The amount of revenue in the Educational Revenue Augmentation Fund, derived from whatever source, shall be allocated pursuant to paragraphs (2) and (3) to school districts and county offices of education, in total, and to community college districts, in total, in the same proportion that property tax revenues were distributed to school districts and county offices of education, in total, and community college districts, in total, during the 1992–93 fiscal year.

(2) The county auditor shall, based on information provided by the county superintendent of schools pursuant to this paragraph, allocate that proportion of the revenue in the Educational Revenue Augmentation Fund to be allocated to school districts and county offices of education only to those school districts and county offices of education within the county that are not excess tax school entities, as defined in Section 95.1. The county superintendent of schools shall determine the amount to be allocated to each school district in inverse proportion to the amounts of property tax revenue per average daily attendance in each school district. For each county office of education, the allocation shall be made based on the historical split of base property tax revenue between the county office of education and school districts within the county. In no event shall any additional money be allocated from the Educational Revenue Augmentation Fund to a school district or county office of education upon that district or county office of education becoming an excess tax school entity. If, after determining the amount to be allocated to each school district and county office of education, the county superintendent of schools determines there are still additional funds to be allocated, the county superintendent of schools shall determine the remainder to be allocated in inverse proportion to the amounts of property tax revenue, excluding Educational Revenue Augmentation Fund moneys, per average daily attendance in each remaining school district, and on the basis of the historical split described above for each county office of education, that is not an excess tax school entity until all funds that would not result in a school district or county office of education becoming an excess tax school entity are allocated. The county superintendent of schools

may determine the amounts to be allocated between each school district and county office of education to ensure that all funds that would not result in a school district or county office of education becoming an excess tax school entity are allocated.

(3) The county auditor shall, based on information provided by the Chancellor of the California Community Colleges pursuant to this paragraph, allocate that proportion of the revenue in the Educational Revenue Augmentation Fund to be allocated to community college districts only to those community college districts within the county that are not excess tax school entities, as defined in Section 95.1. The chancellor shall determine the amount to be allocated to each community college district in inverse proportion to the amounts of property tax revenue per funded full-time equivalent student in each community college district. In no event shall any additional money be allocated from the Educational Revenue Augmentation Fund to a community college district upon that district becoming an excess tax school entity.

(4) If, after making the allocation required pursuant to paragraph (2), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (3). If, after making the allocation pursuant to paragraph (3), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (2). If, after determining the amount to be allocated to each community college district, the Chancellor of the California Community Colleges determines that there are still additional funds to be allocated, the Chancellor of the California Community Colleges shall determine the remainder to be allocated to each community college district in inverse proportion to the amounts of property tax revenue, excluding Educational Revenue Augmentation Fund moneys, per funded full-time equivalent student in each remaining community college district that is not an excess tax school entity until all funds that would not result in a community college district becoming an excess tax school entity are allocated.

(5) For purposes of allocations made pursuant to Section 97 for the 1994–95 fiscal year, the amounts allocated from the Educational Revenue Augmentation Fund pursuant to this subdivision, other than those amounts deposited in the Educational Revenue Augmentation Fund pursuant to any provision of the Health and Safety Code, shall be deemed property tax revenue allocated to the Educational Revenue Augmentation Fund in the prior fiscal year.

SEC. 11. Section 97.036 is added to the Revenue and Taxation Code, to read:

97.036. (a) The Director of Finance may reduce the amount of the transfer to the Educational Revenue Augmentation Account determined pursuant to subdivision (a) of Section 97.035 for any eligible county as described in subdivision (b) of this section. The total amount of the reductions for all counties which may be authorized pursuant to this section shall not exceed two million

dollars ($2,000,000).

(b) For purposes of this section, an "eligible county" is a county with a population of less than 350,000 as reported in the 1990 federal census that had a fire element of the tax bill in 1977–78, that continues to fund some portion of those costs from the county general fund in 1993–94, and that provides these services in the same manner as a special district less than countywide and has so indicated in the Controller's Report on Financial Transactions Concerning Counties.

(c) For each eligible county, the county auditor may submit the following information to the Director of Finance not later than November 1, 1993:

(1) The amount of property tax allocated to the county fire district in the 1977–78 fiscal year.

(2) The amount allocated from the county budget to the county fire district in the 1978–79 fiscal year.

(3) The amount of property tax reduction for the county fire district attributable to the passage of Article XIII A of the California Constitution by the voters in the primary election in June 1978.

(4) The amount of money allocated from the county budget to the county fire district in the 1993–94 fiscal year.

(5) The amount allocated to the county fire district from the Special District Augmentation Fund in the 1992–93 fiscal year.

(d) For each eligible county that submits to the Director of Finance by November 1, 1993, the information described in subdivision (c), the Director of Finance shall make the following calculations:

(1) Multiply the amount of property tax allocated to the county fire district in the 1977–78 fiscal year by the change in the value of the property tax base for the county from the 1977–78 fiscal year to the 1978–79 fiscal year.

(2) Subtract the amount reported pursuant to paragraph (3) of subdivision (c) from the amount determined pursuant to paragraph (1).

(3) Multiply the amount determined pursuant to paragraph (2) by an amount determined by the Director of Finance to be the change in assessed value for the county from the 1978–79 fiscal year to the 1993–94 fiscal year.

(4) Multiply the amount reported pursuant to paragraph (5) of subdivision (c) by 1.038.

(5) Add the amount determined pursuant to paragraph (3) to the amount determined pursuant to paragraph (4).

(6) Subtract the amount determined pursuant to paragraph (5) from the amount reported pursuant to paragraph (4) of subdivision (c).

(e) The Director of Finance shall determine the sum of all the amounts determined pursuant paragraph (6) of subdivision (d).

(f) If the sum determined pursuant to subdivision (e) is greater than two million dollars ($2,000,000), then the Director of Finance shall proportionately reduce the amount for each county so that the

total of the amounts for all counties does not exceed two million dollars ($2,000,000). If the sum determined pursuant to subdivision (e) does not exceed two million dollars ($2,000,000), then the Director of Finance shall not reduce the amount determined for each county.

(g) The Director of Finance shall by January 15, 1994, notify each county of its reduction in the amount to be transferred to the Educational Revenue Augmentation Account pursuant to subdivision (a) of Section 97.035. The maximum amount of the reduction that may be authorized pursuant to this section is one-half the amount determined pursuant to subdivision (f).

SEC. 12. Section 97.07 is added to the Revenue and Taxation Code, to read:

97.07. (a) Notwithstanding any other provision of this chapter, for the 1993–94 fiscal year, the amounts of property tax revenue that are required to be shifted pursuant to Section 97.035 from a city described in the second clause of paragraph (2) of subdivision (h) of Section 95 or a city described in paragraph (2) of subdivision (b) of Section 16700 of the Welfare and Institutions Code, and from the county in which those cities are located, to the Educational Relief Augmentation Fund, shall each be reduced by an amount equal to the sum of the property tax revenue loss incurred by the city or county as a result of the Oakland/Berkeley Fire that occurred in October 1991. The auditor shall certify to the Department of Finance the amount of the property tax revenue loss for each city and the county as a result of those properties that were reassessed as a result of that fire. The property tax revenue loss shall be the difference between the property tax revenues, including property tax revenue attributable to tax rates levied pursuant to subdivision (b) of Section 1 of Article XIII A of the California Constitution, that would have been derived based on the original assessed value of those properties for the 1991–92 fiscal year prior to any reassessment for disaster relief, increased by 2 percent, and the property tax revenues derived from the assessed value of those properties for the 1992–93 fiscal year.

(b) In each of the 1994–95, 1995–96, and 1996–97 fiscal years, for the county and cities described in subdivision (a), one-third of the adjustments made pursuant to subdivision (a) for each described city and the county shall be added to the amount of property tax revenue deemed allocated to each city and the county in the prior fiscal year.

SEC. 13. Section 97.09 is added to the Revenue and Taxation Code, to read:

97.09. Notwithstanding any other provision of this chapter, in the County of Santa Cruz, the auditor shall, for the 1993–94 fiscal year only, deposit those property tax revenues that would otherwise be allocated to enterprise special districts in a Supplemental Allocation Fund. The county board of supervisors shall allocate moneys in the fund for the 1993–94 fiscal year only to either enterprise special districts or the County Library Fund.

SEC. 14. Section 2188.8 of the Revenue and Taxation Code is

amended to read:

2188.8. (a) Whenever the assessor receives a written request for separate assessment of timeshare estates in a timeshare project, as defined in Section 11003.5 of the Business and Professions Code and as specified in subdivision (h) of this section, the assessor shall, on the first lien date which occurs more than 60 days following the request, and on each lien date thereafter, separately assess each timeshare estate in the project if the assessor determines that the conditions specified in subdivision (c) have been met. Whenever estates in a timeshare project are separately assessed, they shall continue to be separately assessed in subsequent fiscal years and once a request for separate assessment is made with respect to a project, it is binding on all future timeshare estate owners.

(b) The interest that is to be separately assessed is the value of the right of recurrent, exclusive use or occupancy of real property, annually or on some other periodic basis, for a specific period of time that has been, or will be, allotted from the use or occupancy periods into which the project has been divided.

(c) The separate assessment of a timeshare estate may not be made by the assessor unless:

(1) The person making the request certifies that the request for separate assessment has been approved in the manner provided in the organizational documents of the organization involved for approval of matters affecting the affairs of the organization generally; and

(2) A diagrammatic floor plan of the improvements, a copy of the documents setting forth the procedures for scheduling time and units to each timeshare estate owner, and a list of every timeshare estate owner, with a date notation thereon showing when, according to the organization's records, each timeshare estate was acquired, have been filed with the assessor. A plot map of the land showing the location of the improvements on the land need not be filed unless requested by the assessor. The organization shall file an annual statement for each succeeding assessment year, on or before April 1, with the assessor setting forth any changes to such required information known to the organization. The list or other information provided pursuant to this section is not a public document and shall not be open to public inspection, except as provided in Section 408.

(d) Notwithstanding the provisions of subdivision (c), this section shall not be construed to require any person making a request for separate assessment to meet the requirements of the Subdivision Map Act, nor shall the approval of any governmental agency be required for separate assessment.

(e) The tax on a timeshare estate that is separately assessed pursuant to this section shall be a lien solely on the timeshare estate and shall be entered on and be subject to all provisions of law applicable to taxes on the secured roll, provided:

(1) If the taxes on any timeshare estate that is separately assessed remain unpaid at the time set for declaration of default for

delinquent taxes, the taxes on the timeshare estate, together with any penalties and costs that may have accrued thereon while on the secured roll, may be transferred to the unsecured roll.

(2) Defaulted timeshare estate taxes remaining unpaid on any prior year secured tax roll may be transferred to the unsecured roll and collected like any other tax on the unsecured roll.

(f) The assessor shall provide to the principal office of each timeshare project within the taxing jurisdiction, at such time and in such manner as he deems appropriate, adequate notice of the provisions of this section and other pertinent information relative to the implementation thereof.

(g) The county may charge a fee for processing an application for separate assessment and for the initial and the ongoing costs, not to exceed the actual cost, of the separate assessment and billing, and mailings, with respect to a timeshare project. This fee shall be subject to Chapter 12.5 (commencing with Section 54985) of Part 1 of Division 2 of Title 5 of the Government Code, and shall be proportionately allocated to each of the timeshare estate owners. This fee may be collected commencing with the initial separate tax bills, and on subsequent tax bills, and deposited in the county's general fund.

(h) For purposes of this section, "timeshare estate" applies to timeshare estates, as defined in Section 11003.5 of the Business and Professions Code, which include a fee simple interest in the underlying property involved. However, "timeshare estate" does not include timeshare estates that are coupled with a leasehold interest or an estate for years.

SEC. 15. Section 7285.3 of the Revenue and Taxation Code, as added by Chapter 73 of the Statutes of 1993, is amended to read:

7285.3. Except as provided in Sections 7251.3 and 7251.4, the combined rate of all taxes imposed in any county pursuant to this chapter and pursuant to Part 1.6 (commencing with Section 7251) shall not exceed the rate specified in Section 7251.1.

SEC. 16. Section 15200.99 is added to the Welfare and Institutions Code, to read:

15200.99. (a) Notwithstanding Section 15200.97, the Counties of Merced and Stanislaus, in concurrence with their respective district attorneys, may use moneys in the fund for, and only for, children-related services, including, but not limited to, services with respect to child health, child abuse, and child molestation.

(b) The authority of subdivision (a) shall apply only if all of the following requirements are met:

(1) The county is eligible to receive the performance rate, and remains eligible to receive that rate for the entire period that this section is effective.

(2) The county maintains a fund balance sufficient for the county to meet its milestones for transition to the statewide automated system due to be completed in 1995.

(3) The county in each fiscal year equals or exceeds the

recoupment rate of the prior fiscal year.

(c) This section shall remain in effect only until June 30, 1996, and as of that date is repealed, unless a later enacted statute, that is enacted before June 30, 1996, deletes or extends that date.

SEC. 17. The Legislature finds and declares that Section 97.035 of the Revenue and Taxation Code as amended by Section 10 of this act is inapplicable to the issues in San Ramon Valley Fire Protection District v. The Board of Supervisors of the County of Contra Costa, Contra Costa County Superior Court Case No. C92-04453, currently on appeal to the Court of Appeal, First Appellate District No. A061952. The Legislature further finds and declares that case concerns a matter disputing the applicability of, and calculations under, former Section 98.6 of the Revenue and Taxation Code as that section read on, and before, June 15, 1993, and is a matter assigned to the judicial branch of state government for final resolution.

SEC. 18. Notwithstanding any other provision of law, for the purpose of calculating revenue limit apportionments pursuant to Section 42238 of the Education Code, funds received by the Hemet Unified School District pursuant to Chapter 450 of the Statutes of 1991, shall for the 1993–94 and 1994–95 fiscal years only, be added, in lieu of the provisions of that chapter, to the amount computed pursuant to subdivision (d) of Section 42238 of the Education Code.

SEC. 19. It is the intent of the Legislature in enacting Sections 97.03 and 97.035 of the Revenue and Taxation Code to transfer in each county to the Educational Revenue Augmentation Fund an amount of property tax revenue not to exceed the greater of the following:

(a) The amount of property tax revenues attributable to state assistance payments received pursuant to Chapter 282 of the Statutes of 1979.

(b) The reductions made pursuant to Section 97.03.

SEC. 20. 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 with respect to the Counties of Merced, Stanislaus, Santa Cruz, and San Diego and the Hemet Unified School District. The facts constituting this necessity are:

(a) In the Counties of Merced and Stanislaus, there is an unusually severe shortage of local moneys available to fund child-related services during a period of greatly increased demand for those services, while at the same time programs in those counties for the collection of child support are adequately funded.

(b) In the County of Santa Cruz, local libraries are currently experiencing funding shortages, reductions in operations, and closures at a level beyond those similar difficulties being experienced by other comparable counties.

(c) The County of San Diego has experienced unique difficulties in the funding of particular public services that are most efficiently addressed by expediting the collection of delinquent fines and

forfeitures.

(d) The Hemet Unified School District is subject to unusually severe geographic and logistical burdens in providing educational services, and thus, is subject to unusually high operating costs as compared to otherwise similar districts.

SEC. 21. No reimbursement is required by Section 13 of 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 Section 13 of this act. However, with respect to the remaining sections of this act, 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. 22. This act is an urgency statute necessary for the immediate preservation of the public peace, 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 allocation of state and local governmental revenues in a manner consistent with the resolution of the current severe shortfall in state revenues, it is necessary that this act take effect immediately.

CHAPTER 906

An act to amend Sections 25210.9c, 26802.5, 56036, 56111.11, 57132, 61621.5, 66450, 66470, 66492, 66493, 66499.20¼, and 66499.20½ of, and to add Sections 17558.5 and 31641.97 to, the Government Code, to amend Sections 13143.5, 13869.7, and 19870 of the Health and Safety Code, to amend the heading of Article 86.5 (commencing with Section 21195) of Chapter 1.5 of Part 3 of Division 2 of, and to amend Section 21195 of, the Public Contract Code, to amend Section 93.035 of, and to add Section 97.038 to, the Revenue and Taxation Code, to amend Section 30540 of the Water Code, to amend Section 201 of the Placer County Flood Control and Water Conservation District Act (Statutes of 1984, Chapter 689), to amend Section 7.1 of the Santa Clara County Flood Control and Water District Act, and to amend Sections 4 and 6 of the Sonoma County Flood Control and Water Conservation Act, relating to local government and declaring the

urgency thereof, to take effect immediately.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. This act shall be known and may be cited as the Omnibus Local Government Act of 1993.

SEC. 2. Section 17558.5 is added to the Government Code, to read:

17558.5. (a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the Controller no later than four years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.

(b) The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, and the reason for the adjustment. Remittance advices and other notices of payment action shall not constitute notice of adjustment from an audit or review.

(c) Nothing in this section shall be construed to limit the adjustment of payments when inaccuracies are determined to be the result of the intent to defraud, or when a delay in the completion of an audit is the result of willful acts by the claimant or inability to reach agreement on terms of final settlement.

SEC. 2.4. Section 25210.9c of the Government Code is amended to read:

25210.9c. (a) Pursuant to a resolution adopted by a four-fifths vote of all the members of its board of supervisors, a county may appropriate any of its available moneys to a revolving fund not to exceed one million dollars ($1,000,000) to be used for the acquisition of real or personal property, environmental impact studies, fiscal analysis, engineering services, salaries, wages, services, supplies, or the construction of structures or improvements needed in whole or in part to provide one or more extended services to a county service area located wholly within the county. The revolving fund shall be reimbursed from service fees, connection charges, tax revenues, or other moneys available from the service area, and no sums shall be disbursed from the fund until the board has, by resolution, established the method by and the term, not exceeding 10 years, within which the county service area is to reimburse the fund. The service area shall reimburse the fund for any amount disbursed to the service area within 10 years after disbursement, together with

interest at the current rate per annum received on similar types of investments by the county as determined by the county treasurer.

(b) Notwithstanding subdivision (a), the Board of Supervisors of the County of Santa Barbara may disburse money from the revolving fund to county service areas without complying with the requirement for reimbursement.

SEC. 2.5. Section 26802.5 of the Government Code is amended to read:

26802.5. In a county of the 11th, 15th, 17th, 21st, 22nd, 25th, or 36th class, as ascertained and determined by Section 28020, a registrar of voters may be appointed by the board of supervisors in the same manner as other county officers are appointed. In those counties, the county clerk is not ex officio registrar of voters, and the registrar of voters shall discharge all duties vested by law in the county clerk which duties relate to and are a part of the election procedure.

SEC. 2.7. Section 31641.97 is added to the Government Code, to read:

31641.97. (a) This section shall be applicable in the retirement system of any county of the 10th class, as defined by Sections 28020 and 28031, as amended by Chapter 1204 of the Statutes of 1971, if the board of supervisors adopts, by majority vote, a resolution implementing this section.

(b) The purpose of this section is to authorize persons hired by the county before January 1, 1993, and employed by the county on December 31, 1992, to receive credit in the retirement system for prior military service by contributing to the retirement system an amount equal to the full cost, including interest, of the employee and county liability for the additional credit.

(c) Notwithstanding any other provision of this chapter, an eligible person must meet the following requirements in order to receive credit for prior military service:

(1) The person must have been hired by the county before January 1, 1993, and must have been an active employee on December 31, 1992.

(2) The person must file written notice with the retirement board before January 1, 1995, electing to receive credit and providing such information as the board may require.

(3) The person must contribute to the retirement system prior to the effective date of his or her retirement, by lump-sum payment or by installment payments over a period not to exceed five years, an amount equal to the full cost, including interest, of the employee and county liability for the additional credit.

(4) The person must not be entitled to receive a pension or retirement allowance for the prior military service and must provide the certification required by Section 31641.4.

(5) A person who was hired by the county before January 1, 1993, who was actively employed by the county on December 31, 1992, and who retired or elected deferred retirement after December 31, 1992,

and before December 31, 1993, may also elect to receive credit under this section by filing the written notice and making the entire contribution before July 1, 1994, less whatever additional amounts would have been paid to that person by the retirement system if the person had made the entire contribution prior to retirement.

(d) The board of supervisors may include additional terms and conditions in the resolution implementing this section, provided the terms and conditions do not include the system paying for any of the employee or county cost of the military service credit.

(e) The full cost, including interest, of the employee and county liability for the additional credit under this section shall be determined by the board of retirement on actuarial advice, and shall be the actuarial equivalent of the difference between the retirement benefits the person will receive after receipt of credit for prior military service under this section and the retirement benefits the person would have received without that credit.

SEC. 3. Section 56036 of the Government Code is amended to read:

56036. (a) "District" or "special district" means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries. "District" or "special district" includes a county service area, but excludes all of the following:

(1) The state.

(2) A county.

(3) A city.

(4) A school district or a community college district.

(5) A special assessment district.

(6) An improvement district.

(7) A community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5.

(8) A permanent road division formed pursuant to Article 3 (commencing with Section 1160) of Chapter 4 of Division 2 of the Streets and Highways Code.

(9) An air pollution control district or an air quality maintenance district.

(10) A service zone of a fire protection district.

(b) Except as otherwise provided in paragraph (1), each of the entities listed in paragraph (1) is a "district" or a "special district" for the purposes of this division.

(1) For the purposes of Chapter 1 (commencing with Section 57000) to Chapter 7 (commencing with Section 57175), inclusive, of Part 4 or Part 5 (commencing with Section 57300), none of the following entities is a "district" or a "special district":

(A) A unified or union high school library district.

(B) A bridge and highway district.

(C) A joint highway district.

(D) A transit or rapid transit district.

(E) A metropolitan water district.
(F) A separation of grade district.
(2) Any conducting authority proceedings for a change of organization involving an entity described in paragraph (1) shall be conducted pursuant to the principal act authorizing the establishment of that entity.
(c) Except as otherwise provided in paragraph (1), each of the entities listed in paragraph (1) is a "district" or "special district" for purposes of this division.
(1) For the purposes of Chapter 1 (commencing with Section 57000) to Chapter 7 (commencing with Section 57175), inclusive, of Part 4 or Part 5 (commencing with Section 57300), none of the following entities is a "district" or "special district" if the commission of the principal county determines, in accordance with Sections 56127 and 56128, that the entity is not a "district" or "special district."
(A) A flood control district.
(B) A flood control and floodwater conservation district.
(C) A flood control and water conservation district.
(D) A conservation district.
(E) A water conservation district.
(F) A water replenishment district.
(G) The Orange County Water District.
(H) A California water storage district.
(I) A water agency.
(J) A county water authority or a water authority.
(2) If the commission determines that an entity described in paragraph (1) is not a "district" or "special district," any conducting authority proceedings for a change of organization involving the entity shall be conducted pursuant to the principal act authorizing the establishment of that entity.
SEC. 4. Section 56111.11 of the Government Code is amended to read:
56111.11. (a) Notwithstanding Section 56110, upon approval of the commission, the City of El Centro or the City of Imperial may annex noncontiguous territory of not more than 1,960 acres in area, located in the County of Imperial 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 that city.
(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 El Centro or the City of Imperial pursuant to this section becomes contiguous to the city, the limitations imposed by this section shall cease to apply.

(e) In any commission order giving approval to an annexation pursuant to this section, the commission may require, as a condition of that approval, that the City of El Centro or the City of Imperial enter into an agreement with the other city under which the city apportions any increase in state subventions resulting from the annexation of territory pursuant to this section.

SEC. 5. Section 57132 of the Government Code is amended to read:

57132. The election on the question of the change of organization or reorganization shall be called and held on the next regular election date occurring at least 88 days after the date upon which the resolution calling the election was adopted. This section does not apply to any election conducted solely by mailed ballot pursuant to Chapter 5 (commencing with Section 1340) of Division 2 of the Elections Code.

SEC. 6. Section 61621.5 of the Government Code is amended to read:

61621.5. (a) Except as otherwise provided in this section, a district may by ordinance adopt regulations binding upon all persons to govern the construction and use of its facilities and property, including regulations imposing reasonable charges for the use thereof. Violation of any regulation relating to the construction and use of sanitation facilities or of roads is a misdemeanor.

(b) A district may by ordinance adopt regulations binding upon all persons to govern the use of its park and recreational facilities and property, including regulations imposing reasonable charges for the use thereof. Violation of any regulation relating to the use of park and recreational facilities is a misdemeanor.

(c) A district granted consent of the governing body of the county or city to exercise the powers provided in subdivision (j) or (k) of Section 61600 shall have the powers, duties, and authority of a county road commissioner granted under Article 2 (commencing with Section 1460) of Chapter 5.5 of Division 2 of the Streets and Highways Code to issue written permits to do the acts permitted by Section 1460 of the Streets and Highways Code in and on the streets accepted for maintenance by the district in accordance with the applicable provisions of the chapter. Any person who does any of the acts specified in Section 1460 of the Streets and Highways Code without the authority of a written permit from the district is guilty of a misdemeanor and is liable to the district for all expenses and damages caused thereby.

SEC. 7. Section 66450 of the Government Code is amended to read:

66450. (a) If a subdivision for which a parcel map is required lies within an unincorporated area, a certificate or statement by the county surveyor is required. If a subdivision lies within a city, a certificate or statement by the city engineer or city surveyor is required. The appropriate official shall sign, date, and, below or immediately adjacent to the signature, indicate his or her registration or license number with expiration date and the stamp of his or her seal and state that:

(1) He or she examined the map.

(2) The subdivision as shown is substantially the same as it appeared on the tentative map, if required, and any approved alterations thereof.

(3) All provisions of this chapter and of any local ordinances applicable at the time of approval of the tentative map, if required, have been complied with.

(4) He or she is satisfied that the map is technically correct.

(b) City or county engineers registered as civil engineers after January 1, 1982, shall only be qualified to certify the statements of paragraphs (1), (2), and (3) of subdivision (a). The statement specified in paragraph (4) of subdivision (a) shall only be certified by a person authorized to practice land surveying pursuant to the Professional Land Surveyors' Act (Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code) or a person registered as a civil engineer prior to January 1, 1982, pursuant to the Professional Engineers' Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code).

(c) The county surveyor, city engineer, or city surveyor, as the case may be, or other public official or employee qualified and authorized to perform the functions of one of those officials, shall complete his or her certificate or statement, as required by this section, within 20 days from the time the parcel map is submitted to him or her by the subdivider for approval. The completed parcel map shall be delivered to the county recorder or, if required by local ordinance, filed with the legislative body prior to delivery to the county recorder, within the same 20-day period.

SEC. 7.5. Section 66470 of the Government Code is amended to read:

66470. The amending map or certificate of correction shall be prepared and signed by a registered civil engineer or licensed land surveyor. An amending map shall conform to the requirements of Section 66434, if a final map, or subdivisions (a) to (d), inclusive, and (f) to (i), inclusive, of Section 66445, if a parcel map. The amending map or certificate of correction shall set forth in detail the corrections made and show the names of the present fee owners of the property affected by the correction or omission. Upon recordation of a certificate of correction, the county recorder shall within 60 days of recording transmit a certified copy to the county surveyor or county engineer who shall maintain an index of recorded

certificates of correction.

The county recorder may charge a fee, in addition to the fee charged for recording the certificate of correction, which shall be transmitted to the county surveyor or the county engineer, as compensation for the cost of maintaining an index of recorded certificates of correction. The amount of this additional fee shall not exceed the fee which is charged for recording the certificate of correction.

If the property affected by a map is located within a city, the county recorder shall, upon request of the city engineer, provide copies of recorded certificates of correction to the city engineer.

SEC. 8. Section 66492 of the Government Code is amended to read:

66492. Prior to the filing of the final map or parcel map with the legislative body, the subdivider shall, in accordance with procedures established by the county, file with the county recorder of the county in which any part of the subdivision is located, a certificate or statement from the official computing redemptions in any public agency in which any part of the subdivision is located, showing that, according to the records of that office, there are no liens against the subdivision or any part thereof for unpaid, state, county, municipal or local taxes or special assessments collected as taxes, except taxes or special assessments not yet payable.

This section shall not be applicable to amending maps filed in accordance with the provisions of Section 66469.

SEC. 9. Section 66493 of the Government Code is amended to read:

66493. (a) Whenever any part of the subdivision is subject to a lien for taxes or special assessments collected as taxes which are not yet payable, the final map or parcel map shall not be recorded until the owner or subdivider does both of the following:

(1) Files with the clerk of the board of supervisors of the county wherein any part of the subdivision is located a certificate or statement prepared by the appropriate state or local official giving his or her estimate of those taxes or assessments.

(2) Executes and files with the clerk of the board of supervisors of the county wherein any part of the subdivision is located, security conditioned upon the payment of all state, county, municipal, and local taxes and the current installment of principal and interest of all special assessments collected as taxes, which at the time the final map is recorded are a lien against the property, but which are not yet payable.

(b) If the land being subdivided is a portion of a larger parcel shown on the last preceding tax roll as a unit, the security for payment of taxes need be only for the sum which may be determined by the county to be sufficient to pay the current and delinquent taxes on the land being subdivided, together with all accrued penalties and costs if those taxes have been or are allowed to become delinquent. Separate assessor's parcel numbers shall be given to the portion of

the larger parcel which is not within the proposed subdivision and to the parcel or parcels which are within the proposed subdivision.

If the land being subdivided is tax-defaulted, it may be redeemed without the redemption of the remainder of the larger parcel of which it is a part pursuant to the Revenue and Taxation Code as if it were held in ownership separate from and other than the ownership of the remainder.

(c) Whenever land subject to a special assessment or bond which may be paid in full is divided by the line of a lot or parcel of the subdivision, that assessment or bond shall be paid in full; security shall be filed with the clerk of the board of supervisors, payable to the county as trustee for the assessment bondholders for the payment of the special assessment or bond; or the responsibility for payment of the assessment shall be certified as segregated pursuant to subdivision (d).

(d) Whenever land subject to a special assessment for payment of a bond would be divided by the line of a lot or parcel of a subdivision, and the special assessment is not paid in full or secured pursuant to subdivision (c), the final map or parcel map shall not be recorded until the owner or subdivider files with the clerk of the board of supervisors of the county a certificate prepared by the clerk of the legislative body that created the assessment district. The certificate shall certify that the legislative body has determined that provision has been made for segregation of the responsibility of each of the proposed new parcels for a portion of the assessment payment obligation in the manner provided in the statute pursuant to which the assessments were levied or to which the bonds were issued.

(e) In computing the amount of security for "taxes" in subdivision (a) or "current taxes" in subdivision (b), it shall only be necessary to consider amounts shown on the regular assessment roll or shown on any supplemental rolls prepared pursuant to Chapter 3.5 (commencing with Section 75) of Part 0.5 of Division 1 of the Revenue and Taxation Code.

(f) This section shall not be applicable to amending maps filed in accordance with Section 66469.

SEC. 10. Section 66499.20¼ of the Government Code is amended to read:

66499.20¼. A city or county may, by ordinance, authorize a parcel map to be filed under the provisions of this chapter for the purpose of reverting to acreage land previously subdivided and consisting of four or less contiguous parcels under the same ownership. Any map so submitted shall be accompanied by evidence of title and nonuse or lack of necessity of any public streets or public easements which are to be vacated or abandoned. Any public streets or public easements to be left in effect after the reversion shall be adequately delineated on the map. After approval of the reversion by the governing body or advisory agency the map shall be delivered to the county recorder. The filing of the map shall constitute legal reversion to acreage of the land affected thereby, and shall also constitute

abandonment of all public streets or public easements not shown on the map, provided however that written notation of each abandonment is listed by reference to the recording data creating those public streets or public easements and certified to on the map by the clerk of the legislative body or the designee of the legislative body approving the map. The filing of the map shall also constitute a merger of the separate parcels into one parcel for purposes of this chapter and shall thereafter be shown as such on the assessment roll subject to the provisions of Section 66445. Except as provided in subdivision (f) of Section 66445, on any parcel map used for reverting acreage, a certificate shall appear signed and acknowledged by all parties having any record title interest in the land being reverted, consenting to the preparation and filing of the parcel map.

SEC. 11. Section 66499.20½ of the Government Code is amended to read:

66499.20½. Subdivided lands may be merged and resubdivided without reverting to acreage by complying with all the applicable requirements for the subdivision of land as provided by this division and any local ordinances adopted pursuant thereto. The filing of the final map or parcel map shall constitute legal merging of the separate parcels into one parcel and the resubdivision of such parcel, and the real property shall thereafter be shown with the new lot or parcel boundaries on the assessment roll. Any unused fees or deposits previously made pursuant to this division pertaining to the property shall be credited pro rata towards any requirements for the same purposes which are applicable at the time of resubdivision. Any public streets or public easements to be left in effect after the resubdivision shall be adequately delineated on the map. After approval of the merger and resubdivision by the governing body or advisory agency the map shall be delivered to the county recorder. The filing of the map shall constitute legal merger and resubdivision of the land affected thereby, and shall also constitute abandonment of all public streets and public easements not shown on the map, provided that a written notation of each abandonment is listed by reference to the recording data creating these public streets or public easements, and certified to on the map by the clerk of the legislative body or the designee of the legislative body approving the map.

SEC. 12. Section 13143.5 of the Health and Safety Code is amended to read:

13143.5. (a) Notwithstanding Part 2 (commencing with Section 13100) of Division 12, 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. Any changes or modifications that are more stringent than the requirements published in the California Building

Standards Code relating to fire and panic safety shall be subject to subdivision (b) of Section 18941.5.

(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) (1) A city, county, or city and county that adopts an ordinance relating to fire and panic safety pursuant to this section shall delegate the enforcement of the ordinance to either of the following:

(A) The chief of the fire authority of the city, county, or city and county, or his or her authorized representative.

(B) The chief building official of the city, county, or city and county, or his or her authorized representative.

(2) Any fee charged pursuant to the enforcement authority of this subdivision shall not exceed the estimated reasonable cost of providing the service for which the fee is charged, pursuant to Section 66014 of the Government Code.

(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. 13. Section 13869.7 of the Health and Safety Code is amended 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. Any changes or modifications that are more stringent than the requirements published in the California Building Standards Code relating to fire and panic safety shall be subject to subdivision (b) of Section 18941.5.

(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) (1) A city, county, or city and county that ratifies an ordinance relating to fire and panic safety pursuant to this section shall delegate the enforcement of the ordinance to either of the following:

(A) The chief of the fire protection district that adopted the ordinance, or his or her authorized representative.

(B) The chief building official of the city, county, or city and county, or his or her authorized representative.

(2) Any fee charged pursuant to the enforcement authority of this subdivision shall not exceed the estimated reasonable cost of providing the service for which the fee is charged, pursuant to Section 66014 of the Government Code.

SEC. 14. Section 19870 of the Health and Safety Code is amended to read:

19870. (a) As a result of construction inspection, an enforcement agency shall not impose a new or modified building standard different from those specified in the plans and specifications approved during plan checking functions for which a building permit is issued, unless the enforcement agency determines that any of the following apply:

(1) The standard is necessary to correct a violation of the governing code or standard and to protect the public health or safety.

(2) The plans and specifications did not reference the standard or were not in sufficient detail.

(3) There is a deviation, addition, or deletion from the plan.

(4) There are modifications to the plan by the permittee.

(5) The permit is deemed expired because the building or work authorized by the permit is not commenced within 180 days from the date of the permit, or the permittee has suspended or abandoned the work authorized by the permit at any time after the work is commenced.

(6) The permit is deemed suspended or revoked pursuant to subdivision (e) of Section 303 of the latest adopted version of the Uniform Building Code.

(b) As used in this chapter:

(1) "Building standard" means a building standard as defined in Section 18909, or other standard adopted by a local agency pursuant to Section 17958 or subdivision (c) of Section 18941.5, that was effective on the date of the application for the building permit.

(2) "Enforcement agency" means any department of a local agency that has the authority to inspect a construction or renovation project and enforce health, safety, or building codes including, but not limited to, the building department or building division, the fire department or fire district, and the health department.

(3) "Local agency" means a city, county, or city and county.

(4) "Plans and specifications" mean the plans, drawings, and specifications for a construction or renovation project, for which a building permit was issued, which relates to buildings classified for occupancy as a building of Group A, B, and R-1, pursuant to the 1991, Edition of the Uniform Building Code of the International Conference of Building Officials.

(5) "Building inspector" means any employee or contractor of an enforcement agency who performs inspections of a construction or renovation project for the purpose of assuring compliance with adopted uniform building codes and standards.

(6) "Supervisor" means any employee of any enforcement agency to whom a building inspector reports and who is responsible for reviewing a building inspector's project approvals or denials or modification orders.

(7) "Permittee" means a building owner, building property manager, or authorized representative to whom a building permit is issued by the enforcement agency.

(c) (1) If an enforcement agency requires that a new or modified building standard be met pursuant to the condition set forth in paragraph (1) of subdivision (a), the building inspector, within two working days of ordering the standard shall provide the permittee, in writing on a form prescribed by the enforcement agency, a description of the specific threat to public health and safety and the section of the applicable building code or standard that has been violated or not complied with, and the interpretations and reasons for differing from the approved plans and specifications.

(2) If an enforcement agency requires that a new or modified building standard be met pursuant to the condition set forth in paragraph (2) of subdivision (a), the building inspector, within two working days of ordering the standard, shall provide the permittee, in writing on a form prescribed by the enforcement agency, the applicable building code or standard that has been violated or not complied with, and a description of how that standard is applicable and necessary to the construction or renovation project for which the building permit is issued.

(3) If an enforcement agency requires that a new or modified building standard be met pursuant to the condition set forth in paragraph (3) or (4) of subdivision (a), the building inspector, within two working days of ordering the standard, shall provide the permittee, in writing on a form prescribed by the enforcement agency, the applicable building code or standard that has been violated or not complied with, and the deviations, additions, or deletions from, or the modifications to, the plan, as the case may be, which results in a violation or noncompliance with an applicable building code or standard.

(d) If an enforcement agency requires a new or modified building standard that the permittee certifies to the enforcement agency would result in a cumulative increase in the overall cost of the construction or renovation project of 10 percent or more, all findings

made by a building inspector pursuant to subdivision (c) shall be reviewed and approved in writing by the supervisor of the construction inspector within five working days of the order for a new or modified building standard. No certificate of occupancy may be denied if the findings of a construction supervisor are not so approved.

(e) A copy of all findings made by the building inspector pursuant to subdivision (c) shall be sent to the department within the local agency that is responsible for reviewing and approving the plans and specifications during the plan checking functions for which the building permit is issued.

(f) Compliance with subdivisions (c) and (d) shall not be required if, at the time an enforcement agency imposes a new or modified building standard, the building inspector, the building inspector's supervisor, and the permittee consult with one another within two working days of imposing the standard, and the permittee agrees with the enforcement agency's order.

SEC. 14.3. The heading of Article 86.5 (commencing with Section 21195) of Chapter 1.5 of Part 3 of Division 2 of the Public Contract Code is amended to read:

Article 86.5. Solano County Water Agency

SEC. 14.4. Section 21195 of the Public Contract Code is amended to read:

21195. The provisions of this article shall apply to contracts by the Solano County Water Agency, as provided for in Chapter 573 of the Statutes of 1989.

SEC. 14.5. Section 97.035 of the Revenue and Taxation Code, as amended by Assembly Bill 1519 of the 1993–94 Regular Session of the Legislature, is amended to read:

97.035. Notwithstanding any other provision of this chapter, the computations and allocations made by each county pursuant to Section 97, as modified by Section 97.03 for the 1992–93 fiscal year, shall be modified for the 1993–94 fiscal year pursuant to subdivisions (a) to (c), inclusive, as follows:

(a) The amount of property tax revenue deemed allocated in the prior fiscal year to each county and city and county shall be reduced by an amount to be determined by the Director of Finance in accordance with the following:

(1) The total amount of the property tax reductions for counties and cities and counties determined pursuant to this section shall be one billion nine hundred ninety-eight million dollars ($1,998,000,000) in the 1993–94 fiscal year.

(2) The Director of Finance shall determine the amount of the reduction for each county or city and county as follows:

(A) The proportionate share of the property tax revenue reduction for each county or city and county that would have been imposed on all counties under the proposal specified in the "May

Revision of the 1993–94 Governor's Budget" shall be determined by reference to the document entitled "Estimated County Property Tax Transfers Under Governor's May Revision Proposal," published by the Legislative Analyst's Office on June 1, 1993.

(B) Each county's or city and county's proportionate share of total taxable sales in all counties in the 1991–92 fiscal year shall be determined.

(C) An amount for each county and city and county shall be determined by applying its proportionate share determined pursuant to subparagraph (A) to the one billion nine hundred ninety-eight million dollar ($1,998,000,000) statewide reduction for counties and cities and counties.

(D) An amount for each county and city and county shall be determined by applying its proportionate share determined pursuant to subparagraph (B) to the one billion nine hundred ninety-eight million dollar ($1,998,000,000) statewide reduction for counties and cities and counties.

(E) The Director of Finance shall add the amounts determined pursuant to subparagraphs (C) and (D) for each county and city and county, and divide the resulting figure by two. The amount so determined for each county and city and county shall be divided by a factor of 1.038. The resulting figure shall be the amount of property tax revenue to be subtracted from the amount of property tax revenue deemed allocated in the prior fiscal year.

(3) The Director of Finance shall, by July 15, 1993, report to the Joint Legislative Budget Committee its determination of the amounts determined pursuant to paragraph (2).

(4) On or before August 15, 1993, the Director of Finance shall notify the auditor of each county and city and county of the amount of property tax revenue reduction determined for each county and city and county.

(5) Notwithstanding any other provision of this subdivision, the amount of the reduction specified in paragraph (1) for any county or city and county that has first implemented, for the 1993–94 fiscal year, the alternative procedure for the distribution of property tax levies authorized by Chapter 2 (commencing with Section 4701) of Part 8 shall be reduced, for the 1993–94 fiscal year only, in the amount of any increased revenue allocated to school districts, county offices of education, and community college districts that would not have been allocated for the 1993–94 fiscal year but for the implementation of that alternative procedure.

(b) The amount of property tax revenue deemed allocated in the prior fiscal year to each city shall be reduced by an amount to be determined by the Director of Finance in accordance with the following:

(1) The total amount of the property tax reductions determined for cities pursuant to this section shall be two hundred eighty-eight million dollars ($288,000,000) in the 1993–94 fiscal year.

(2) The Director of Finance shall determine the amount of

reduction for each city as follows:

(A) The amount of property tax revenue that is estimated to be attributable in the 1993–94 fiscal year to the amount of each city's state assistance payment received by that city pursuant to Chapter 282 of the Statutes of 1979 shall be determined.

(B) A factor for each city equal to the amount determined pursuant to subparagraph (A) for that city, divided by the total of the amounts determined pursuant to subparagraph (A) for all cities, shall be determined.

(C) An amount for each city equal to the factor determined pursuant to subparagraph (B), multiplied by three hundred eighty-two million five hundred thousand dollars ($382,500,000), shall be determined.

(D) In no event shall the amount for any city determined pursuant to subparagraph (C) exceed a per capita amount of nineteen dollars and thirty-one cents ($19.31), as determined in accordance with that city's population on January 1, 1993, as estimated by the Department of Finance.

(E) The amount determined for each city pursuant to subparagraphs (C) and (D) shall be the amount of property tax revenue to be subtracted from the amount of property tax revenue deemed allocated in the prior year.

(3) The Director of Finance shall, by July 15, 1993, report to the Joint Legislative Budget Committee those amounts determined pursuant to paragraph (2).

(4) On or before August 15, 1993, the Director of Finance shall notify each county auditor of the amount of property tax revenue reduction determined for each city located within that county.

(c) (1) The amount of property tax revenue deemed allocated in the prior fiscal year to each special district, as defined pursuant to subdivision (m) of Section 95, shall be reduced by the amount determined for the district pursuant to paragraph (3) and increased by the amount determined for the district pursuant to paragraph (4). The total net amount of these changes is intended to equal two hundred forty-four million dollars ($244,000,000) in the 1993–94 fiscal year.

(2) Notwithstanding any other provision of this subdivision, no reduction shall be made pursuant to this subdivision with respect to any of the following special districts:

(A) A local hospital district as described in Division 23 (commencing with Section 32000) of the Health and Safety Code.

(B) A water agency that does not sell water at retail, but not including an agency the primary function of which, as determined on the basis of total revenues, is flood control.

(C) A transit district.

(D) A police protection district formed pursuant to Part 1 (commencing with Section 20000) of Division 14 of the Health and Safety Code.

(E) A special district that was a multicounty special district as of

July 1, 1979.

(3) On or before September 15, 1993, the county auditor shall determine an amount for each special district equal to the amount of its allocation determined pursuant to Sections 96 or 97, and 98 for the 1993–94 fiscal year multiplied by the ratio determined pursuant to paragraph (1) of subdivision (a) of Section 98.6 as that section read on June 15, 1993. In those counties that were subject to Sections 98.65, 98.66, 98.67, and 98.68, the county auditor shall determine an amount for each special district that represents the current amount of its allocation determined pursuant to Sections 96 or 97, and 98 for the 1993–94 fiscal year that is attributed to the property tax shift from schools required by Chapter 282 of the Statutes of 1979. In determining this amount, the county auditor shall adjust for the influence of increased assessed valuation within each district, including the effect of jurisdictional changes, and the reductions in property tax allocations required in the 1992–93 fiscal year by Chapters 699 and 1369 of the Statutes of 1992. In the case of a special district that has been consolidated or reorganized, the auditor shall determine the amount of its current property tax allocation that is attributable to the prior district's or districts' receipt of state assistance payments pursuant to Chapter 282 of the Statutes of 1979. Notwithstanding any other provision of this paragraph, for a special district that is governed by a city council or whose governing board has the same membership as a city council and that is a subsidiary district as defined in subdivision (e) of Section 16271 of the Government Code, the county auditor shall multiply the amount that otherwise would be calculated pursuant to this paragraph by 0.38 and the result shall be used in the calculations required by paragraph (5). In no event shall the amount determined by this paragraph be less than zero.

(4) (A) On or before September 15, 1993, the county auditor shall determine an amount for each special district that is engaged in fire protection activities, as reported to the Controller for inclusion in the 1989–90 Edition of the Financial Transactions Report Concerning Special Districts under the heading of "Fire Protection," that is equal to the amount of revenue allocated to that special district from the Special District Augmentation Fund for fire protection activities in the 1992–93 fiscal year. In the case of a special district, other than a special district governed by the county board of supervisors or whose governing body is the same as the county board of supervisors, that is engaged in fire protection activities as reported to the Controller, the county auditor shall also determine the amount by which the district's amount determined pursuant to paragraph (3) exceeds the amount by which its allocation was reduced by operation of Section 98.6 in the 1992–93 fiscal year. This amount shall be added to the amount otherwise determined for the district under this paragraph. In any county subject to Section 98.65, 98.66, 98.67, or 98.68, the county auditor shall determine for each special district that is engaged in fire protection activities an amount that is equal to the

amount determined for that district pursuant to paragraph (3).

(B) For purposes of this paragraph, a special district includes any special district that is allocated property tax revenue pursuant to this chapter and does not appear in the State Controller's Report on Financial Transactions Concerning Special Districts, but is engaged in fire protection activities and appears in the State Controller's Report on Financial Transactions Concerning Counties.

(5) The total amount of property taxes allocated to special districts by the county auditor as a result of paragraph (4) shall be subtracted from the amount of property tax revenues not allocated to special districts by the county auditor as a result of paragraph (3) to determine the amount to be deposited in the Education Revenue Augmentation Fund as specified in subdivision (d).

(6) On or before September 30, 1993, the county auditor shall notify the Director of Finance of the net amount determined for special districts pursuant to paragraph (5).

(d) (1) The amount of property tax revenues not allocated to the county, city and county, cities within the county, and special districts as a result of the reductions required by subdivisions (a), (b), and (c) shall instead be deposited in the Educational Revenue Augmentation Fund established in each county or city and county pursuant to Section 97.03. The amount of revenue in the Educational Revenue Augmentation Fund, derived from whatever source, shall be allocated pursuant to paragraphs (2) and (3) to school districts and county offices of education, in total, and to community college districts, in total, in the same proportion that property tax revenues were distributed to school districts and county offices of education, in total, and community college districts, in total, during the 1992–93 fiscal year.

(2) The county auditor shall, based on information provided by the county superintendent of schools pursuant to this paragraph, allocate that proportion of the revenue in the Educational Revenue Augmentation Fund to be allocated to school districts and county offices of education only to those school districts and county offices of education within the county that are not excess tax school entities, as defined in Section 95.1. The county superintendent of schools shall determine the amount to be allocated to each school district in inverse proportion to the amounts of property tax revenue per average daily attendance in each school district. For each county office of education, the allocation shall be made based on the historical split of base property tax revenue between the county office of education and school districts within the county. In no event shall any additional money be allocated from the Educational Revenue Augmentation Fund to a school district or county office of education upon that district or county office of education becoming an excess tax school entity. If, after determining the amount to be allocated to each school district and county office of education, the county superintendent of schools determines there are still additional funds to be allocated, the county superintendent of schools

shall determine the remainder to be allocated in inverse proportion to the amounts of property tax revenue, excluding Educational Revenue Augmentation Fund moneys, per average daily attendance in each remaining school district, and on the basis of the historical split described above for each county office of education, that is not an excess tax school entity until all funds that would not result in a school district or county office of education becoming an excess tax school entity are allocated. The county superintendent of schools may determine the amounts to be allocated between each school district and county office of education to ensure that all funds that would not result in a school district or county office of education becoming an excess tax school entity are allocated.

(3) The county auditor shall, based on information provided by the Chancellor of the California Community Colleges pursuant to this paragraph, allocate that proportion of the revenue in the Educational Revenue Augmentation Fund to be allocated to community college districts only to those community college districts within the county that are not excess tax school entities, as defined in Section 95.1. The chancellor shall determine the amount to be allocated to each community college district in inverse proportion to the amounts of property tax revenue per funded full-time equivalent student in each community college district. In no event shall any additional money be allocated from the Educational Revenue Augmentation Fund to a community college district upon that district becoming an excess tax school entity.

(4) If, after making the allocation required pursuant to paragraph (2), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (3). If, after making the allocation pursuant to paragraph (3), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (2). If, after determining the amount to be allocated to each community college district, the Chancellor of the California Community Colleges determines that there are still additional funds to be allocated, the Chancellor of the California Community Colleges shall determine the remainder to be allocated to each community college district in inverse proportion to the amounts of property tax revenue, excluding Educational Revenue Augmentation Fund moneys, per funded full-time equivalent student in each remaining community college district that is not an excess tax school entity until all funds that would not result in a community college district becoming an excess tax school entity are allocated.

(5) For purposes of allocations made pursuant to Section 97 for the 1994–95 fiscal year, the amounts allocated from the Educational Revenue Augmentation Fund pursuant to this subdivision, other than those amounts deposited in the Educational Revenue Augmentation Fund pursuant to any provision of the Health and Safety Code, shall be deemed property tax revenue allocated to the Educational Revenue Augmentation Fund in the prior fiscal year.

SEC. 14.6. Section 97.038 is added to the Revenue and Taxation Code, to read:

97.038. Notwithstanding Section 97.035, a special district does not include, for purposes of the reductions required by that section, a memorial district formed pursuant to Article 1 (commencing with Section 1170) of Chapter 1 of Part 2 of Division 6 of the Military and Veteran's Code.

SEC. 15. Section 30540 of the Water Code is amended to read:

30540. (a) The board shall, at its first meeting or as soon thereafter as practicable, appoint by a majority vote a general manager and a secretary.

(b) The board shall also, by majority vote, do either of the following:

(1) Appoint an auditor or treasurer to carry out the duties required by Section 30582 and other duties required by the board.

(2) Retain an auditor as an independent contractor, other than the auditor or treasurer appointed pursuant to paragraph (1), to conduct an annual audit of the district's books, records, and financial affairs.

SEC. 16. Section 201 of the Placer County Flood Control and Water Conservation District Act (Statutes of 1984, Chapter 689) is amended to read:

Sec. 201. The board of supervisors acting ex officio as the board of directors may, upon the vote of at least four of its members, adopt a resolution either: (1) appointing a board of directors composed of one director for each supervisorial district in the county, each of whom shall be an eligible voter within the supervisorial district he or she is appointed to represent, and fixing a time and date on which the newly appointed directors shall take office, at which time the board of supervisors shall cease to be the ex officio board of directors, (2) call a general district election or special election to fill the seats on the board of directors by election, in which event the board of supervisors shall cease to be the ex officio board of directors at the time the elected board of directors takes office, or (3) providing for a board of directors composed of two members of the board of supervisors, one member at large appointed by the board of supervisors, and one member of the city council of each incorporated city within the county appointed by the city council.

SEC. 17. Section 7.1 of the Santa Clara County Flood Control and Water District Act is amended to read:

Sec. 7.1. Each of the five elected members shall be nominated and elected by the electors of the supervisorial district which he represents at the times and in the manner provided by general law for the election of county supervisors. Elected directors from the second, third and fifth supervisorial districts shall be first elected at the general election held in 1968. Elected directors from the first and fourth districts shall be first elected at the general election held in 1970. At each general election thereafter, either three or two directors, as the case may be, shall be elected. The term of office shall

begin at noon on the first Monday in January following the election period. In order to be eligible for election or appointment each director must be a qualified elector in the district he represents, and must continue to reside therein during his incumbency in office provided however no change in boundaries of a supervisorial district shall affect the term of office of any director. Every member of the board, whether elected or appointed, may be recalled by the voters in accordance with the recall provisions of Chapter 2 (commencing with Section 27200) of Division 14 of the Elections Code applicable to officers of counties.

SEC. 18. Section 4 of the Sonoma County Flood Control and Water Conservation District Act is amended to read:

Sec. 4. The Board of Supervisors of the County of Sonoma shall be, and they are hereby designated as, and empowered to act as, ex officio the board of the district and shall exercise the powers of the district enumerated in this act, except as otherwise provided, and may perform all other acts necessary or proper, in their discretion, to accomplish the purposes of this act. The board may adopt and enforce reasonable rules and regulations for the administration and government of the district and to facilitate the exercise of its powers and duties herein set forth and may employ and fix the compensation of all necessary agents and employees to look after the performance of any work or improvement provided in this act. The members of the board of directors of the district shall receive no additional compensation for their services as such, but each shall receive his or her actual and necessary expenses in the performance of his or her duties under this act, payable from the fund of said district. The directors shall elect a chairman, who shall preside at all meetings of the board and in case of his or her absence or inability to act, the members present must by an order entered in their minutes, select one of their number to act as chairman temporarily. Any member of the board may administer oaths, when necessary in the performance of his or her official duties. A majority of the members of the board shall constitute a quorum for the transaction of business, and no act of the board shall be valid or binding unless a majority of all members present concur therein.

SEC. 19. Section 6 of the Sonoma County Flood Control and Water Conservation District Act is amended to read:

Sec. 6. The county administrator, county clerk, county assessor, county tax collector, county auditor, county treasurer, county counsel, county purchasing agent, district attorney, their successors in office, and their assistants, deputies, clerks, and employees shall be, unless otherwise provided by the board of directors, ex officio such officials of the district, and shall respectively perform, without additional compensation, the same various duties for the district as for the county in order to carry out the provisions of this act. The district may, by agreement with the county, reimburse the county for all costs and expenses incurred by reason of the performance of those duties by the county clerk, county administrator, and by

members of the board of supervisors, for the district. Any agreement shall require the filing by county and approval by the district of itemized claims for those costs and expenses.

SEC. 20. Section 19 of Assembly Bill 1519 of the 1993–94 Regular Session of the Legislature is amended to read:

Sec. 19. (a) It is the intent of the Legislature in enacting Section 97.035 of the Revenue and Taxation Code to transfer from special districts to the Educational Revenue Augmentation Fund an amount of property tax revenue not to exceed the greater of the following:

(1) The amount of property tax revenues attributable to the current value of fiscal relief pursuant to Article XIII A of the California Constitution.

(2) The reductions made pursuant to Section 97.03.

(b) This section shall be operative only if Assembly Bill 1519 of the 1993–94 Regular Session of the Legislature is chaptered.

SEC. 21. Section 14.5 of this bill incorporates amendments to Section 97.035 of the Revenue and Taxation Code proposed by both this bill and AB 1519. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 97.035 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 1519, in which case Section 97.035 of the Revenue and Taxation Code, as amended by AB 1519, shall remain operative only until the operative date of this bill, at which time Section 14.5 of this bill shall become operative.

SEC. 23. 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. 24. All sections of this bill except Sections 14.5 and 20 shall become operative January 1, 1994.

SEC. 25. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify ambiguities under current law which will enable local agencies to carry out their duties and responsibilities in a timely, effective, and efficient manner, it is necessary that this act take immediate effect.

CHAPTER 907

An act to add Section 25511 to the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 25511 is added to the Business and Professions Code, to read:

25511. (a) Notwithstanding any other provision of this division, any licensee or officer, director, employee, or agent of a licensee that holds no more than eight on-sale licenses may also hold not more than 16.67 percent of the stock of a corporation that holds beer manufacturer licenses issued pursuant to paragraph (1) of subdivision (a) of Section 23320 that are located in Sacramento, Placer, El Dorado, Marin, or Napa County, and may serve on the board of directors and as an officer or employee of that corporate licensed beer manufacturer.

(b) An on-sale licensee specified in subdivision (a) shall purchase no alcoholic beverages for sale in this state other than from a licensed wholesaler or winegrower.

(c) In enacting this section, the Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exception established by this section to the general prohibition against tied-house interests must be limited to its expressed terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

CHAPTER 908

An act to amend Sections 747, 1032, 1063.5, 1731, 3553, 3584, and 3593 of the Public Utilities Code, relating to public utilities.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 747 of the Public Utilities Code is amended to read:

747. (a) In addition to the incentives program required by Section 746, the commission shall require one or more electric utilities to implement pilot projects to accomplish the following:

(1) On or before June 30, 1991, begin to test separately from any generation resource bidding system the ability of demand side bidding to deliver benefits to utility customers.

(2) At the earliest practicable time, test the feasibility of an integrated bidding system that includes both generation resources and demand side programs.

(b) The commission shall establish a pilot program for gas utilities which tests a program of competitive bidding auctions for demand side services which deliver benefits to utility customers. However, a pilot program shall not apply to customer classes for which the gas utility is at risk for loss of sales or revenues due to the lack of a sales adjustment mechanism.

(c) At the earliest practicable time, the commission, in consultation with the State Energy Resources Conservation and Development Commission, shall report the results of the pilot projects required by subdivisions (a) and (b) to the Legislature. The report shall assess the feasibility and implications of implementing the tested bidding systems and shall include recommendations on whether or not the state should adopt either, or both, of the following:

(1) An integrated bidding system that allows demand side services to compete with generation resources to fulfill future electric utility resource needs, or a program of separate bidding auctions for demand side services which deliver benefits to electric utility customers.

(2) A program of separate bidding auctions for demand side services which deliver benefits to natural gas utility customers.

SEC. 1.5. Section 1032 of the Public Utilities Code is amended to read:

1032. (a) Every applicant for a certificate shall file in the office of the commission an application therefor in the form required by the commission. The applicant shall forward a copy of the application to each public transit operator operating in any portion of the territory sought to be served by the applicant. The commission may, with or without a hearing, issue the certificate as requested, or refuse to issue it, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate terms and conditions that, in its judgment, the public convenience and necessity require.

(b) The commission may, after a hearing, issue a certificate to operate in a territory already served by a certificate holder under this part only when the existing passenger stage corporation or corporations serving the territory will not provide that service to the satisfaction of the commission.

(c) Before issuing a certificate, the commission shall consider the effect of the applicant's proposed operations on the services, either

provided directly or by contract, furnished by any public transit operator.

SEC. 2. Section 1063.5 of the Public Utilities Code is amended to read:

1063.5. (a) The commission shall issue or authorize the transfer of no certificate under this article except upon a showing before the commission and a finding by the commission that the applicant or proposed transferee meets all of the following requirements:

(1) Is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol governing highway safety.

(2) Is committed to observing the hours of service regulations of state and, where applicable, federal law, for all persons, whether employees or subhaulers, operating vehicles in transportation for compensation under the certificate.

(3) Has a preventive maintenance program in effect for its vehicles used in transportation for compensation that conforms to regulations of the Department of the California Highway Patrol in Title 13 of the California Code of Regulations.

(4) Participates in a program to regularly check the driving records of all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation requiring a class A driver's license under the certificate.

(5) Has a safety education and training program in effect for all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation.

(6) Will maintain its vehicles used in transportation for compensation in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety.

(7) Has filed with the commission the certificate of workers' compensation insurance coverage or statement required by Section 460.5.

(8) Has provided the commission an address of an office or terminal where documents supporting the factual matters specified in the showing required by this section may be inspected by the commission and the Department of the California Highway Patrol.

(b) With respect to paragraphs (2) and (6) of subdivision (a), the commission may base a finding on a certification by the commission that an applicant has filed, with the commission, a sworn declaration of ability to comply and intent to comply.

(c) The commission shall, commencing on April 15, 1989, and quarterly thereafter, prepare and submit to the Legislature a report of its implementation of this section. This report may be combined with the report required by Section 3553.

SEC. 3. Section 1731 of the Public Utilities Code is amended to read:

1731. (a) The commission shall set an effective date when issuing

an order or decision. The commission may set the effective date of an order or decision prior to the date of issuance of the order or decision.

(b) After any order or decision has been made by the commission, any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, may apply for a rehearing in respect to any matters determined in the action or proceeding and specified in the application for rehearing. The commission may grant and hold a rehearing on those matters, if in its judgment sufficient reason is made to appear. No cause of action arising out of any order or decision of the commission shall accrue in any court to any corporation or person unless the corporation or person has filed an application to the commission for a rehearing within 30 days after the date of issuance or within 10 days after the date of issuance in the case of an order issued pursuant to either Article 5 (commencing with Section 816) or Article 6 (commencing with Section 851) of Chapter 4 relating to security transactions and the transfer or encumbrance of utility property. For purposes of this article, "date of issuance" means the date when the commission mails the order or decision to the parties to the action or proceeding.

SEC. 4. Section 3553 of the Public Utilities Code is amended to read:

3553. (a) The commission shall issue or authorize the transfer of no permit under this chapter except upon a showing before the commission and a finding by the commission that the applicant or proposed transferee meets all of the following requirements:

(1) Is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol governing highway safety.

(2) Is committed to observing the hours of service regulations of state and, where applicable, federal law, for all persons, whether employees or subhaulers, operating vehicles in transportation for compensation under the permit.

(3) Has a preventive maintenance program in effect for its vehicles used in transportation for compensation that conforms to regulations of the Department of the California Highway Patrol in Title 13 of the California Code of Regulations.

(4) Participates in a program to regularly check the driving records of all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation requiring a class A driver's license under the permit.

(5) Has a safety education and training program in effect for all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation.

(6) Will maintain its vehicles used in transportation for compensation in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the

California Code of Regulations relative to motor vehicle safety.

(7) Has filed with the commission the certificate of workers' compensation insurance coverage or statement required by Section 3554.

(8) Has provided the commission an address of an office or terminal where documents supporting the factual matters specified in the showing required by this section may be inspected by the commission and the Department of the California Highway Patrol.

(b) With respect to paragraphs (2) and (6) of subdivision (a), the commission may base a finding on a certification by the commission that an applicant has filed, with the commission, a sworn declaration of ability to comply and intent to comply.

(c) The commission shall, commencing on April 15, 1989, and quarterly thereafter, prepare and submit to the Legislature a report of its implementation of this section. This report may be combined with the report required by Section 1063.5.

SEC. 4.5. Section 3553 of the Public Utilities Code is amended to read:

3553. (a) The commission shall issue or authorize the transfer of no permit under this chapter except upon a showing before the commission and a finding by the commission that the applicant or proposed transferee meets all of the following requirements:

(1) Is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol governing highway safety.

(2) Is committed to observing the hours of service regulations of state and, where applicable, federal law, for all persons, whether employees or subhaulers, operating vehicles in transportation for compensation under the permit.

(3) Has a preventive maintenance program in effect for its vehicles used in transportation for compensation that conforms to regulations of the Department of the California Highway Patrol in Title 13 of the California Code of Regulations.

(4) Participates in a program to regularly check the driving records of all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation requiring a class A driver's license under the permit.

(5) Has a safety education and training program in effect for all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation.

(6) Will maintain its vehicles used in transportation for compensation in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety.

(7) Has filed with the commission the workers' compensation document required by Section 3554 for its employees or a certificate of consent to self-insure, issued by the Director of Industrial Relations or its successor agency.

(8) Has provided the commission an address of an office or terminal where documents supporting the factual matters specified in the showing required by this section may be inspected by the commission and the Department of the California Highway Patrol.

(b) With respect to paragraphs (2) and (6) of subdivision (a), the commission may base a finding on a certification by the commission that an applicant has filed, with the commission, a sworn declaration of ability to comply and intent to comply.

(c) As provided in subdivision (d) of Section 3584, the commission may delegate to its executive director or the executive director's designee the authority to issue, or authorize the transfer of, seasonal agricultural carrier permits and to make the findings specified in subdivisions (a) and (b) of this section and subdivisions (b) and (c) of Section 3584 necessary to exercise the delegated authority.

(d) The commission shall, commencing on April 15, 1989, and quarterly thereafter, prepare and submit to the Legislature a report of its implementation of this section. This report may be combined with the report required by Section 1063.5.

SEC. 5. Section 3584 of the Public Utilities Code is amended to read:

3584. (a) Except as provided in Section 3583, any highway carrier desiring a permit to operate as a livestock carrier or an agricultural carrier shall file an application therefor with the commission. The application shall set forth all of the following:

(1) The name and address of the applicant.

(2) The names and addresses of its officers, if any.

(3) Full information concerning the financial condition and physical properties of the applicant.

(4) Such other information necessary to the enforcement of this article as the commission may require.

(b) The commission shall not issue or authorize the transfer of any permit under this chapter except upon a showing before the commission and a finding by the commission that the applicant or proposed transferee meets all of the following requirements:

(1) Is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol governing highway safety.

(2) Is committed to observing the hours of service regulations of state and, where applicable, federal law, for all persons, whether employees or subhaulers, operating vehicles in transportation for compensation under the permit.

(3) Has a preventive maintenance program in effect for its vehicles used in transportation for compensation that conforms to regulations of the Department of the California Highway Patrol in Title 13 of the California Code of Regulations.

(4) Participates in a program to regularly check the driving records of all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation requiring a class A

driver's license under the permit.

(5) Has a safety education and training program in effect for all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation.

(6) Will maintain its vehicles used in transportation for compensation in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety.

(7) Has filed with the commission a certificate of workers' compensation insurance coverage for its employees or a certificate of consent to self-insure issued by the Director of Industrial Relations.

(8) Has provided the commission an address of an office or terminal where documents supporting the factual matters specified in the showing required by this section may be inspected by the commission and the Department of the California Highway Patrol.

(c) With respect to paragraphs (2) and (6) of subdivision (b), the commission may base a finding on a certification by the commission that an applicant has filed, with the commission, a sworn declaration of ability to comply and intent to comply.

(d) The commission shall, commencing on April 15, 1991, and quarterly thereafter, prepare and submit to the Legislature a report of its implementation of this section. This report may be combined with the report required by Section 1063.5.

SEC. 5.5. Section 3584 of the Public Utilities Code is amended to read:

3584. (a) Except as provided in Section 3583, any highway carrier desiring a permit to operate as a livestock carrier or an agricultural carrier shall file an application therefor with the commission. The application shall set forth all of the following:

(1) The name and address of the applicant.

(2) The names and addresses of its officers, if any.

(3) Full information concerning the financial condition and physical properties of the applicant.

(4) Other information necessary to the enforcement of this article as the commission may require.

(b) The commission shall not issue or authorize the transfer of any permit under this chapter except upon a showing before the commission and a finding by the commission that the applicant or proposed transferee meets all of the following requirements:

(1) Is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol governing highway safety.

(2) Is committed to observing the hours of service regulations of state and, where applicable, federal law, for all persons, whether employees or subhaulers, operating vehicles in transportation for compensation under the permit.

(3) Has a preventive maintenance program in effect for its

vehicles used in transportation for compensation that conforms to regulations of the Department of the California Highway Patrol in Title 13 of the California Code of Regulations.

(4) Participates in a program to regularly check the driving records of all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation requiring a class A driver's license under the permit.

(5) Has a safety education and training program in effect for all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation.

(6) Will maintain its vehicles used in transportation for compensation in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety.

(7) Has filed with the commission a certificate of workers' compensation insurance coverage for its employees or a certificate of consent to self-insure issued by the Director of Industrial Relations.

(8) Has provided the commission an address of an office or terminal where documents supporting the factual matters specified in the showing required by this section may be inspected by the commission and the Department of the California Highway Patrol.

(c) With respect to paragraphs (2) and (6) of subdivision (b), the commission may base a finding on a certification by the commission that an applicant has filed, with the commission, a sworn declaration of ability to comply and intent to comply.

(d) The commission may delegate to its executive director or the executive director's designee the authority to issue, or authorize the transfer of, seasonal agricultural carrier permits and to make the findings specified in subdivisions (b) and (c) necessary to exercise the delegated authority.

(e) The commission shall, commencing on April 15, 1991, and quarterly thereafter, prepare and submit to the Legislature a report of its implementation of this section. This report may be combined with the report required by Section 1063.5.

SEC. 6. Section 3593 of the Public Utilities Code is amended to read:

3593. (a) Except as provided in Section 3592.5, any highway carrier desiring a permit to operate as a tank truck or vacuum truck carrier shall file a petition therefor with the commission. The petition shall set forth all of the following:

(1) The name and address of the applicant.

(2) The names and addresses of the applicant's officers, if any.

(3) Full information concerning the financial condition and physical properties of the applicant.

(4) Such other information necessary to the enforcement of this chapter as the commission may require.

(b) The commission shall not issue or authorize the transfer of any permit under this chapter except upon a showing before the

commission and a finding by the commission that the applicant or proposed transferee meets all of the following requirements:

(1) Is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol governing highway safety.

(2) Is committed to observing the hours of service regulations of state and, where applicable, federal law, for all persons, whether employees or subhaulers, operating vehicles in transportation for compensation under the permit.

(3) Has a preventive maintenance program in effect for its vehicles used in transportation for compensation that conforms to regulations of the Department of the California Highway Patrol in Title 13 of the California Code of Regulations.

(4) Participates in a program to regularly check the driving records of all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation requiring a class A driver's license under the permit.

(5) Has a safety education and training program in effect for all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation.

(6) Will maintain its vehicles used in transportation for compensation in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety.

(7) Has filed with the commission a certificate of workers' compensation insurance coverage for its employees or a certificate of consent to self-insure issued by the Director of Industrial Relations.

(8) Has provided the commission an address of an office or terminal where documents supporting the factual matters specified in the showing required by this section may be inspected by the commission and the Department of the California Highway Patrol.

(c) With respect to paragraphs (2) and (6) of subdivision (b), the commission may base a finding on a certification by the commission that an applicant has filed, with the commission, a sworn declaration of ability to comply and intent to comply.

(d) The commission shall, commencing on April 15, 1991, and quarterly thereafter, prepare and submit to the Legislature a report of its implementation of this section. This report may be combined with the report required by Section 1063.5.

SEC. 7. Section 4.5 of this bill incorporates amendments to Section 3553 of the Public Utilities Code proposed by both this bill and AB 1646. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 3553 of the Public Utilities Code, and (3) this bill is enacted after AB 1646, in which case Section 4 of this bill shall not become operative.

SEC. 8. Section 5.5 of this bill incorporates amendments to

Section 3584 of the Public Utilities Code proposed by both this bill and AB 1646. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 3584 of the Public Utilities Code, and (3) this bill is enacted after AB 1646, in which case Section 5 of this bill shall not become operative.

CHAPTER 909

An act to amend Sections 695.220 and 695.520 of the Code of Civil Procedure, to amend Sections 22754.1, 68113, 68511.3, 68544, and 77003 of, to add Section 68114.7 to, and to repeal Sections 77001, 77009, 77010 and 77011 of, the Government Code, to amend Sections 94 and 1170.4 of, and to add Section 809 to, the Penal Code, and to amend Section 40508 of the Vehicle Code, relating to the judiciary.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 695.220 of the Code of Civil Procedure is amended to read:

695.220. Money received in satisfaction of a money judgment, except a money judgment for child support, is to be credited as follows:

(a) The money is first to be credited against the amounts described in subdivision (b) of Section 685.050 that are collected by the levying officer.

(b) Any remaining money is next to be credited against any fee due the court pursuant to Section 6103.5 or 68511.3 of the Government Code, which are to be remitted to the court by the levying officer.

(c) Any remaining money is next to be credited against the accrued interest that remains unsatisfied.

(d) Any remaining money is to be credited against the principal amount of the judgment remaining unsatisfied. If the judgment is payable in installments, the remaining money is to be credited against the matured installments in the order in which they matured.

(e) Satisfaction of a money judgment for child support is to be credited as follows:

(1) The money is first to be credited against the current month's support.

(2) Any remaining money is next to be credited against the accrued interest that remains unsatisfied.

(3) Any remaining money is to be credited against the principal amount of the judgment remaining unsatisfied.

(4) Notwithstanding the above, a collection received as a result of

a tax refund offset is first to be credited against past due support assigned to the state prior to satisfaction pursuant to paragraphs (1), (2), and (3).

SEC. 2. Section 699.520 of the Code of Civil Procedure is amended to read:

699.520. The writ of execution shall require the levying officer to whom it is directed to enforce the money judgment and shall include the following information:

(a) The date of issuance of the writ.

(b) The title of the court where the judgment is entered and the cause and number of the action.

(c) The name and address of the judgment creditor and the name and last known address of the judgment debtor.

(d) The date of the entry of the judgment and of any subsequent renewals and where entered in the records of the court.

(e) The total amount of the money judgment as entered or renewed, together with costs thereafter added to the judgment pursuant to Section 685.090 and the accrued interest on the judgment from the date of entry or renewal of the judgment to the date of issuance of the writ, reduced by any partial satisfactions and by any amounts no longer enforceable.

(f) The amount required to satisfy the money judgment on the date the writ is issued.

(g) The amount of interest accruing daily on the principal amount of the judgment from the date the writ is issued.

(h) Whether any person has requested notice of sale under the judgment and, if so, the name and mailing address of such person.

(i) The sum of the fees and costs added to the judgment pursuant to Section 6103.5 or 68511.3 of the Government Code and which is in addition to the amount owing to the judgment creditor on the judgment.

SEC. 3. Section 22754.1 of the Government Code is amended to read:

22754.1. (a) As used in this part, unless the context otherwise requires, the term "employee" includes any judge of a municipal court or justice court, and the terms "employer" and "contracting agency" with respect to such a judge enrolled in a health benefits plan include the county in which the municipal court or justice court is located, provided that adoption of a resolution under Section 22850 shall not be required. The state is not obligated to make any contribution to health benefit plans for active and retired municipal or justice court judges, except for municipal or justice court judges serving on senior judge status and then only during the time as a municipal or justice court judge is actively serving as a senior judge. A municipal or justice court judge may elect to come under the provisions of this part only within 90 days of assuming office for the first time as such a judge. If a municipal or justice court judge elects to come under the provisions of this part, the county employing the judge shall contribute to the Public Employees' Contingency

Reserve Fund the sums as it would have otherwise contributed to a health benefit plan provided for county employees, unless the municipal or justice court judge elects to enroll under the county health benefit plan. Those contributions shall be applied first to the contribution required of it as an employer under Section 22831 and any remainder shall be applied to the contribution required under Sections 22825 and 22825.6. The municipal or justice court judge whether enrolled as an employee or annuitant shall contribute the cost of that enrollment plus the amount required of an employer under Section 22831 less the amount, if any, contributed by his or her county. A county shall not be required to contribute any portion of the cost of a health benefits plan under this part for a judge after retirement unless the health benefits plan provided for county employees provides that coverage.

(b) No conversion of a county's justice courts to municipal courts or consolidations of justice or municipal court districts pursuant to Chapter 6 (commencing with Section 71001) of Title 8, and no election by a judge or judge's failure to make any election pursuant to those provisions, shall have any effect on the continuation of rights and obligations under this section. Obligations of the county as employer or contracting agency and the rights of a judge as employee under this section are identical and are continuous and of equal force, whether the judge serves on a justice court or municipal court. Nothing in this section shall be construed to authorize any county to pay the member contributions to the Judges' Retirement Fund.

SEC. 4. Section 68113 of the Government Code is amended to read:

68113. (a) The superior, municipal, and justice courts in each county shall submit a report to the Judicial Council on progress towards achieving the cost reduction goals associated with the coordination plans and factors impacting the cost of court operations and the collection of revenues. The report shall also include financial information prepared by the county auditor on expenditures for court operations and revenues according to a uniform chart of accounts adopted by the Judicial Council. The reports shall be submitted quarterly on or before the first day of the third month following the end of the quarter.

(b) For purposes of the reporting requirements of this section, a court or courts in a county may petition the Judicial Council to permit division of the court or courts into smaller administrative units corresponding to the organization of the court or courts under a coordination plan where reporting courtwide would impose an undue burden because of the number of judges or the physical location of the divisions of the court or courts.

(c) The Judicial Council shall submit a report to the Legislature on or before November 1 following the end of each fiscal year setting forth all of the following:

(1) The revenues and expenditures for each superior, municipal,

and justice court in the state and statewide totals.

(2) A summary of the savings achieved by each county and statewide.

(3) Factors impacting the cost of court operations and the collection of revenues.

SEC. 5. Section 68114.7 is added to the Government Code, to read:

68114.7. The coordination, consolidation, merger, or conversion of any court pursuant to this chapter or otherwise shall not of itself cause any reduction in judicial or nonjudicial court employee benefit programs provided or administered by the county pursuant to Chapter 2 (commencing with Section 53200) of Part 1 of Division 2 of Title 5, or pursuant to a memorandum or agreement in effect prior to the effective date of this section. This section does not constitute a change in, but is declaratory of, the existing law. Any reduction or cessation of benefits contrary to this section made between June 30, 1992, and the effective date of this section shall be restored.

SEC. 6. Section 68511.3 of the Government Code, is amended to read:

68511.3. (a) The Judicial Council shall formulate and adopt uniform forms and rules of court for litigants proceeding in forma pauperis. These rules shall provide: (1) for standard procedures for considering and determining applications for permission to proceed in forma pauperis, including, in the event of a denial of such permission, a written statement detailing the reasons for denial and an evidentiary hearing where there is a substantial evidentiary conflict; (2) for standard procedures to toll relevant time limitations when a pleading or other paper accompanied by such an application is timely lodged with the court and delay is caused due to the processing of the application to proceed in forma pauperis; (3) for proceeding in forma pauperis at every stage of the proceedings at both the appellate and trial levels of the court system; (4) for the confidentiality of the financial information provided to the court by these litigants; (5) that the court may authorize the clerk of the court, county financial officer, or other appropriate county officer to make reasonable efforts to verify the litigant's financial condition without compromising the confidentiality of the application; and (6) that permission to proceed in forma pauperis be granted (A) to litigants who declare under penalty of perjury that they are receiving benefits pursuant to the Supplemental Security Income (SSI) and State Supplemental Payments (SSP) programs (Sections 12200–12205.2 of the Welfare and Institutions Code), the Aid to Families with Dependent Children (AFDC) program (42 United States Code 601–644), the Food Stamp program (7 United States Code 2011–2027) or Section 17000 of the Welfare and Institutions Code and (B) to litigants who declare under penalty of perjury that their monthly income is 125 percent or less of the current monthly poverty line annually established by the Secretary of Health and Human Services pursuant to the Omnibus Budget Reconciliation Act

of 1981, as amended, and who submit a financial statement setting forth each item which makes up their monthly income in support of the averment as part of the declaration. The rules shall further provide that the court shall grant permission to proceed in forma pauperis in any other instance in which, in its discretion, such permission is appropriate because the litigant is unable to proceed without using money which is necessary for the use of the litigant or the litigant's family to provide for the common necessaries of life.

(b) The forms and rules shall provide for the disclosure of both of the following:

(1) The current address of the litigant.

(2) The date of birth of the litigant.

The information furnished by the litigant shall be used by the court in determining his or her ability to pay all or a portion of the fees and costs.

(c) At any time within three years after the court has granted a litigant permission to proceed in forma pauperis, the clerk of the court, county financial officer, or other appropriate county officer may notify the court of any changed financial circumstances which may enable the litigant to pay all or a portion of the fees and costs which had been waived. The court may authorize the clerk of the court, county financial officer or other appropriate county officer to require the litigant to appear before and be examined by the court; provided, that no litigant shall be required to appear more than once in any four-month period. The court may then order the litigant to pay to the county such sum and in such manner as the court believes is compatible with the litigant's financial ability.

In any action or proceeding in which the litigant whose fees and costs have been waived would have been entitled to recover those fees and costs from another party to the action or proceeding had they been paid, the court may assess the amount of the waived fees and costs against the other party and order the other party to pay that sum to the county or to the clerk and serving and levying officers respectively, or the court may order the amount of the waived fees and costs added to the judgment and so identified by the clerk.

Execution may be issued on any order provided for in this subdivision in the same manner as on a judgment in a civil action. When an amount equal to the sum due and payable to the clerk has been collected upon the judgment, these amounts shall be remitted to the clerk within 30 days. Thereafter when an amount equal to the sum due to the serving and levying officers has been collected upon the judgment, these amounts shall be due and payable to those officers and shall be remitted within 30 days. If the remittance is not received by the clerk within 30 days or there is a filing of a partial satisfaction of judgment in an amount at least equal to the fees and costs payable to the clerk or a satisfaction of judgment has been filed, notwithstanding any other provision of law, the court may issue an abstract of judgment, writ of execution, or both for recovery of those sums, plus the fees for issuance and execution and an additional fee

for administering this section. The county board of supervisors shall establish a fee, not to exceed actual costs of administering this subdivision and in no case exceeding twenty-five dollars ($25), which shall be added to the writ of execution.

(d) The clerk of the court may dispose of applications for in forma pauperis status three years after the date of filing without the need for microfilming, or the clerk may dispose of applications immediately upon their being microfilmed.

SEC. 7. Section 68544 of the Government Code, as amended by Chapter 158 of the Statutes of 1993, is amended to read:

68544. When the judge files a claim, the Judicial Council shall draw warrants for the payment of extra compensation or expenses as provided in this article.

SEC. 8. Section 77001 of the Government Code is repealed.

SEC. 9. Section 77003 of the Government Code, as amended by Chapter 2 of the Statutes of 1993, is amended to read:

77003. (a) As used in this chapter, "court operations" means all of the following:

(1) Salaries, benefits, and public agency retirement contributions for superior, municipal, and justice court judges and for subordinate judicial officers.

(2) The salary, benefits, and public agency retirement contributions for other court staff including all municipal court staff positions specifically prescribed by statute.

(3) Those marshals, constables, and sheriffs as the court deems necessary for court operations.

(4) Court-appointed counsel in juvenile court dependency proceedings and counsel appointed by the court to represent a minor pursuant to Chapter 10 (commencing with Section 3150) of Part 2 of Division 8 of the Family Code.

(5) Services and supplies relating to court operations.

(6) Collective bargaining under the Meyers-Milias-Brown Act with respect to court employees specified in Section 3501.5.

(7) Actual indirect costs, not to exceed 18 percent of state trial court funding payments to counties for county general services attributable to court operations, but specifically excluding, but not limited to, law library operations conducted by a trust pursuant to statute; courthouse construction; district attorney services; probation services; indigent criminal defense; grand jury expenses and operations; and pretrial release services.

(8) In a county with a population of 350,000 or less as determined by the Department of Finance, to the extent that the block grant for a given fiscal year exceeds the 1987–88 funding level for the trial courts in that county, as adjusted by the current consumer price index, "court operations" includes probation services, indigent criminal defense, and pretrial release services.

(9) The salaries, benefits, and public agency retirement contributions to be used in computing "court operations" are those salaries, benefits, and public agency retirement contributions in

existence on June 30, 1991, and any reclassification made thereafter primarily for purposes of granting a salary increase shall not be applicable for purposes of this section.

SEC. 10. Section 77009 of the Government Code is repealed.

SEC. 11. Section 77010 of the Government Code is repealed.

SEC. 12. Section 77011 of the Government Code is repealed.

SEC. 13. Section 94 of the Penal Code is amended to read:

94. Every judicial officer who asks or receives any emolument, gratuity, or reward, or any promise thereof, except such as may be authorized by law, for doing any official act, is guilty of a misdemeanor. The lawful compensation of a temporary judge shall be prescribed by Judicial Council rule. Every judicial officer who shall ask or receive the whole or any part of the fees allowed by law to any stenographer or reporter appointed by him or her, or any other person, to record the proceedings of any court or investigation held by him or her, shall be guilty of a misdemeanor, and upon conviction thereof shall forfeit his or her office. Any stenographer or reporter, appointed by any judicial officer in this state, who shall pay, or offer to pay, the whole or any part of the fees allowed him or her by law, for his or her appointment or retention in office, shall be guilty of a misdemeanor, and upon conviction thereof shall be forever disqualified from holding any similar office in the courts of this state.

SEC. 14. Section 809 is added to the Penal Code, to read:

809. The night-time commissioner of the Santa Clara County Superior Court shall be considered a magistrate for the purpose of conducting prompt probable cause hearings for persons arrested without an arrest warrant as mandated by law.

SEC. 15. Section 1170.4 of the Penal Code is amended to read:

1170.4. The Judicial Council shall collect and analyze relevant information relating to sentencing practices in this state and other jurisdictions. Such information shall be taken into consideration by the Judicial Council in the adoption of rules pursuant to Section 1170.3.

SEC. 16. Section 40508 of the Vehicle Code is amended to read:

40508. (a) Any person willfully violating his or her written promise to appear or a lawfully granted continuance of his or her promise to appear in court or before a person authorized to receive a deposit of bail is guilty of a misdemeanor regardless of the disposition of the charge upon which he or she was originally arrested.

(b) Any person willfully failing to pay a lawfully imposed fine for a violation of any provision of this code or a local ordinance adopted pursuant to this code within the time authorized by the court and without lawful excuse having been presented to the court on or before the date the fine is due is guilty of a misdemeanor regardless of the full payment of the fine after such time.

(c) Any person willfully failing to comply with a condition of a court order for a violation of this code, other than for failure to

appear or failure to pay a fine, is guilty of a misdemeanor, regardless of their subsequent compliance with the order.

(d) If a person convicted of an infraction fails to pay a fine or any installment thereof within the time authorized by the court, the court may, except as otherwise provided in this subdivision, impound the person's driver's license and order the person not to drive for a period not to exceed 30 days. Before returning the license to the person, the court shall endorse on the reverse side of the license that the person was ordered not to drive, the period for which that order was made, and the name of the court making the order. If a defendant with a class 3 or 4 driver's license satisfies the court that impounding his or her driver's license and ordering the defendant not to drive will affect his or her livelihood, the court shall order that the person limit his or her driving for a period not to exceed 30 days to driving that is essential in the court's determination to the person's employment, including the person's driving to and from his or her place of employment if other means of transportation are not reasonably available. The court shall provide for the endorsement of the limitation on the person's license. The impounding of the license and ordering the person not to drive or the order limiting the person's driving does not constitute a suspension of the license, but a violation of the order constitutes contempt of court.

CHAPTER 910

An act to amend Sections 5151, 5154, 6161, and 6165 of the Business and Professions Code, to amend Sections 13401, 13405, 13406, 13407, 13408, 13409, and 13410 of, and to add Section 13404.5 to, the Corporations Code, relating to corporations.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 5151 of the Business and Professions Code is amended to read:

5151. An applicant for registration as an accountancy corporation shall supply to the board all necessary and pertinent documents and information requested by the board concerning the applicant's plan of operation. The board may provide forms of application. If the board finds that the corporation is duly organized and existing under the General Corporation Law or the foreign corporation is duly qualified for the transaction of intrastate business pursuant to the General Corporation Law, that each officer, director, shareholder and, except as otherwise permitted under Section 5053, each employee who will render professional services is a licensed person as defined in the Moscone-Knox Professional Corporation Act, or a

person licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices, and that from the application it appears that the affairs of the corporation will be conducted in compliance with law and the rules and regulations of the board, the board shall upon payment of the registration fee in such amount as it may determine issue a certificate of registration. The applicant shall include with the application, for each shareholder of the corporation licensed in a foreign country but not in this state or in any other state, territory, or possession of the United States, a certificate from the authority in the foreign country currently having final jurisdiction over the practice of accounting, which shall verify the shareholder's admission to practice in the foreign country, the date thereof, and the fact that the shareholder is currently in good standing as the equivalent of a certified public accountant or public accountant. If the certificate is not in English, there shall be included with the certificate a duly authenticated English translation thereof. The application shall be signed and verified by an officer of the corporation.

SEC. 1.5. Section 5154 of the Business and Professions Code is amended to read:

5154. Except as provided in Section 13403 of the Corporations Code, each director, shareholder, and officer of an accountancy corporation shall be a licensed person as defined in the Moscone-Knox Professional Corporation Act, or a person licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices.

SEC. 1.7. Section 6161 of the Business and Professions Code is amended to read:

6161. An applicant for registration as a law corporation shall supply to the State Bar all necessary and pertinent documents and information requested by the State Bar concerning the applicant's plan of operation, including, but not limited to, a copy of its articles of incorporation, certified by the Secretary of State, a copy of its bylaws, certified by the secretary of the corporation, the name and address of the corporation, the names and addresses of its officers, directors, shareholders and employees who will render professional services, the address of each office, and any fictitious name or names which the corporation intends to use. The State Bar may provide forms of application. If the Board of Governors or a committee authorized by it finds that the corporation is duly organized and existing or duly qualified for the transaction of intrastate business pursuant to the General Corporation Law, that each officer (except as provided in Section 13403 of the Corporations Code), director, shareholder and each employee who will render professional services is a licensed person as defined in the Professional Corporation Act, or a person licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices, and that from the application it appears that the affairs of the corporation will be conducted in compliance with law and the

rules and regulations of the State Bar, the State Bar shall upon payment of the registration fee in such amount as it may determine issue a certificate of registration. The applicant shall include with the application, for each shareholder of the corporation licensed in a foreign country but not in this state or in any other state, territory, or possession of the United States, a certificate from the authority in the foreign country currently having final jurisdiction over the practice of law, which shall verify the shareholder's admission to practice in the foreign country, the date thereof, and the fact that the shareholder is currently in good standing as an attorney or counselor at law or the equivalent. If the certificate is not in English, there shall be included with the certificate a duly authenticated English translation thereof. The application shall be signed and verified by an officer of the corporation.

SEC. 1.75. Section 6161 of the Business and Professions Code is amended to read:

6161. An applicant for registration as a law corporation shall supply to the State Bar all necessary and pertinent documents and information requested by the State Bar concerning the applicant's plan of operation, including but not limited to a copy of its articles of incorporation, certified by the Secretary of State, a copy of its bylaws, certified by the secretary of the corporation, the name and address of the corporation, the names and addresses of its officers, directors, shareholders, members, if any, and employees who will render professional services, the address of each office, and any fictitious name or names which the corporation intends to use. The State Bar may provide forms of application. If the Board of Governors or a committee authorized by it finds that the corporation is duly organized and existing or duly qualified for the transaction of intrastate business pursuant to the General Corporation Law, or pursuant to subdivision (b) of Section 13406 of the Corporations Code, that each officer (except as provided in Section 13403 of the Corporations Code), director, shareholder (except as provided in subdivision (b) of Section 13406 of the Corporations Code), and each employee who will render professional services is a licensed person as defined in the Professional Corporation Act, or a person licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices, and that from the application it appears that the affairs of the corporation will be conducted in compliance with law and the rules and regulations of the State Bar, the State Bar shall upon payment of the registration fee in such amount as it may determine issue a certificate of registration. The applicant shall include with the application, for each shareholder of the corporation licensed in a foreign country but not in this state or in any other state, territory, or possession of the United States, a certificate from the authority in the foreign country currently having final jurisdiction over the practice of law, which shall verify the shareholder's admission to practice in the foreign country, the date thereof, and the fact that the shareholder is

currently in good standing as an attorney or counselor at law or the equivalent. If the certificate is not in English, there shall be included with the certificate a duly authenticated English translation thereof. The application shall be signed and verified by an officer of the corporation.

SEC. 1.8. Section 6165 of the Business and Professions Code is amended to read:

6165. Except as provided in Section 13403 of the Corporations Code, each director, shareholder, and each officer of a law corporation shall be a licensed person as defined in the Professional Corporation Act, or a person licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices.

SEC. 1.9. Section 6165 of the Business and Professions Code is amended to read:

6165. Except as provided in Sections 13403 and 13406 of the Corporations Code, each director, shareholder, and each officer of a law corporation shall be a licensed person as defined in the Professional Corporation Act, or a person licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices.

SEC. 2. Section 13401 of the Corporations Code is amended to read:

13401. As used in this part:

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

(b) "Professional corporation" means a corporation organized under the General Corporation Law which is engaged in rendering professional services in a single profession, except as otherwise authorized in Section 13401.5, pursuant to a certificate of registration issued by the governmental agency regulating the profession as herein provided and which in its practice or business designates itself as a professional or other corporation as may be required by statute. However, any professional corporation rendering professional services by persons duly licensed by the Medical Board of California or any examining committee under the jurisdiction of the board, the State Board of Pharmacy, the Board of Examiners in Veterinary Medicine, the Board of Architectural Examiners, the Certified Shorthand Reporters Board, or the Board of Registered Nursing shall not be required to obtain a certificate of registration in order to render those professional services.

(c) "Foreign professional corporation" means a corporation organized under the laws of a state of the United States other than this state that is engaged in a profession of a type for which there is authorization in the Business and Professions Code for the performance of professional services by a foreign professional corporation.

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

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

SEC. 2.5. Section 13401 of the Corporations Code is amended to read:

13401. As used in this part:

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

(b) "Professional corporation" means a corporation organized under the General Corporation Law or pursuant to subdivision (b) of Section 13406 which is engaged in rendering professional services in a single profession, except as otherwise authorized in Section 13401.5, pursuant to a certificate of registration issued by the governmental agency regulating the profession as herein provided and which in its practice or business designates itself as a professional or other corporation as may be required by statute. However, any professional corporation rendering professional services by persons duly licensed by the Medical Board of California or any examining committee under the jurisdiction of the board, the State Board of Pharmacy, the Board of Examiners in Veterinary Medicine, the Board of Architectural Examiners, the Certified Shorthand Reporters Board, or the Board of Registered Nursing shall not be required to obtain a certificate of registration in order to render those professional services.

(c) "Foreign professional corporation" means a corporation organized under the laws of a state of the United States other than this state that is engaged in a profession of a type for which there is authorization in the Business and Professions Code for the performance of professional services by a foreign professional corporation.

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

(e) "Disqualified person" means a licensed person who for any reason becomes legally disqualified (temporarily or permanently) to render the professional services which the particular professional

corporation or foreign professional corporation of which he or she is an officer, director, shareholder, or employee is or was rendering.

SEC. 3. Section 13404.5 is added to the Corporations Code, to read:

13404.5. (a) A foreign professional corporation may qualify as a foreign corporation to transact intrastate business in this state in accordance with Chapter 21 (commencing with Section 2100) of Division 1. A foreign professional corporation shall be subject to the provisions of the General Corporation Law applicable to foreign corporations, except where those provisions are in conflict with or inconsistent with the provisions of this part. The statement and designation filed by the foreign professional corporation pursuant to Section 2105 shall contain a specific statement that the corporation is a foreign professional corporation within the meaning of this part.

(b) No foreign professional corporation shall render professional services in this state without a currently effective certificate of registration issued by the governmental agency regulating the profession in which that corporation proposes to be engaged, pursuant to the applicable provisions of the Business and Professions Code expressly authorizing those professional services to be rendered by a foreign professional corporation.

(c) If the California board, commission, or other agency that prescribes the rules or regulations governing a particular profession either now or hereafter requires that the shareholders of the professional corporation bear any degree of personal liability for the acts of the corporation, either by personal guarantee or in some other form that the governing agency prescribes, the shareholders of a foreign corporation that has been qualified to do business in this state in the same profession shall, as a condition of doing business in this state, be subject, with regard to the rendering of professional services by the professional corporation in California, or for California residents, to the same degree of personal liability, if any, as is prescribed by the governing agency for shareholders of a California professional corporation rendering services in the same profession.

(d) Each application by a foreign professional corporation to qualify to do business in this state shall contain the following statement:

"The shareholders of the undersigned foreign professional corporation shall be subject, with regard to the rendering of professional services by the professional corporation in California, or for California residents, to the same degree of personal liability, if any, in California as is from time to time prescribed by the agency governing the profession in this state for shareholders in a California professional corporation rendering services in the same profession. This application accordingly constitutes a submission to the jurisdiction of the courts of California to the same extent, but only to the same extent, as applies to the shareholders of a California professional corporation in the same profession. The foregoing submission to jurisdiction is a condition of qualification to do business

in this state."

SEC. 4. Section 13405 of the Corporations Code is amended to read:

13405. (a) Subject to the provisions of Section 13404, a professional corporation may lawfully render professional services in this state, but only through employees who are licensed persons. The corporation may employ persons not so licensed, but such persons shall not render any professional services rendered or to be rendered by that corporation in this state. A professional corporation may render professional services outside of this state, but only through employees who are licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices. Nothing in this section is intended to prohibit the rendition of occasional professional services in another jurisdiction as an incident to the licensee's primary practice, so long as it is permitted by the governing agency that regulates the particular profession in the jurisdiction. Nothing in this section is intended to prohibit the rendition of occasional professional services in this state as an incident to a professional employee's primary practice for a foreign professional corporation qualified to render professional services in this state, so long as it is permitted by the governing agency that regulates the particular profession in this state.

(b) Subject to Section 13404.5, a foreign professional corporation qualified to render professional services in this state may lawfully render professional services in this state, but only through employees who are licensed persons, and shall render professional services outside of this state only through persons who are licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices. The foreign professional corporation may employ persons in this state who are not licensed in this state, but those persons shall not render any professional services rendered or to be rendered by the corporation in this state.

(c) Nothing in this section or in this part is intended to, or shall, augment, diminish or otherwise alter existing provisions of law, statutes or court rules relating to services by a California attorney in another jurisdiction, or services by an out-of-state attorney in California. These existing provisions, including, but not limited to, admission pro hac vice and the taking of depositions in a jurisdiction other than the one in which the deposing attorney is admitted to practice, shall remain in full force and effect.

SEC. 5. Section 13406 of the Corporations Code is amended to read:

13406. Shares of capital stock in a professional corporation may be issued only to a licensed person or to a person who is licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices, and any shares issued in violation of this restriction shall be void. Unless there is a public offering of securities by a professional corporation or by a foreign professional corporation qualified to render professional services in

this state, its financial statements shall be treated by the Commissioner of Corporations as confidential, except to the extent that such statements shall be subject to subpoena in connection with any judicial or administrative proceeding, and may be admissible in evidence therein. No shareholder of a professional corporation or of a foreign professional corporation qualified to render professional services in this state shall enter into a voting trust, proxy, or any other arrangement vesting another person (other than another person who is a shareholder of the same corporation) with the authority to exercise the voting power of any or all of his or her shares, and any such purported voting trust, proxy or other arrangement shall be void.

SEC. 5.5. Section 13406 of the Corporations Code is amended to read:

13406. (a) Subject to the provisions of subdivision (b), shares of capital stock in a professional corporation may be issued only to a licensed person or to a person who is licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices, and any shares issued in violation of this restriction shall be void. Unless there is a public offering of securities by a professional corporation or by a foreign professional corporation qualified to render professional services in this state, its financial statements shall be treated by the Commissioner of Corporations as confidential, except to the extent that such statements shall be subject to subpoena in connection with any judicial or administrative proceeding, and may be admissible in evidence therein. No shareholder of a professional corporation or of a foreign professional corporation qualified to render professional services in this state shall enter into a voting trust, proxy, or any other arrangement vesting another person (other than another person who is a shareholder of the same corporation) with the authority to exercise the voting power of any or all of his or her shares, and any such purported voting trust, proxy or other arrangement shall be void.

(b) A professional law corporation may be incorporated as a nonprofit public benefit corporation under the Nonprofit Public Benefit Corporation Law under either of the following circumstances:

(1) The corporation is a qualified legal services project or a qualified support center within the meaning of subdivisions (a) and (b) of Section 6213 of the Business and Professions Code.

(2) The professional law corporation otherwise meets all of the requirements and complies with all of the provisions of the Nonprofit Public Benefit Corporation Law, as well as all of the following requirements:

(A) All of the members of the corporation, if it is a membership organization as described in the Nonprofit Corporation Law, are persons licensed to practice law in California.

(B) All of the members of the professional law corporation's board of directors are persons licensed to practice law in California.

(C) Seventy percent of the clients to whom the corporation provides legal services are lower income persons as defined in Section 50079.5 of the Health and Safety Code, and to other persons who would not otherwise have access to legal services.

(D) The corporation shall not enter into contingency fee contracts with clients.

(c) A professional law corporation incorporated as a nonprofit public benefit corporation that is a recipient in good standing as defined in subdivision (c) of Section 6213 of the Business and Professions Code shall be deemed to have satisfied all of the filing requirements of a professional law corporation under Sections 6161.1, 6162, and 6163 of the Business and Professions Code.

SEC. 6. Section 13407 of the Corporations Code is amended to read:

13407. Shares in a professional corporation or a foreign professional corporation qualified to render professional services in this state may be transferred only to a licensed person, to a shareholder of the same corporation, to a person licensed to practice the same profession in the jurisdiction or jurisdictions in which the person practices, or to such professional corporation, and any transfer in violation of this restriction shall be void.

A professional corporation may purchase its own shares without regard to any restrictions provided by law upon the repurchase of shares, if at least one share remains issued and outstanding.

If a professional corporation or a foreign professional corporation qualified to render professional services in this state shall fail to acquire all of the shares of a shareholder who is disqualified from rendering professional services in this state or of a deceased shareholder who was, on his or her date of death, licensed to render professional services in this state, or if such a disqualified shareholder or the representative of such a deceased shareholder shall fail to transfer said shares to the corporation, to another shareholder of the corporation, to a person licensed to practice the same profession in the jurisdiction or jurisdictions in which the person practices, or to a licensed person, within 90 days following the date of disqualification, or within six months following the date of death of such shareholder, as the case may be, then the certificate of registration of such corporation may be suspended or revoked by the governmental agency regulating the profession in which such corporation is engaged. In the event of such suspension or revocation such corporation shall cease forthwith to render professional services in this state.

SEC. 7. Section 13408 of the Corporations Code is amended to read:

13408. The following shall be grounds for the suspension or revocation of the certificate of registration of a professional corporation or a foreign professional corporation qualified to render professional services in this state: (a) if all shareholders who are licensed persons of such corporation shall at any one time become

disqualified persons, or (b) if the sole shareholder shall become a disqualified person, or (c) if such corporation shall knowingly employ or retain in its employment a disqualified person, or (d) if such corporation shall violate any applicable rule or regulation adopted by the governmental agency regulating the profession in which such corporation is engaged, or (e) if such corporation shall violate any statute applicable to a professional corporation or to a foreign professional corporation, or (f) any ground for such suspension or revocation specified in the Business and Professions Code relating to the profession in which such corporation is engaged. In the event of such suspension or revocation of its certificate of registration such corporation shall cease forthwith to render professional services in this state.

SEC. 8. Section 13409 of the Corporations Code is amended to read:

13409. (a) A professional corporation may adopt any name permitted by a law expressly applicable to the profession in which such corporation is engaged or by a rule or regulation of the governmental agency regulating such profession. The provisions of subdivision (b) of Section 201 shall not apply to the name of a professional corporation if such name shall contain and be restricted to the name or the last name of one or more of the present, prospective, or former shareholders or of persons who were associated with a predecessor person, partnership or other organization or whose name or names appeared in the name of such predecessor organization, and the Secretary of State shall have no authority by reason of subdivision (b) of Section 201 to refuse to file articles of incorporation which set forth such a name; provided, however, that such name shall not be substantially the same as the name of a domestic corporation, the name of a foreign corporation qualified to render professional services in this state which is authorized to transact business in this state, or a name which is under reservation for another corporation. The Secretary of State may require proof by affidavit or otherwise establishing that the name of the professional corporation complies with the requirements of this section and of the law governing the profession in which such professional corporation is engaged. The statements of fact in such affidavits may be accepted by the Secretary of State as sufficient proof of the facts.

(b) A foreign professional corporation qualified to render professional services in this state may transact intrastate business in this state by any name permitted by a law expressly applicable to the profession in which the corporation is engaged, or by a rule or regulation of the governmental agency regulating the rendering of professional services in this state by the corporation. The provisions of subdivision (b) of Section 201 shall not apply to the name of a foreign professional corporation if the name contains and is restricted to the name or the last name of one or more of the present, prospective, or former shareholders or of persons who were

associated with a predecessor person, partnership, or other organization, or whose name or names appeared in the name of the predecessor organization, and the Secretary of State shall have no authority by reason of subdivision (b) of Section 201 to refuse to issue a certificate of qualification to a foreign professional corporation that sets forth that name in its statement and designation; provided, however, that such a name shall not be substantially the same as the name of a domestic corporation, the name of a foreign corporation qualified to render professional services in the state, or a name that is under reservation for another corporation. The Secretary of State may require proof by affidavit or otherwise establishing that the name of the foreign professional corporation qualified to render professional services in this state complies with the requirements of this section and of the law governing the profession in which the foreign professional corporation qualified to render professional services in this state proposes to engage in this state. The statements of fact in such affidavits may be accepted by the Secretary of State as sufficient proof of the facts.

SEC. 10. Section 13410 of the Corporations Code is amended to read:

13410. (a) A professional corporation or a foreign professional corporation qualified to render professional services in this state shall be subject to the applicable rules and regulations adopted by, and all the disciplinary provisions of the Business and Professions Code expressly governing the practice of the profession in this state, and to the powers of, the governmental agency regulating the profession in which such corporation is engaged. Nothing in this part shall affect or impair the disciplinary powers of any such governmental agency over licensed persons or any law, rule or regulation pertaining to the standards for professional conduct of licensed persons or to the professional relationship between any licensed person furnishing professional services and the person receiving such services.

(b) With respect to any foreign professional corporation qualified to render professional services in this state, each such governmental agency shall adopt rules, regulations, and orders as appropriate to restrict or prohibit any disqualified person from doing any of the following:

(1) Being a shareholder, director, officer, or employee of the corporation.

(2) Rendering services in any profession in which he or she is a disqualified person.

(3) Participating in the management of the corporation.

(4) Sharing in the income of the corporation.

SEC. 11. Section 1.75 of this bill incorporates amendments to Section 6161 of the Business and Professions Code proposed by both this bill and SB 312. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 6161 of the Business and Professions Code, and (3) this bill is enacted after SB 312, in which case Section 1.7 of

this bill shall not become operative.

SEC. 12. Section 1.9 of this bill incorporates amendments to Section 6165 of the Business and Professions Code proposed by both this bill and SB 312. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 6165 of the Business and Professions Code, and (3) this bill is enacted after SB 312, in which case Section 1.8 of this bill shall not become operative.

SEC. 13. Section 2.5 of this bill incorporates amendments to Section 13401 of the Corporations Code proposed by both this bill and SB 312. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 13401 of the Corporations Code, and (3) this bill is enacted after SB 312, in which case Section 2 of this bill shall not become operative.

SEC. 14. Section 5.5 of this bill incorporates amendments to Section 13406 of the Corporations Code proposed by both this bill and SB 312. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 13406 of the Corporations Code, and (3) this bill is enacted after SB 312, in which case Section 5 of this bill shall not become operative.

CHAPTER 911

An act to add Section 24200.3 to the Education Code, relating to the State Teachers' Retirement System.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 24200.3 is added to the Education Code, to read:

24200.3. (a) Any service retirant who retired under Option 2 or Option 3 with an effective date prior to January 1, 1991, may elect to change Option 2 to Option 6 or Option 3 to Option 7 under all of the following conditions:

(1) The election is made during the six-month period commencing July 1, 1994, and ending December 31, 1994.

(2) The same beneficiary under Option 2 or Option 3 is named as beneficiary under Option 6 or Option 7.

(3) The change in options is consistent with Sections 22401.6 and 24200.1.

(4) The option beneficiary is not afflicted with any known terminal illness and the service retirant shall state under penalty of perjury that to the best of his or her knowledge the option

beneficiary is not afflicted with any known terminal illness.

(5) The option beneficiary has not predeceased the retirant as of the effective date of the change in options.

(b) The change in options shall be effective on the date the election is signed, provided that the election is received in the office of the system in Sacramento within 30 days after the date of the signature.

(c) If an election to change options is made pursuant to this section, the modified allowance shall be reduced in a manner determined by the board to ensure that no additional liability shall be incurred by the system pursuant to this section.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. 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 912

An act to amend Sections 25205.12 and 25205.14 of, and to add Section 25144.6 to, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 25144.6 is added to the Health and Safety Code, to read:

25144.6. (a) As used in this section, "reusable soiled textile materials" means textile items, including, but not limited to, shop towels, uniforms, gloves, and linens and towels which may become soiled with hazardous waste during commercial or industrial use, and are made reusable by laundering or comparable methods of cleaning.

(b) Reusable soiled textile materials which meet all of the following requirements are exempt from Section 25205.5 and from Article 6 (commencing with Section 25160) and Article 6.5 (commencing with Section 25167.1):

(1) The materials or the management of the materials are not otherwise regulated by the Environmental Protection Agency pursuant to the federal act.

(2) The materials are not used to clean up or control a spill or release that is required to be reported to any state or federal agency.

(3) No hazardous waste has been added after the materials' original use.

(4) No free liquids, as defined by Section 66260.10 of Title 22 of the California Code of Regulations, are released during transportation or storage of the materials.

(5) The facility laundering or cleaning the materials maintains records of the date, type, and quantities by piecework or weight of the materials collected and laundered.

(6) The facility laundering or cleaning the materials prepares a contingency plan which specifies procedures for handling both onsite and offsite emergencies involving the materials, and employees are trained in its execution.

(c) Notwithstanding Sections 25201 and 25245, a facility laundering or using comparable methods of cleaning reusable soiled textile materials and performing the pretreatment necessary to remove metals and organics from the wastewater resulting from the wash process is not required to obtain a hazardous waste facilities permit or other grant of authorization, and is exempt from the requirements of Article 12 (commencing with Section 25245), if the facility meets all of the following requirements:

(1) Management procedures are in place to ensure that the reusable soiled textile materials are managed in accordance with all the requirements specified in subdivision (b).

(2) The waste wash water conveyances and containers are constructed of materials to ensure that they are impervious under the conditions of use, and are visually inspected at least twice a year to ensure that waste wash water is not leaking to the underlying soil. A facility which is in compliance with this paragraph is not subject to the requirements of Section 66264.193 of Title 22 of the California Code of Regulation.

(3) The sludge collected from the washing process is managed in accordance with this chapter.

(4) The facility has a training program in place that ensures that the facility personnel are able to safely and properly handle and clean the reusable soiled textile materials and to respond effectively to emergencies by familiarizing them with emergency procedures, equipment, and systems.

(5) The facility is in compliance with the requirements of paragraphs (1) to (6), inclusive, and paragraphs (8) and (10), of subdivision (d) of Section 25201.5.

(6) The facility submits a notification to the department in accordance with paragraph (7) of subdivision (d) of Section 25201.5 on or before April 1, 1994, submits the fee required pursuant to subdivision (b) of Section 25205.14 for the 1994 reporting period on that date, and pays the fee required by that section for subsequent reporting periods of operation when billed by the department or the Board of Equalization.

SEC. 2. Section 25205.12 of the Health and Safety Code is amended to read:

25205.12. (a) The operator of a hazardous waste facility authorized by the department to operate pursuant to a permit-by-rule, under a grant of conditional authorization pursuant to Section 25200.3, or pursuant to subdivision (a) or (c) of Section 25201.5, or exempted pursuant to Section 25144.6 is exempt from the facility fee specified in Section 25205.2 for any activities authorized by the permit-by-rule, under a grant of conditional authorization pursuant to Section 25200.3, or exempted pursuant to subdivision (a) or (c) of Section 25201.5, or exempted pursuant to Section 25144.6 at that facility for any year or reporting period during which the facility is operating.

(b) The retroactive portion of the facility fee exemption provided by subdivision (a) does not apply to any facility which was authorized by the department to operate on or before June 1, 1991, for any fees paid or billed prior to January 1, 1993.

(c) The operator of a hazardous waste facility eligible to operate pursuant to a standardized permit, as specified in Section 25201.6, is exempt from the facility fee specified in Sections 25205.2 and 25205.4 for any year or reporting period prior to January 1, 1993, during which the facility operated, if the hazardous waste treatment or storage activity was conducted prior to January 1, 1993, the owner or operator was in compliance with the notification and application requirements of Section 25201.6, and one of the following circumstances applies:

(1) The owner or operator was not authorized by the department before July 1, 1993, to conduct the eligible treatment or storage activity.

(2) The owner or operator did not pay a hazardous waste facility fee, as specified in Section 25205.2, for any year or reporting period prior to July 1, 1993, for the facility that is the subject of the standardized permit.

SEC. 3. Section 25205.14 of the Health and Safety Code is amended to read:

25205.14. (a) The owner or operator of a facility or transportable treatment unit operating pursuant to a permit-by-rule shall pay a fee to the board per facility or transportable treatment unit for each reporting period, or portion thereof. The fee for the 1993 reporting period shall be one thousand one hundred forty dollars ($1,140) . Thereafter, the fees shall be adjusted annually by the board to reflect increases and decreases in the cost of living, as measured by the United States Department of Labor or a successor agency. The owner or operator of a facility or transportable treatment unit operating pursuant to a permit-by-rule shall also pay a fee in the amount of 50 percent of the fee specified in this subdivision for each modification of the notification required by subdivision (f) of Section 25200.3. The reporting period shall begin January 1 of each calendar year. On or before January 31 of each calendar year, the department

shall notify the board of all known owners or operators operating pursuant to a permit-by-rule. The department shall also notify the board of any owner or operator authorized to operate under conditional authorization or pursuant to a permit-by-rule within 60 days after being authorized.

(b) A generator operating under a grant of conditional authorization pursuant to Section 25200.3 shall pay a fee to the board per facility for each reporting period, or portion thereof. The fee for the 1993 reporting period shall be one thousand one hundred forty dollars ($1,140). Thereafter, the fees shall be adjusted annually by the board to reflect increases and decreases in the cost of living, as measured by the United States Department of Labor or a successor agency. A generator shall also pay a fee in the amount of 50 percent of the fee specified in the subdivision for each modification of the notification required by Sections 67450.2 and 67450.3 of Title 22 of the California Code of Regulations, as those sections read on January 1, 1993. The reporting period shall begin January 1 of each calendar year. On or before January 31 of each calendar year, the department shall notify the board of all known generators operating pursuant to a grant of conditional authorization under Section 25200.3. The department shall also notify the board of any generator authorized to operate under conditional authorization within 60 days of the receipt of notification.

(c) A generator performing treatment conditionally exempted pursuant to Section 25144.6 or subdivision (a) or (c) of Section 25201.5 shall pay one hundred dollars ($100) to the board per facility for the operating period, or portion thereof, and fifty ($50) every reporting period thereafter. The reporting period shall begin January 1 of each calendar year. On or before January 31 of each calendar year, the department shall notify the board of all known facilities performing treatment conditionally exempted by subdivision (a) or (c) of Section 25201.5. The department shall also notify the board of any generator who notifies the department that the generator is conducting a conditionally exempt treatment operation within 60 days of the receipt of the notification.

(d) The fees 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.

(e) Notwithstanding subdivisions (a), (b), and (c), the fees for the 1993 reporting period for facilities operating permit-by-rule fixed treatment units or for generators conditionally authorized to operate pursuant to Section 25200.3 or performing treatment conditionally exempted pursuant to Section 25201.5 shall be remitted to the department at the time the notifications required by Sections 25200.3, 25201.5, and 25202.13 are submitted to the department.

SEC. 4. If Senate Bill 922 of the 1993–94 Regular Session of the Legislature is enacted and takes effect on or before January 1, 1994, and amends Section 25205.12 of the Health and Safety Code, that section of that bill shall prevail over Section 2 of this act, whether that

act is enacted prior to, or subsequent to, this act.

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 913

An act to amend Sections 25158, 25163, 25174.7, 25200.10, 25201, 25205.1, and 25205.7 of, to repeal Section 25158.1 of, and to repeal and add Article 10.8 (commencing with Section 25218) of Chapter 6.5 of Division 20 of, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 25158 of the Health and Safety Code is amended to read:

25158. (a) Except as provided in subdivision (f), any person generating hazardous waste, or owning or operating a facility for the treatment, storage, or disposal of hazardous waste, shall file with the director, or the director's designee, on a form provided by the director, or the director's designee, a hazardous waste notification statement. An amended statement shall be filed with the department whenever there has been a substantial change in the information provided on the previously filed notification statement. A person shall not generate, treat, store, or dispose of hazardous waste, unless the person files a notification statement with the director pursuant to this section, unless exempted pursuant to subdivision (f).

(b) A hazardous waste notification statement shall include all of the following information:

(1) The name and address of the person owning the facility or conducting the activity specified in subdivision (a).

(2) The address and location of the activity or facility, including the city and county.

(3) The name and 24-hour telephone number of the contact person in the event of an emergency involving the facility or activity.

(4) The quantities of hazardous waste annually handled pursuant

to the activity or at the facility.

(5) A description of the hazardous waste activity being conducted, such as generation, treatment, storage, or disposal.

(6) A general description of the hazardous waste being handled.

(c) The department shall prepare and distribute the hazardous waste notification statement forms. The form shall include a statement which clearly states who is required to file the form. The form shall also include a statement that the form is not a substitute for the federal notification required by the Environmental Protection Agency pursuant to subsection (a) of Section 6930 of Title 42 of the United States Code.

(d) Any person who is required to submit a hazardous waste notification statement to the director pursuant to subdivision (a) and who fails to do so is subject to a civil penalty of not less than fifty dollars ($50) and not more than five hundred dollars ($500) for each day for which the department does not receive a statement. Any person who knowingly submits false information to the department is subject to a civil penalty of not less than two thousand dollars ($2,000) and not more than twenty thousand dollars ($20,000) for each day that the false information goes uncorrected.

(e) The director shall compile and organize the statements by the city and county within which each activity and facility are located, and shall transmit the compiled statements to the appropriate regional offices, the California regional water quality control boards, and county health officers.

(f) Subdivision (a) does not apply to any of the following:

(1) A person who has filed notification with the Administrator of the Environmental Protection Agency pursuant to subsection (a) of Section 6930 of Title 42 of the United States Code.

(2) A person who only produces household hazardous waste, as defined in subdivision (d) of Section 25218.1.

(3) Any person who owns property on which a cleanup of, or other removal of, or remedial action to, a hazardous waste site is taking place, or who is engaged in any of those activities on a hazardous waste site.

SEC. 2. Section 25158.1 of the Health and Safety Code is repealed.

SEC. 3. Section 25163 of the Health and Safety Code, as amended by Section 1 of Chapter 1346 of the Statutes of 1992, is amended to read:

25163. (a) (1) Except as otherwise provided in subdivisions (b), (c), (f), and (g), it is unlawful for any person to carry on, or engage in, the transportation of hazardous wastes, unless the person holds a valid registration issued by the department, and it shall be unlawful for any person to transfer custody of a hazardous waste to a transporter who does not hold a valid registration issued by the department. A person who holds a valid registration issued by the department pursuant to this section is a registered hazardous waste transporter, for purposes of this chapter. Any registration issued by the department to a transporter of hazardous waste is not

transferable from the person to whom it was issued to any other person.

(2) Any person who transports hazardous waste in a vehicle shall have a valid registration issued by the department in his or her possession while transporting the hazardous waste. The registration certificate shall be shown upon demand to any representative of the department, officer of the Department of the California Highway Patrol, any local health officer, or any public officer designated by the department. Any person registered pursuant to this section may obtain additional copies of the registration from the department upon the payment of a fee of two dollars ($2) for each copy requested, in accordance with Section 12196 of the Government Code.

(3) Commencing January 1, 1986, the hazardous waste information required and collected for registration pursuant to this subdivision shall be recorded and maintained in the management information system operated by the Department of the California Highway Patrol.

(b) Persons transporting only septic tank, cesspool, seepage pit, or chemical toilet waste that does not contain a hazardous waste originating from other than the body of a human or animal and who hold an unrevoked registration issued by the health officer or the health officer's authorized representative pursuant to Chapter 6 (commencing with Section 25000) are exempt from the requirements of subdivision (a).

(c) Persons transporting hazardous wastes to a permitted hazardous waste facility for transfer, treatment, recycling, or disposal, which wastes do not exceed a total volume of five gallons or do not exceed a total weight of 50 pounds, are exempt from the requirements of subdivisions (a) and (e) and from the requirements of Section 25160 concerning possession of the manifest while transporting hazardous waste, upon meeting all of the following conditions:

(1) The hazardous wastes are transported in closed containers and packed in a manner that prevents the containers from tipping, spilling, or breaking during the transporting.

(2) Different hazardous waste materials are not mixed within a container during the transporting.

(3) If the hazardous waste is extremely hazardous waste or acutely hazardous waste, the extremely hazardous waste or acutely hazardous waste was not generated in the course of any business, and is not more than 2.2 pounds.

(4) The person transporting the hazardous waste is the producer of that hazardous waste, and the person produces not more than 100 kilograms of hazardous waste in any month.

(5) The person transporting the hazardous waste does not accumulate more than a total of 1,000 kilograms of hazardous waste onsite at any one time.

(d) Any person registered as a hazardous waste transporter

pursuant to subdivision (a) is not subject to the registration requirements of Chapter 6 (commencing with Section 25000), but shall comply with those terms, conditions, orders, and directions that the health officer or the health officer's authorized representative may determine to be necessary for the protection of human health and comfort, and shall otherwise comply with the requirements for statements as provided in Section 25007. Violations of those requirements of Section 25007 shall be punished as provided in Section 25010. Proof of registration pursuant to subdivision (a) shall be submitted by mail or in person to the local health officer in the city or county in which the registered hazardous waste transporter will be conducting the activities described in Section 25001.

(e) It is unlawful for any person to transport hazardous waste in any truck, trailer, semitrailer, vacuum tank, or cargo tank not inspected by the Department of the California Highway Patrol or to transport hazardous waste in any container, other than a container packaged pursuant to United States Department of Transportation regulations, which has not been inspected by the Department of the California Highway Patrol, or in a rolloff bin which has not been inspected, certified, and maintained in compliance with subdivisions (b) and (c) of Section 25169.1.

(f) Any person authorized to collect solid waste, as defined in Section 40191 of the Public Resources Code, who unknowingly transports hazardous waste to a solid waste facility, as defined in Section 40194 of the Public Resources Code, incidental to the collection of solid waste is not subject to subdivisions (a) and (e).

(g) Any person transporting household hazardous waste or a conditionally exempt small quantity generator transporting hazardous waste to an authorized household hazardous waste collection facility pursuant to Section 25218.5 is exempt from subdivisions (a) and (e) and from paragraph (1) of subdivision (d) of Section 25160 requiring possession of the manifest while transporting hazardous waste.

(h) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1995, deletes or extends that date.

SEC. 4. Section 25163 of the Health and Safety Code, as amended by Section 2 of Chapter 1346 of the Statutes of 1992, is amended to read:

25163. (a) (1) Except as otherwise provided in subdivisions (b), (c), (f), and (g), it is unlawful for any person to carry on, or engage in, the transportation of hazardous wastes, unless the person holds a valid registration issued by the department, and it shall be unlawful for any person to transfer custody of a hazardous waste to a transporter who does not hold a valid registration issued by the department. A person who holds a valid registration issued by the department pursuant to this section is a registered hazardous waste transporter, for purposes of this chapter. Any registration issued by the department to a transporter of hazardous waste is not

transferable from the person to whom it was issued to any other person.

(2) Any person who transports hazardous waste in a vehicle shall have a valid registration issued by the department in his or her possession while transporting the hazardous waste. The registration certificate shall be shown upon demand to any representative of the department, officer of the Department of the California Highway Patrol, any local health officer, or any public officer designated by the department. Any person registered pursuant to this section may obtain additional copies of the registration from the department upon the payment of a fee of two dollars ($2) for each copy requested, in accordance with Section 12196 of the Government Code.

(3) The hazardous waste information required and collected for registration pursuant to this subdivision shall be recorded and maintained in the management information system operated by the Department of the California Highway Patrol.

(b) Persons transporting only septic tank, cesspool, seepage pit, or chemical toilet waste that does not contain a hazardous waste originating from other than the body of a human or animal and who hold an unrevoked registration issued by the health officer or the health officer's authorized representative pursuant to Chapter 6 (commencing with Section 25000) are exempt from the requirements of subdivision (a).

(c) Persons transporting hazardous wastes to a permitted hazardous waste facility for transfer, treatment, recycling, or disposal, which wastes do not exceed a total volume of five gallons or do not exceed a total weight of 50 pounds, are exempt from the requirements of subdivisions (a) and (e) and from the requirements of Section 25160 concerning possession of the manifest while transporting hazardous waste, upon meeting all of the following conditions:

(1) The hazardous wastes are transported in closed containers and packed in a manner that prevents the containers from tipping, spilling, or breaking during the transporting.

(2) Different hazardous waste materials are not mixed within a container during the transporting.

(3) If the hazardous waste is extremely hazardous waste or acutely hazardous waste, the extremely hazardous waste or acutely hazardous waste was not generated in the course of any business, and is not more than 2.2 pounds.

(4) The person transporting the hazardous waste is the producer of that hazardous waste, and the person produces not more than 100 kilograms of hazardous waste in any month.

(5) The person transporting the hazardous waste does not accumulate more than a total of 1,000 kilograms of hazardous waste onsite at any one time.

(d) Any person registered as a hazardous waste transporter pursuant to subdivision (a) is not subject to the registration

requirements of Chapter 6 (commencing with Section 25000), but shall comply with those terms, conditions, orders, and directions that the health officer or the health officer's authorized representative may determine to be necessary for the protection of human health and comfort, and shall otherwise comply with the requirements for statements as provided in Section 25007. Violations of those requirements of Section 25007 shall be punished as provided in Section 25010. Proof of registration pursuant to subdivision (a) shall be submitted by mail or in person to the local health officer in the city or county in which the registered hazardous waste transporter will be conducting the activities described in Section 25001.

(e) It is unlawful for any person to transport hazardous waste in any truck, trailer, semitrailer, vacuum tank, or cargo tank not inspected by the Department of the California Highway Patrol or to transport hazardous waste in any container, other than a container packaged pursuant to United States Department of Transportation regulations, which has not been inspected by the Department of the California Highway Patrol.

(f) Any person authorized to collect solid waste, as defined in Section 40191 of the Public Resources Code, who unknowingly transports hazardous waste to a solid waste facility, as defined in Section 40194 of the Public Resources Code, incidental to the collection of solid waste is not subject to subdivisions (a) and (e).

(g) Any person transporting household hazardous waste or a conditionally exempt small quantity generator transporting hazardous waste to an authorized household hazardous waste collection facility pursuant to Section 25218.5 is exempt from subdivisions (a) and (e) and from paragraph (1) of subdivision (d) of Section 25160 requiring possession of the manifest while transporting hazardous waste.

(h) This section shall become operative January 1, 1995.

SEC. 5. Section 25174.7 of the Health and Safety Code is amended to read:

25174.7. (a) The fees provided for in Sections 25174.1 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.

(2) Hazardous wastes generated or disposed of by a public agency or person operating a household hazardous waste collection facility pursuant to Article 10.8 (commencing with Section 25218), including, but not limited to, hazardous waste received from conditionally exempt small quantity commercial generators, authorized pursuant to Section 25218.3.

(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 Section 25174.1 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 Section 25174.1.

(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. 6. Section 25200.10 of the Health and Safety Code is amended to read:

25200.10. (a) Except as provided in subdivisions (d) and (e), the department shall require, and any permit issued by the department shall require, corrective action for all releases of hazardous waste or constituents from a solid waste management unit or a hazardous waste management unit at a facility engaged in hazardous waste management, regardless of the time at which waste was released at the facility. Any corrective action required pursuant to this section shall require that corrective action be taken beyond the facility boundary where necessary to protect human health or the environment, unless the owner or operator demonstrates to the

satisfaction of the department that despite the owner's or operator's best efforts, the owner or operator is unable to obtain the necessary permission to undertake this action. When corrective action cannot be completed prior to issuance of the permit, the permit shall contain schedules of compliance for corrective action and assurances of financial responsibility for completing the corrective action.

(b) This section does not limit the department's authority to require corrective action pursuant to Section 25187.

(c) For purposes of this section, "facility" means the entire site that is under the control of the owner or operator seeking a hazardous waste facilities permit.

(d) This section does not apply to a permit issued to a public agency or person for the operation of a temporary household hazardous waste collection facility pursuant to Article 10.8 (commencing with Section 25218).

(e) The corrective action required by subdivision (a) does not apply to a generator who treats hazardous waste pursuant to subdivision (a) or (c) of Section 25201.5. This subdivision does not limit the department's authority or the authority of a local health officer authorized pursuant to Section 25187.7 to order corrective action pursuant to Section 25187.

SEC. 7. Section 25201 of the Health and Safety Code is amended to read:

25201. (a) Except as provided in subdivision (c) and Section 25201.5, no owner or operator of a storage facility, treatment facility, transfer facility, resource recovery facility, or disposal site shall accept, treat, store, or dispose of a hazardous waste at the facility, 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, 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 recycle-only household hazardous waste collection facility operated in accordance with subdivision (b) of Section 25218.8.

SEC. 8. Section 25201 of the Health and Safety Code is amended to read:

25201. (a) Except as provided in subdivisions (c) and (d) and in Section 25201.5, no owner or operator of a storage facility, treatment facility, transfer facility, resource recovery facility, or disposal site shall accept, treat, store, or dispose of a hazardous waste at the facility, 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, 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 recycle-only household hazardous waste collection facility operated in accordance with subdivision (b) of Section 25218.8.

(d) A hazardous waste facilities permit is not required for a facility that meets the requirements of Section 13263.2 of the Water Code.

SEC. 9. 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 units or other structures, and all contiguous land, used for the treatment, transfer, storage, resource recovery, disposal, or recycling of hazardous waste, which has been issued or deemed to hold 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 any of the following:

(1) Any household hazardous waste collection facility operated pursuant to Article 10.8 (commencing with Section 25218).

(2) 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 wastes which meet the requirements of paragraph (3) of subdivision (a) of Section 25174.7.

(3) 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.

(4) A facility used solely for the treatment, transfer, storage, resource recovery, disposal, or recycling of hazardous waste which results when a government agency, or its contractor, investigates, removes, or remedies a release of hazardous waste caused by another person.

(5) (A) For purposes of fees assessed in any reporting period beginning July 1, 1990, or subsequently, a facility which has been issued a permit for the purpose of storing hazardous waste onsite, and whose permit has expired, if all of the following has occurred:

(i) The facility has received no waste from offsite since the permit expired.

(ii) The owner or operator gave the department timely notification of intent to close the facility, pursuant to regulations

adopted by the department.

(iii) At least 90 days have elapsed since the owner or operator gave the department that notification.

(iv) The department did not complete its review of the closure plan within 90 days of receiving the notification.

(B) This exclusion shall take effect the reporting period following the reporting period in which the facility first satisfied the requirements of subparagraph (A) and did not accumulate waste onsite for more than 90 consecutive days.

(c) "Large storage facility" means a storage facility which stores 1,000 or more tons of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

(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 current reporting period commencing on or after July 1, 1991.

(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 of the current reporting period commencing on or after July 1, 1991.

(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 of the current reporting period commencing on or after July 1, 1991.

(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 of the current reporting period commencing on or after July 1, 1991.

(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 of the current reporting period commencing on or after July 1, 1991.

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-rule governed by this chapter or the regulations adopted pursuant to this chapter. 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 (h), 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 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.

(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.

(A) A person submitting a request for a variance not otherwise listed in this paragraph shall pay eight thousand dollars ($8,000), unless the applicant is a small business and the department determines in its discretion that payment of this fee would cause financial or other unreasonable hardship to the applicant. If that

finding is made, the department may assess the applicant up to 50 percent of the standard fee. For the purposes of this subparagraph, "small business" means a business which is independently owned and operated, has 25 employees or less, and has a gross annual income which does not exceed two million dollars ($2,000,000).

(B) 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 subdivision (i).

(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 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.

(i) (1) A person requesting a class 1 permit modification, as defined in the regulations, 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, shall pay a fee equal to 40 percent of the fee for a new hazardous waste facilities permit for that facility, except that person shall pay 30 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, shall pay a fee equal to 80 percent of the fee for a new hazardous waste facilities permit for that facility, except that person shall pay 60 percent of the fee for a new permit for a land disposal facility or an incinerator.

(j) (1) 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.

(2) A person submitting a hazardous waste facilities permit application for a postclosure permit 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.

(3) For purposes of this subdivision and paragraph (8) of subdivision (c) of Section 25205.4, and notwithstanding subdivision (k), any facility or unit is "small" if 0.5 tons (1,000 pounds) or less of hazardous waste remain after closure, "medium" if more than 0.5 tons (1,000 pounds), but less than 1,000 tons of hazardous waste

remain after closure, and "large" if 1,000 or more tons of hazardous waste remain after closure.

(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) (1) The fees assessed pursuant to this section do not apply to an extremely hazardous waste permit.

(2) The fees assessed pursuant to this section do not apply to any variance issued to a public agency to transport wastes for purposes of operating a household hazardous waste collection facility or from a household hazardous waste collection facility receiving household hazardous waste or hazardous waste from conditionally exempted small quantity generators pursuant to Article 10.8 (commencing with Section 25218).

(n) The fees assessed pursuant to subdivision (h) do not apply to any government agency for hazardous wastes which result when the government agency, or its contractor, investigates, removes, or remedies a release of hazardous waste caused by another person.

(o) In each instance when a government agency uses its extremely hazardous waste permit for emergency response activities, the government agency shall send a copy of the permit to the department.

SEC. 11. Article 10.8 (commencing with Section 25218) of Chapter 6.5 of Division 20 of the Health and Safety Code is repealed.

SEC. 12. 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 facility 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-rule governed by this chapter or the regulations adopted pursuant to this chapter. 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 (h), 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 facility 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 facility permit application for any incinerator 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.

(e) (1) Except as provided in paragraphs (2) and (3), a person submitting a hazardous waste facility 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.

(2) A person submitting an application for a standardized permit for a storage facility, a treatment facility, or a storage and treatment facility, as specified in Section 25201.6, shall pay thirty thousand fifty-one dollars ($30,051) for a Series A standardized permit, eighteen thousand seven hundred sixty-two dollars ($18,762) for a Series B standardized permit, and five thousand dollars ($5,000) for a Series C standardized permit. The board shall assess these fees based upon the classifications adopted by the department pursuant to subdivision (e) of Section 25205.4.

(3) In addition to the fees specified in paragraph (2), the board shall assess a fee equal to the department's costs in reviewing and overseeing any corrective action program described in the application for a standardized permit pursuant to subparagraph (C) of paragraph (2) of subdivision (c) of Section 25201.6 and in reviewing and overseeing any corrective action work undertaken at the facility pursuant to that corrective action program.

(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.

(A) A person submitting a request for a variance not otherwise listed in this paragraph shall pay eight thousand dollars ($8,000), unless the applicant is a small business and the department determines in its discretion that payment of this fee would cause financial or other unreasonable hardship to the applicant. If that finding is made, the department may assess the applicant up to 50 percent of the standard fee. For the purposes of this subparagraph, "small business" means a business which is independently owned and operated, has 25 employees or less, and has a gross annual income which does not exceed two million dollars ($2,000,000).

(B) 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 subdivision (i).

(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 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.

(i) (1) A person requesting a class 1 permit modification, as defined in the regulations, shall pay a fee of one thousand five hundred dollars ($1,500), except a person requesting a class 1 permit modification to a standardized permit issued pursuant to Section 25201.6 shall pay a fee of seven hundred fifty dollars ($750).

(2) A person requesting a class 2 permit modification, as defined in the regulations, shall pay a fee equal to 40 percent of the fee for a new hazardous waste facilities permit for that facility, except that person shall pay 30 percent of the fee for a new permit for a land disposal facility or an incinerator and except that a person requesting

a class 2 permit modification to a standardized permit issued pursuant to Section 25201.6 shall pay a fee equal to 40 percent of the fee for a new standardized permit for that facility.

(3) A person requesting a class 3 permit modification, as defined in the regulations, shall pay a fee equal to 80 percent of the fee for a new hazardous waste facilities permit for that facility, except that person shall pay 60 percent of the fee for a new permit for a land disposal facility or an incinerator and except that a person requesting a class 2 permit modification, to a standardized permit issued pursuant to Section 25201.6 shall pay a fee equal to 80 percent of the fee for a new standardized permit for that facility.

(j) 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 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) For purposes of this subdivision and paragraph (8) of subdivision (c) of Section 25205.4, and notwithstanding subdivision (k), any facility or unit is "small" if 0.5 tons (1,000 pounds) or less of hazardous waste remain after closure, "medium" if more than 0.5 tons (1,000 pounds), but less than 1,000 tons of hazardous waste remain after closure, and "large" if 1,000 or more tons of hazardous waste remain after closure.

(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) (1) The fees assessed pursuant to this section do not apply to an extremely hazardous waste permit.

(2) The fees assessed pursuant to this section do not apply to any

variance issued to a public agency to transport wastes for purposes of operating a household hazardous collection waste facility or to transport wastes from a household hazardous waste collection facility receiving hazardous waste from small quantity generators pursuant to Article 10.8 (commencing with Section 25218).

(3) A permanent household hazardous waste collection facility.

(n) The fees assessed pursuant to subdivision (h) do not apply to any government agency for hazardous wastes which result when the government agency, or its contractor, investigates, removes, or remedies a release of hazardous waste caused by another person.

(o) In each instance when a government agency uses its extremely hazardous waste permit for emergency response activities, the government agency shall send a copy of the permit to the department.

(p) Except as provided in paragraph (3) of subdivision (e), the department shall not assess any fees for the department's costs in reviewing and overseeing a corrective action taken in conjunction with a hazardous waste facilities permit application.

SEC. 13. Article 10.8 (commencing with Section 25218) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 10.8. Household Hazardous Waste and Small Quantity Generator Waste

25218. The Legislature hereby finds and declares all of the following:

(a) Residential households which generate household hazardous waste and very small businesses which generate small amounts of hazardous waste in the state need an appropriate and economic means of disposing of the hazardous waste they generate.

(b) Abandonment or illegal disposal of household hazardous waste and hazardous waste from small businesses and the continued disposal of those wastes into the solid waste stream is a threat to public health and safety and to the environment.

(c) It is the shared responsibility of citizens, commercial small quantity generators, disposal facility operators, hazardous waste processors, manufacturers, sellers, solid waste handlers, and state and local agencies to ensure the proper recycling and disposal of household hazardous waste and conditionally exempt small quantity generator waste.

25218.1. For purposes of this article, the following terms have the following meaning:

(a) "Conditionally exempt small quantity generator" or "CESQG" means a business concern which meets the criteria specified in Section 261.5 of Title 40 of the Code of Federal Regulations.

(b) "Curbside household hazardous waste collection program" means a service authorized by a public agency which collects recyclable household hazardous waste materials, including latex

paint, used oil, used oil filters, and small batteries, and which is operated in accordance with Section 25163.

(c) "Door-to-door household hazardous waste collection program" or "household hazardous waste residential pickup service" means a program operated by a public agency, or its contractor, that collects household hazardous waste from individual residences, and transports that waste in an inspected and certified hazardous waste transport vehicle to an authorized household hazardous waste collection facility.

(d) "Household" means a single detached residence or a single unit of a multiple residence unit and all appurtenant structures.

(e) "Household hazardous waste" means any hazardous waste generated incidental to owning or maintaining a place of residence. Household hazardous waste does not include any waste generated in the course of operating a business concern at a residence.

(f) "Household hazardous waste collection facility" means a facility operated by a public agency, or its contractor, for the purpose of collecting, handling, treating, storing, recycling, or disposing of household hazardous waste, and its operation may include accepting hazardous waste from conditionally exempt small quantity generators if that acceptance is authorized pursuant to Section 25218.3. Household hazardous waste collection facilities include permanent household hazardous waste collection facilities, as defined in subdivision (g), temporary household hazardous waste collection facilities, as defined in subdivision (k), recycle-only household hazardous waste collection facilities, as defined in subdivision (j), curbside household hazardous waste collection programs, as defined in subdivision (b), and mobile household hazardous waste collection facilities, as defined in subdivision (f).

(g) "Mobile household hazardous waste collection facility" means a portable structure within which a household hazardous waste collection facility is operated and which meets all of the following conditions:

(1) The facility is operated not more than four times in any one calendar year at the same location.

(2) The facility is operated not more than three consecutive weeks within a two-month period at the same location.

(3) Upon the termination of operations, all equipment, materials, and waste are removed from the site within 144 hours.

(h) "Permanent household hazardous waste collection facility" means a permanent or semipermanent structure at a fixed location which meets both of the following conditions:

(1) The facility is operated at the same location on a continuous, regular schedule.

(2) The hazardous waste stored at the facility is removed within one year after collection.

(i) "Public agency" means a state or federal agency, county, city, or district.

(j) "Recyclable household hazardous waste material" means those

materials for which proven and authorized recycling technology exists and is readily available, and includes only used oil, used oil filters, latex paint, antifreeze, used small batteries, and spent lead-acid batteries.

(k) "Recycle-only household hazardous waste collection facility" means a household hazardous waste collection facility which is operated in accordance with Section 25218.8 and accepts for recycling only recyclable household hazardous waste materials.

(*l*) "Temporary household hazardous waste collection facility" means a household hazardous waste collection facility which meets both of the following conditions:

(1) The facility is operated not more than once for a period of not more than two days in any one month at the same location.

(2) Upon termination of operations, all equipment, materials, and waste are removed from the site within 144 hours.

25218.2. Prior to commencing operations, a public agency, or its contractor, which intends to operate a household hazardous waste collection facility shall submit the following written information to the department:

(a) A certification that the household hazardous waste collection facility will be operated in accordance with this article and with any other requirement that may be imposed by the department by regulation.

(b) All of the following information:

(1) The facility's name.

(2) The facility's location.

(3) The facility's generator identification number.

(4) The date that the facility will begin operation.

(5) The facility's operating schedule. The public agency shall also subsequently notify the department of any significant change in the operating schedule.

25218.3. (a) The department may authorize any household hazardous waste collection facility to accept hazardous waste from conditionally exempt small quantity generators.

(b) A household hazardous waste collection facility which is authorized to accept hazardous waste from CESQGs pursuant to subdivision (a) shall not accept more than 100 kilograms of hazardous waste, or 1 kilogram of extremely hazardous waste, from any one CESQG in a calendar month.

(c) A public agency, or its contractor, that accepts hazardous waste from CESQGs pursuant to this section may charge the CESQGs a fee for the cost incurred in handling their hazardous waste.

(d) The department may adopt and revise regulations for household hazardous waste collection facilities, including those which are authorized to accept hazardous waste from CESQGs. The regulations shall provide for all of the following:

(1) Promoting the reduction, reclamation, and recycling of hazardous waste over other hazardous waste management

alternatives.

(2) Ensuring the safe transport of household hazardous waste and hazardous waste to authorized collection programs.

(3) Ensuring the compliance of participating CESQGs with the monthly quantity limitations specified in Section 261.5 of Title 40 of the Code of Federal Regulations.

25218.4. Any person who transports household hazardous waste, and any CESQG that transports hazardous waste to an authorized household hazardous waste collection facility, who meets the conditions of Section 25218.5, is exempt from subdivisions (a) and (c) of Section 25163 and from the requirement for possession of a manifest in paragraph (1) of subdivision (d) of Section 25160.

25218.5. (a) Hazardous waste transported to a household hazardous waste collection facility shall be transported by the individual or CESQG who generated the waste, a curbside household hazardous waste collection program, or by a door-to-door household hazardous waste collection program or household hazardous waste residential pickup service.

(b) An individual transporting household hazardous waste generated by that person and a CESQG transporting hazardous waste generated by the CESQG to a household hazardous waste collection facility shall meet all of the following conditions:

(1) The total amount of household hazardous waste or hazardous waste transported to a household hazardous waste collection facility by either the person or a CESQG shall not exceed a total liquid volume of five gallons or a total dry weight of 50 pounds. If the hazardous waste transported is both liquid and nonliquid, the total amount transported shall not exceed a combined weight of 50 pounds.

(2) The household hazardous waste and CESQG hazardous waste which is transported shall be in closed containers and packed in a manner that prevents the containers from tipping, spilling, or breaking during transport.

(3) Different household hazardous wastes or different CESQG hazardous wastes shall not be mixed within a container before or during transport.

(4) If the hazardous waste is an extremely hazardous waste or an acutely hazardous waste, the total amount transported by a CESQG shall not exceed 2.2 pounds.

(c) The total combined volume or weight of latex paint, used oil filters, antifreeze, and small batteries transported to a recycle-only household hazardous waste collection facility by any one individual shall not exceed a total volume of 10 gallons or a total dry weight of 100 pounds. Up to two spent lead-acid batteries and 20 gallons of used oil may be transported at the same time in the same vehicle if all of the following conditions are met:

(1) Not more than 20 gallons of used oil is transported at a time.

(2) The contents of any single container does not exceed five gallons.

(3) The volume of each individual container does not exceed five gallons.

(d) A curbside household hazardous waste collection program shall meet all of the following conditions:

(1) Not more than a total combined weight of 10 pounds of used oil filters and small batteries shall be collected from a single residence at one time.

(2) Not more than five gallons of used oil shall be collected from a single residence at one time, and the volume of each individual container collected shall not exceed five gallons.

(3) Not more than five gallons of latex paint shall be collected from a single residence at one time, and the volume of each individual container collected shall not exceed five gallons.

(4) Spent lead-acid batteries and antifreeze shall not be collected by curbside household hazardous waste collection programs.

(5) The transported household hazardous waste shall be in closed containers and packed in a manner that prevents the containers from tipping, spilling, or breaking during transport.

(6) Different household hazardous wastes shall not be mixed within a container before or during transport.

(e) A door-to-door household hazardous waste collection program or household hazardous waste residential pickup service shall meet all of the following conditions:

(1) The transported household hazardous waste shall be in closed containers and packed in a manner that prevents the containers from tipping, spilling, or breaking during transport.

(2) Different household hazardous wastes shall not be mixed within a container before or during transport.

(3) A door-to-door household hazardous waste collection program or household hazardous waste residential pickup service is exempt from the requirements of Section 25160 regarding the use of a manifest when transporting household hazardous waste collected from individual residences to an authorized hazardous waste collection facility. In lieu of a manifest, a receipt shall be issued for the household hazardous waste collected from an individual residence, and a copy of the receipt shall be retained by the public agency for a period of at least three years.

25218.6. The fees imposed by Article 7 (commencing with Section 25170) and Article 9.1 (commencing with Section 25205.1) do not apply to either of the following:

(a) Hazardous wastes generated or disposed of by a public agency, or its contractor, operating a household hazardous waste collection facility, including, but not limited to, hazardous waste received from CESQGs.

(b) A household hazardous waste collection facility operated in accordance with this article.

25218.7. The corrective action provisions of Section 25200.10 do not apply to a permit issued for the operation of a temporary household hazardous waste collection facility.

25218.8. (a) Except as provided in subdivision (b), a hazardous waste facilities permit shall be obtained for the operation of a household hazardous waste collection facility.

(b) A hazardous waste facilities permit is not required for the operation of a recycle-only household hazardous waste collection facility if all of the following conditions are met:

(1) The facility accepts only the following recyclable household hazardous waste materials for subsequent transport to an authorized recycling facility:

(A) Latex paint.

(B) Used oil.

(C) Used oil filters.

(D) Antifreeze.

(E) Spent lead-acid batteries.

(F) Nickel-cadium, alkaline, carbon-zinc, or other small batteries, if the facility is in compliance with Section 25216.1.

(2) No hazardous wastes or other materials are handled at the facility other than the materials specified in paragraph (1).

(3) The materials are transported to the collection facility by either of the following:

(A) The person who generated the material.

(B) The authorized curbside household hazardous waste collection program.

(4) The materials transported to the facility are transported in accordance with Section 25218.5.

(5) The materials collected are not stored at the 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. More than one ton of spent lead-acid batteries shall not be stored at the facility for more than 180 days.

(6) The materials collected are managed in accordance with the hazardous waste labeling, containerization, emergency response, and personnel training requirements of this chapter.

(7) The facility is in compliance with Section 25218.2.

25218.9. On or before October 1 of each year, a public agency, or its contractor, operating a household hazardous waste collection facility shall submit to the department a copy of the completed California Intergrated Waste Management Board Form 303 that is required to be submitted to that board for the prior fiscal year pursuant to regulations adopted by that board.

25218.10. The department and the California Integrated Waste Management Board shall jointly develop and maintain a data base of all household hazardous waste collection events, facilities, and programs within the state. The department and the California Integrated Waste Management Board shall both maintain that information, as a cooperative effort, and shall make information from the data base available to the public upon request. However, the department and the California Integrated Waste Management Board shall implement this section only to the extent that funds are

appropriated therefor by the Legislature.

SEC. 14. Section 8 of this bill incorporates amendments to Section 25201 of the Health and Safety Code proposed by both this bill and SB 796. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 25201 of the Health and Safety Code, and (3) this bill is enacted after SB 796, in which case Section 7 of this bill shall not become operative.

SEC. 15. Section 12 of this bill incorporates amendments to Section 25205.7 of the Health and Safety Code proposed by both this bill and SB 27. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 25205.7 of the Health and Safety Code, and (3) this bill is enacted after SB 27, in which case Section 25205.7 of the Health and Safety Code, as amended by SB 27, shall remain operative only until the operative date of this bill, at which time Section 12 of this bill shall become operative, and Section 11 of this bill shall not become operative.

SEC. 16. If SB 922 of the 1993–94 Regular Session of the Legislature is enacted and becomes effective on or before January 1, 1994, and amends Sections 25174.7, 25205.1, and 25205.7 of the Health and Safety Code, the changes proposed by SB 922 to Sections 25174.7, 25205.1, and 25205.7 of the Health and Safety Code shall prevail over the changes made by this bill to those sections, regardless of whether this bill is chaptered before or after SB 922.

SEC. 17. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. 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 amend Section 25205.2 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 25205.2 of the Health and Safety Code is amended to read:

25205.2. (a) Except as provided in subdivision (c), in addition to the fees specified in Section 25174.1, each operator of a facility shall pay a facility fee for each reporting period, or any portion thereof, to the board based on the size and type of the facility, as specified in Section 25205.4. On or before January 31 of each calendar year, the department shall notify the board of all known facility operators by facility type and size. The department shall also notify the board of any operator who has been issued a permit or grant of interim status within 30 days after a permit or grant of interim status is issued to the operator. The fee specified in this section does not apply to facilities operating pursuant to a permit-by-rule, as specified in Section 25205.12.

(b) The board shall deposit all fees collected pursuant to subdivision (a) in the Hazardous Waste Control Account in the General Fund. The fees so deposited may be expended by the department, upon appropriation by the Legislature, for the purposes specified in subdivision (b) of Section 25174.

(c) Notwithstanding subdivision (a), a person who is issued a variance by the department from the requirement of obtaining a hazardous waste facilities permit or grant of interim status, or a person who is in a closure period approved by the department pursuant to Article 9 (commencing with Section 25200) and Article 12 (commencing with Section 25245), is not subject to the fee, for any reporting period following the reporting period in which the variance or closure was granted or approved by the department or in the reporting period following any reporting period in which the facility has completed all activities necessary for the department to approve the closure, including, but not limited to, the submittal of a certification that these activities are completed to the department.

(d) Notwithstanding any other provision of this article, the board shall not assess a facility fee pursuant to this section against a city, located in the County of Santa Cruz, that operates a municipal landfill and that has not received any hazardous waste on or after January 1, 1986, if the city did not receive a written annual notification from the department or the board, in accordance with the requirements specified in Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, that the fee would be due on or after January 1, 1986.

SEC. 2. Section 25205.2 of the Health and Safety Code is amended to read:

25205.2. (a) Except as provided in subdivision (c), in addition to the fees specified in Section 25174.1, each operator of a facility shall pay a facility fee for each reporting period, or any portion thereof, to the board based on the size and type of the facility, as specified in Section 25205.4. On or before January 31 of each calendar year, the department shall notify the board of all known facility operators by facility type and size. The department shall also notify the board of any operator who has been issued a permit or grant of interim status within 30 days from the date that the permit or grant of interim

status is issued to the operator. The fee specified in this section does not apply to facilities operating pursuant to a permit-by-rule, as specified in Section 25205.12.

(b) The board shall deposit all fees collected pursuant to subdivision (a) in the Hazardous Waste Control Account in the General Fund. The fees so deposited may be expended by the department, upon appropriation by the Legislature, for the purposes specified in subdivision (b) of Section 25174.

(c) Notwithstanding subdivision (a), a person who is issued a variance by the department from the requirement of obtaining a hazardous waste facilities permit or grant of interim status, or a person who is in a closure period approved by the department pursuant to Article 9 (commencing with Section 25200) and Article 12 (commencing with Section 25245), is not subject to the fee, for any reporting period following the reporting period in which the variance or closure was granted or approved by the department or in the reporting period following any reporting period in which the facility has completed all activities that are necessary for the department to approve the closure, including, but not limited to, the submittal of a certification that these activities are completed to the department.

(d) Notwithstanding any other provision of this article, the board shall not assess a facility fee pursuant to this section against a city, located in the County of Santa Cruz, that operates a municipal landfill and that has not received any hazardous waste on or after January 1, 1986, if the city did not receive a written annual notification from the department or the board, in accordance with the requirements specified in Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, that the fee would be due on or after January 1, 1986.

(e) Notwithstanding subdivision (a), a facility operating pursuant to a standardized permit, as specified in Section 25201.6, is exempt from the annual facility fee imposed by this section for a period of time equal to the number of years that the facility lawfully operated prior to the operative date of the act amending this section pursuant to a hazardous waste facility permit or other grant or authorization and paid facility fees for the operation of the facility pursuant to this section.

SEC. 3. The Legislature finds and declares that due to the unique circumstances regarding the City of Santa Cruz, the amendment of Section 25205.2 of the Health and Safety Code made by Section 1 of this act does not violate Section 16 of Article IV of the California Constitution, since a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution. The facts constituting those unique circumstances are as follows:

(a) The City of Santa Cruz municipal landfill has not received any hazardous waste since 1985 and was prohibited from accepting hazardous waste after that date.

(b) Unlike any other city in the state, the City of Santa Cruz was never notified by the Department of Toxic Substances Control or the State Board of Equalization, in the manner required by law, that the facility fee would be imposed on the operation of the municipal landfill pursuant to Section 25205.2 of the Health and Safety Code, for fee periods after 1985, when hazardous waste was no longer being accepted by that facility.

SEC. 4. The amendments made by this act to Section 25205.2 of the Health and Safety Code shall not take effect if Senate Bill 922 of the 1993–94 Session of the Legislature is enacted and takes effect January 1, 1994, and amends Section 25205.2 of the Health and Safety Code to prohibit a facility from being subject to a facility fee for treatment, storage, or disposal, if that activity took place before July 1, 1986, and if the fee for the activity was not paid prior to January 1, 1994, whether that act is enacted prior to, or subsequent to, this act.

SEC. 5. Section 2 of this bill incorporates amendments to Section 25205.2 of the Health and Safety Code proposed by this bill and SB 27. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 25205.2 of the Health and Safety Code, (3) this bill is enacted after SB 27, and (4) SB 922 is not enacted or does not take effect on January 1, 1994, in which case Section 25205.2 of the Health and Safety Code, as amended by SB 27, shall remain operative only until the operative date of this bill, at which time Section 2 of this bill shall become operative, and Section 1 of this bill shall not become operative.

CHAPTER 915

An act to amend Sections 35160.5, 48209.1, 48209.7, 48209.9, and 48209.11, and 48209.14 and 48980 of the Education Code, relating to school attendance.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 35160.5 of the Education Code is amended to read:

35160.5. (a) On or before December 1, 1984, the governing board of each school district shall, as a condition for the receipt of school apportionments from the State School Fund, adopt rules and regulations establishing school district policies as they relate to the following:

(1) Certification that personnel assigned to evaluate teachers have demonstrated competence in instructional methodologies and evaluation for teachers they are assigned to evaluate. The

determination of whether school personnel meet the district's adopted policies shall be made by the governing board.

(2) The establishment of district policies ensuring that each probationary certificated employee is assigned to a school within the district with assurances that his or her status as a new teacher and his or her potential needs for training, assistance, and evaluations will be recognized by the district.

(3) The establishment of policies and procedures that parents or guardians of pupils enrolled in the district may use to present complaints regarding employees of the district. These policies and procedures shall provide for appropriate mechanisms to respond to, and where possible, to resolve the complaints.

(b) The governing board of each school district that maintains one or more schools containing any of grades 7 to 12, inclusive, shall, as a condition for the receipt of an inflation adjustment pursuant to Section 42238.1, establish a school district policy regarding participation in extracurricular and cocurricular activities by pupils in grades 7 to 12, inclusive. The criteria, which shall be applied to extracurricular and cocurricular activities, shall ensure that pupil participation is conditioned upon satisfactory educational progress in the previous grading period. Pupils who are eligible for differential standards of proficiency pursuant to subdivision (d) of Section 51215 are covered by this section consistent with that subdivision. No person shall classify a pupil as eligible for differential standards of proficiency pursuant to subdivision (d) of Section 51215 for the purpose of circumventing the intent of this subdivision.

(1) For purposes of this subdivision, "extracurricular activity" means a program that has all of the following characteristics:

(A) The program is supervised or financed by the school district.

(B) Pupils participating in the program represent the school district.

(C) Pupils exercise some degree of freedom in either the selection, planning, or control of the program.

(D) The program includes both preparation for performance and performance before an audience or spectators.

(2) For purposes of this subdivision, an "extracurricular activity" is not part of the regular school curriculum, is not graded, does not offer credit, and does not take place during classroom time.

(3) For purposes of this subdivision, a "cocurricular activity" is defined as a program that may be associated with the curriculum in a regular classroom.

(4) Any teacher graded or required program or activity for a course which satisfies the entrance requirements for admission to the California State University or the University of California, is not an extracurricular or cocurricular activity as defined by this section.

(5) For purposes of this subdivision, "satisfactory educational progress" shall include, but not be limited to, the following:

(A) Maintenance of minimum passing grades, which is defined as at least a 2.0 grade point average in all enrolled courses on a 4.0 scale.

(B) Maintenance of minimum progress toward meeting the high school graduation requirements prescribed by the governing board.

(6) For purposes of this subdivision, "previous grading period" does not include any grading period in which the pupil was not in attendance for all, or a majority of, the grading period due to absences excused by the school for reasons such as serious illness or injury, approved travel, or work. In that event, "previous grading period" is deemed to mean the grading period immediately prior to the grading period or periods excluded pursuant to this paragraph.

(7) A program that has, as its primary goal, the improvement of academic or educational achievements of pupils is not an extracurricular or cocurricular activity as defined by this section.

(8) The governing board of each school district may adopt, as part of its policy established pursuant to this subdivision, provisions that would allow a pupil who does not achieve satisfactory educational progress, as defined in paragraph (4), in the previous grading period to remain eligible to participate in extracurricular and cocurricular activities during a probationary period. The probationary period shall not exceed one semester in length, but may be for a shorter period of time, as determined by the governing board of the school district. A pupil who does not achieve satisfactory educational progress, as defined in paragraph (4), during the probationary period shall not be allowed to participate in extracurricular and cocurricular activities in the subsequent grading period.

(9) Nothing in this subdivision shall preclude the governing board of a school district from imposing a more stringent academic standard than that imposed by this subdivision. If the governing board of a school district imposes a more stringent academic standard, the governing board shall establish the criteria for participation in extracurricular and cocurricular activities at a meeting open to the public pursuant to Section 35145.

The governing board of each school district shall annually review the school district policies adopted pursuant to the requirements of this section.

(c) (1) On or before July 1, 1994, the governing board of each school district shall, as a condition for the receipt of school apportionments from the state school fund, adopt rules and regulations establishing a policy of open enrollment within the district for residents of the district. This requirement does not apply to any school district that has only one school or any school district with schools that do not serve any of the same grade level.

(2) The policy shall include all of the following elements:

(A) It shall provide that the parents or guardian of each schoolage child who is a resident in the district may select the schools the child shall attend, irrespective of the particular locations of his or her residence within the district, except that school districts shall retain the authority to maintain appropriate racial and ethnic balances among their respective schools at the school districts' discretion or as specified in applicable court-ordered or voluntary desegregation

plans.

(B) It shall include a selection policy for any school that receives requests for admission in excess of the capacity of the school that ensures that selection of pupils to enroll in the school is made through a random, unbiased process that prohibits an evaluation of whether any pupil should be enrolled based upon his or her academic or athletic performance. For purposes of this subdivision, the governing board of the school district shall determine the capacity of the schools in its district. However, school districts of choice may employ existing entrance criteria for specialized schools or programs if the criteria are uniformly applied to all applicants.

(C) It shall provide that no pupil who currently resides in the attendance area of a school shall be displaced by pupils transferring from outside the attendance area.

(3) It is the intent of the Legislature that, upon the request of the pupil's parent or guardian and demonstration of financial need, each school district provide transportation assistance to the pupil to the extent that the district otherwise provides transportation assistance to pupils.

SEC. 2. Section 48209.1 of the Education Code, as added by Chapter 160 of the Statutes of 1993, is amended to read:

48209.1. (a) The governing board of any school district may accept interdistrict transfers. No school district that receives an application for attendance under this article is required to admit pupils to its schools. If, however, the governing board elects to accept transfers as authorized under this article, it shall, by resolution, elect to accept transfer pupils, determine and adopt the number of transfers it is willing to accept under this article, and ensure that pupils admitted under the policy are selected through a random, unbiased process that prohibits an evaluation of whether or not the pupil should be enrolled based upon his or her academic or athletic performance. Any pupil accepted for transfer shall be deemed to have fulfilled the requirements of Section 48204.

(b) Either the pupil's school district of residence or the school district of choice may prohibit the transfer of a pupil under this article or limit the number of pupils so transferred if the governing board of the district determines that the transfer would negatively impact any of the following:

(1) The court-ordered desegregation plan of the district.

(2) The voluntary desegregation plan of the district that meets the criteria of Section 42249.

(3) The racial and ethnic balance of the district.

SEC. 3. Section 48209.7 of the Education Code, as added by Chapter 160 of the Statutes of 1993, is amended to read:

48209.7. (a) A school district of residence with average daily attendance greater than 50,000 may limit the number of pupils transferring out each year under this article to 1 percent of its current year estimated average daily attendance.

(b) A school district of residence with average daily attendance

less than 50,000 may limit the number of pupils transferring out under this article to 3 percent of its current year estimated average daily attendance and may limit the maximum number of pupils transferring out under this article for the duration of the program authorized by this article to 10 percent of the average daily attendance for that period.

SEC. 4. Section 48209.9 of the Education Code, as added by Chapter 160 of the Statutes of 1993, is amended to read:

48209.9. (a) Commencing January 1, 1994, any application for transfer under this article shall be submitted by the pupil's parent or guardian to the school district of choice that has elected to accept transfer pupils pursuant to Section 48209.1 prior to January 1 of the school year preceding the school year for which the pupil is to be transferred. This application deadline may be waived upon agreement of the pupil's school district of residence and the school district of choice. No applications shall be submitted after January 1, 1999.

(b) The application shall be submitted on a form provided for this purpose by the State Department of Education and may request enrollment of the pupil in a specific school or program of the district.

(c) Not later than 90 days after the receipt by a school district of an application for transfer, the governing board of the district shall notify the parent or guardian in writing whether the application has been provisionally accepted or rejected or of the pupil's position on any waiting list. Final acceptance or rejection shall be made by May 15 preceding the school year for which the pupil is to be transferred. In the event of an acceptance, that notice shall be provided also to the school district of residence. If the application is rejected, the district governing board shall set forth in the written notification to the parent or guardian the specific reason or reasons for that determination, and shall ensure that the determination, and the specific reason or reasons therefor, are accurately recorded in the minutes of the board meeting in which the determination was made.

(d) Final acceptance of the transfer is applicable for one school year and will be renewed automatically each year unless the school district of choice through the adoption of a resolution withdraws from participation in the program and no longer will accept any transfer pupils from other districts. However, if a school district of choice withdraws from participation in the program, high school pupils admitted under this article may continue until they graduate from high school.

SEC. 5. Section 48209.11 of the Education Code, as added by Chapter 160 of the Statutes of 1993, is amended to read:

48209.11. (a) The average daily attendance for pupils admitted by a school district of choice pursuant to this article shall be credited to that district pursuant to Section 46607.

(b) Notwithstanding other provisions of law, state aid for categorical education programs for pupils admitted under this article shall be apportioned to the school district of choice.

(c) The State Allocation Board shall develop procedures to ensure that the average daily attendance of pupils admitted by a school district of choice pursuant to this article shall be credited to that school district for the purposes of any determination under Chapter 22 (commencing with Section 17700) of Part 10 that utilizes an average daily attendance calculation.

SEC. 6. Section 48209.14 of the Education Code, as added by Chapter 160 of the Statutes of 1993, is amended to read:

48209.14. (a) Pursuant to this article, each school district shall keep an accounting of all requests made for alternative attendance and records of all disposition of those requests that shall include, but are not to be limited to, all of the following:

(1) The number of requests granted, denied, or withdrawn. In the case of denied requests, the records shall indicate the reasons for the denials.

(2) The number of pupils transferred out of the district.

(3) The number of pupils transferred into the districts.

(b) The information maintained pursuant to subdivision (a) shall be reported to the governing board of the school district at an open meeting of the governing board. After the information is reported to the governing board of the school district, the information shall be reported to the Superintendent of Public Instruction no later than January 1, 1996, and annually thereafter, and the superintendent shall make the information available to the Governor, the Legislature, and the public.

SEC. 7. Section 48980 of the Education Code is amended to read:

48980. (a) At the beginning of the first semester or quarter of the regular school term, the governing board of each school district shall notify the parent or guardian of its minor pupils regarding the right or responsibility of the parent or guardian under Sections 35291, 46014, 48205, 48207, 48208, 49403, 49423, 49451, 49472, 51240, and 51550, and Chapter 2.3 (commencing with Section 32255) of Part 19.

(b) The notification also shall advise the parent or guardian of the availability of individualized instruction as prescribed by Section 48206.3, and of the program prescribed by Article 9 (commencing with Section 49510) of Chapter 9.

(c) The notification also may advise the parent or guardian of the importance of investing for future college or university education for their children and of considering appropriate investment options including, but not limited to, United States Savings Bonds.

(d) Each school district that elects to provide a fingerprinting program pursuant to Article 10 (commencing with Section 32390) shall inform parents or guardians of the program as specified in Section 32390.

(e) Until June 30, 1995, the notification shall also advise the parent or guardian of the availability of the employment-based school attendance options pursuant to subdivision (f) of Section 48204.

(f) The notification also shall include a copy of the district's written policy on sexual harassment established pursuant to Section

212.6, as it relates to pupils.

(g) The notification shall advise the parent or guardian of all current statutory attendance options and local attendance options available in the school district. That notification shall include all options for meeting residency requirements for school attendance, programmatic options offered within the local attendance areas, and any special programmatic options available on both an interdistrict and intradistrict basis. That notification also shall include a description of all options, a description of the procedure for application for alternative attendance areas or programs, an application form from the district for requesting a change of attendance, and a description of the appeals process available, if any, for a parent or guardian denied a change of attendance. The notification shall also include an explanation of the current statutory attendance options, including, but not limited to, those available under Section 35160.5, Chapter 5 (commencing with Section 46600) of Part 26, subdivision (f) of Section 48204, and Article 1.5 (commencing with Section 48209) of Chapter 2 of Part 27. The State Department of Education shall produce this portion of the notification and shall distribute it to all school districts.

It is the intent of the Legislature that the governing board of each school district annually review the enrollment options available to the pupils within their districts and that the school districts strive to make available enrollment options that meet the diverse needs, potential, and interests of California's pupils.

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 916

An act to amend Sections 2621.5, 2621.7, 2623, 2624, 2692, 26505, 26507, and 26525 of, and to repeal and add Section 2621.8 of, the Public Resources Code, relating to geological hazards.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 2621.5 of the Public Resources Code is amended to read:

2621.5. (a) It is the purpose of this chapter to provide for the adoption and administration of zoning laws, ordinances, rules, and regulations by cities and counties in implementation of the general plan that is in effect in any city or county. The Legislature declares that this chapter is intended to provide policies and criteria to assist cities, counties, and state agencies in the exercise of their responsibility to prohibit the location of developments and structures for human occupancy across the trace of active faults. Further, it is the intent of this chapter to provide the citizens of the state with increased safety and to minimize the loss of life during and immediately following earthquakes by facilitating seismic retrofitting to strengthen buildings, including historical buildings, against ground shaking.

(b) This chapter is applicable to any project, as defined in Section 2621.6, which is located within a delineated earthquake fault zone, upon issuance of the official earthquake fault zones maps to affected local jurisdictions, except as provided in Section 2621.7.

(c) The implementation of this chapter shall be pursuant to policies and criteria established and adopted by the board.

SEC. 2. Section 2621.7 of the Public Resources Code is amended to read:

2621.7. This chapter, except Section 2621.9, shall not apply to any of the following:

(a) The conversion of an existing apartment complex into a condominium.

(b) Any development or structure in existence prior to May 4, 1975, except for an alteration or addition to a structure that exceeds the value limit specified in subdivision (c).

(c) An alteration or addition to any structure if the value of the alteration or addition does not exceed 50 percent of the value of the structure.

(d) (1) Any structure located within the jurisdiction of the City of Berkeley or the City of Oakland which was damaged by fire between October 20, 1991, and October 23, 1991, if granted an exemption pursuant to this subdivision.

(2) The city may apply to the State Geologist for an exemption

and the State Geologist shall grant the exemption only if the structure located within the earthquake fault zone is not situated upon a trace of an active fault line, as delineated in the official earthquake fault zone map or in more recent geologic data, as determined by the State Geologist.

(3) When requesting an exemption, the city shall submit to the State Geologist all of the following information:

(A) Maps noting the parcel numbers of proposed building sites that are at least 50 feet from an identified fault and a statement that there is not any more recent information to indicate a geologic hazard.

(B) Identification of any sites that are within 50 feet of an identified fault.

(C) Proof that the property owner has been notified that the granting of an exemption is not any guarantee that a geologic hazard does not exist.

(4) The granting of the exemption does not relieve a seller of real property or an agent for the seller of the obligation to disclose to a prospective purchaser that the property is located within a delineated earthquake fault zone, as required by Section 2621.9.

(e) (1) Alterations which include seismic retrofitting, as defined in Section 8894.2 of the Government Code, to any of the following listed types of buildings in existence prior to May 4, 1975:

(A) Unreinforced masonry buildings, as described in subdivision (a) of Section 8875 of the Government Code.

(B) Concrete tilt-up buildings, as described in Section 8893 of the Government Code.

(C) Reinforced concrete moment resisting frame buildings as described in Applied Technology Council Report 21 (FEMA Report 154).

(2) The exemption granted by paragraph (1) shall not apply unless a city or county acts in accordance with all of the following:

(A) The building permit issued by the city or county for the alterations authorizes no greater human occupancy load, regardless of proposed use, than that authorized for the existing use permitted at the time the city or county grants the exemption. This may be accomplished by the city or county making a human occupancy load determination that is based on, and no greater than, the existing authorized use, and including that determination on the building permit application as well as a statement substantially as follows: "Under subparagraph (A) of paragraph (2) of subdivision (e) of Section 2621.7 of the Public Resources Code, the occupancy load is limited to the occupancy load for the last lawful use authorized or existing prior to the issuance of this building permit, as determined by the city or county."

(B) The city or county requires seismic retrofitting, as defined in Section 8894.2 of the Government Code, which is necessary to strengthen the entire structure and provide increased resistance to ground shaking from earthquakes.

(C) Exemptions granted pursuant to paragraph (1) are reported in writing to the State Geologist within 30 days of the building permit issuance date.

(3) Any structure with human occupancy restrictions under subparagraph (A) of paragraph (2) shall not be granted a new building permit that allows an increase in human occupancy unless a geologic report, prepared pursuant to subdivision (d) of Section 3603 of Title 14 of the California Code of Regulations in effect on January 1, 1994, demonstrates that the structure is not on the trace of an active fault, or the requirement of a geologic report has been waived pursuant to Section 2623.

(4) A qualified historical building within an earthquake fault zone that is exempt pursuant to this subdivision may be repaired or seismically retrofitted using the State Historical Building Code, except that, notwithstanding any provision of that building code and its implementing regulations, paragraph (2) shall apply.

SEC. 3. Section 2621.8 of the Public Resources Code is repealed.

SEC. 4. Section 2621.8 is added to the Public Resources Code, to read:

2621.8. Notwithstanding Section 818.2 of the Government Code, a city or county which knowingly issues a permit that grants an exemption pursuant to subdivision (e) of Section 2621.7 that does not adhere to the requirements of paragraph (2) of subdivision (e) of Section 2621.7, may be liable for earthquake-related injuries or deaths caused by its failure to so adhere.

SEC. 5. Section 2623 of the Public Resources Code is amended to read:

2623. (a) The approval of a project by a city or county shall be in accordance with policies and criteria established by the State Mining and Geology Board and the findings of the State Geologist. In the development of those policies and criteria, the State Mining and Geology Board shall seek the comment and advice of affected cities, counties, and state agencies. Cities and counties shall require, prior to the approval of a project, a geologic report defining and delineating any hazard of surface fault rupture. If the city or county finds that no undue hazard of that kind exists, the geologic report on the hazard may be waived, with the approval of the State Geologist.

(b) After a report has been approved or a waiver granted, subsequent geologic reports shall not be required, provided that new geologic data warranting further investigations is not recorded.

(c) The preparation of geologic reports that are required pursuant to this section for multiple projects may be undertaken by a geologic hazard abatement district.

SEC. 6. Section 2624 of the Public Resources Code is amended to read:

2624. Notwithstanding any provision of this chapter, cities and counties may do any of the following:

(1) Establish policies and criteria which are stricter than those established by this chapter.

(2) Impose and collect fees in addition to those required under this chapter.

(3) Determine not to grant exemptions authorized under this chapter.

SEC. 7. Section 2692 of the Public Resources Code is amended to read:

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, landslides, or other ground failure 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 earthquake fault 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.

SEC. 8. Section 26505 of the Public Resources Code is amended to read:

26505. "Improvement" means any activity that is necessary or incidental to the prevention, mitigation, abatement, or control of a geologic hazard, including, but not limited to, all of the following:

(a) Acquisition of property or any interest therein.

(b) Construction.

(c) Maintenance, repair, or operation of any improvement.

(d) Preparation of geologic reports required pursuant to Section 2623 for multiple projects within an earthquake fault zone or zones.

(e) Issuance and servicing of bonds, notes, or debentures issued to finance the costs of the improvements specified in subdivisions (a), (b), (c), and (d).

SEC. 9. Section 26507 of the Public Resources Code is amended to read:

26507. "Geologic hazard" means an actual or threatened landslide, land subsidence, soil erosion, earthquake, fault movement, or any other natural or unnatural movement of land or earth.

SEC. 10. Section 26525 of the Public Resources Code is amended to read:

26525. A geologic hazard abatement district may be formed pursuant to this division for the following purposes:

(a) Prevention, mitigation, abatement, or control of a geologic hazard.

(b) Mitigation or abatement of structural hazards that are partly

or wholly caused by geologic hazards.

SEC. 11. All existing special studies zone maps shall be known as earthquake fault zone maps and shall continue to be valid. The maps need not be reissued to incorporate the change in name.

SEC. 12. 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 917

An act to amend Sections 3701 and 3702.2 of the Labor Code, relating to workers' compensation.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 3701 of the Labor Code is amended to read:

3701. (a) Each year every private self-insuring employer shall secure incurred liabilities for the payment of compensation and the performance of the obligations of employers imposed under this chapter by renewing the prior year's security deposit or by making a new deposit of security. If a new deposit is made, it shall be posted within 60 days of the filing of the self-insured employer's annual report with the director, but in no event later than May 1.

(b) The minimum deposit shall be 125 percent of the private self-insurer's estimated future liability for compensation to secure payment of compensation plus 10 percent of the private self-insurer's estimated future liability for compensation to secure payment of all administrative and legal costs relating to or arising from the employer's self-insuring. In no event shall the security deposit for the incurred liabilities for compensation be less than two hundred twenty thousand dollars ($220,000).

(c) In determining the amount of the deposit required to secure incurred liabilities for the payment of compensation and the performance of obligations of a self-insured employer imposed under this chapter, the director shall offset estimated future liabilities for the same claims covered by a self-insured plan under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. Sec. 901 et seq.), but in no event shall the offset exceed the estimated future liabilities for the claims under this chapter.

(d) The director may only accept as security, and the employer

shall deposit as security, cash, securities, surety bonds, or irrevocable letters of credit in any combination the director, in his or her discretion, deems adequate security. The current deposit shall include within its coverage all amounts covered by terminated surety bonds or excess insurance policies.

(e) Surety bonds, irrevocable letters of credit, and documents showing issuance of any irrevocable letter of credit shall be deposited with, and be in a form approved by, the director, shall be exonerated only according to its terms and, in no event, by the posting of additional security.

(f) The director may accept as security a joint security deposit that secures an employer's obligation under this chapter and that also secures that employer's obligations under the federal Longshore and Harbor Workers' Compensation Act.

(g) The liability of the Self-Insurers' Security Fund, with respect to any claims brought under both this chapter and under the federal Longshore and Harbor Workers' Compensation Act, to pay for shortfalls in a security deposit shall be limited to the amount of claim liability owing the employee under this chapter offset by the amount of any claim liability owing under the Longshore and Harbor Workers' Compensation Act, but in no event shall the liability of the fund exceed the claim liability under this chapter. At the employee's option, recovery may be pursued under either the state or federal program.

(h) Securities shall be deposited on behalf of the director by the self-insured employer with the Treasurer. Securities shall be accepted by the Treasurer for deposit and shall be withdrawn only upon written order of the director.

(i) Cash shall be deposited in a financial institution approved by the director, and in the account assigned to the director. Cash shall be withdrawn only upon written order of the director.

(j) Upon the sending by the director of a request to renew, request to post, or request to increase or decrease a security deposit, a perfected security interest is created in the private self-insured's assets in favor of the director to the extent of any then unsecured portion of the self-insured's incurred liabilities. That perfected security interest is transferred to any cash or securities thereafter posted by the private self-insured with the director and is released only upon either of the following:

(1) The acceptance by the director of a surety bond or irrevocable letter of credit for the full amount of the incurred liabilities for the payment of compensation.

(2) The return of cash or securities by the director.

The private self-insured employer loses all right, title, and interest in, and any right to control, all assets or obligations posted or left on deposit as security. The director may liquidate the deposit as provided in Section 3701.5 and apply it to the self-insured employer's incurred liabilities either directly or through the Self-Insurers' Security Fund.

SEC. 2. Section 3702.2 of the Labor Code is amended to read:

3702.2. (a) All self-insured employers shall file a self-insurer's annual report in a form prescribed by the director.

(b) To enable the director to determine the amount of the security deposit required by subdivision (c) of Section 3701, the annual report of a self-insured employer who has self-insured both state and federal workers' compensation liability shall also set forth (1) the amount of all compensation liability incurred, paid-to-date, and estimated future liability under both this chapter and under the federal Longshore and Harbor Workers' Compensation Act (33 U.S.C. Sec. 901 et seq.), and (2) the identity and the amount of the security deposit securing the employer's liability under state and federal self-insured programs.

CHAPTER 918

An act to amend Section 871 of the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 871 of the Welfare and Institutions Code is amended to read:

871. (a) Any person under the custody of a probation officer or any peace officer in a county juvenile hall, or committed to a county juvenile home, ranch, camp, or forestry camp, or any person being transported to or from a county juvenile hall, home, ranch, camp, or forestry camp, who escapes or attempts to escape from that place or during transportation to or from that place, is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceeding one year.

(b) Any person who commits any of the acts described in subdivision (a) by use of force or violence shall be punished by imprisonment in a county jail for not more than one year or by imprisonment in the state prison.

(c) The willful failure of a person under the custody of a probation officer or any peace officer in a county juvenile hall, or committed to a county juvenile home, ranch camp, or forestry camp, to return to the county juvenile hall, home, ranch, camp, or forestry camp at the prescribed time while outside or away from the county facility on furlough or temporary release constitutes an escape punishable as provided in subdivision (a). However, a willful failure to return at the prescribed time shall not be considered an escape if the failure to return was reasonable under the circumstances.

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 919

An act to amend Sections 557.6 and 669.5 of the Insurance Code, relating to insurance.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 557.6 of the Insurance Code is amended to read:

557.6. Any peace officer or firefighter as defined pursuant to this section who has been involved in an accident shall submit to his or her private automobile insurer within 30 days of the accident his or her written declaration under penalty of perjury stating whether or not at the time of the accident he or she was operating an authorized emergency vehicle, as defined in subdivision (a) or (f) of Section 165 of the Vehicle Code or in paragraph (1) or (2) of subdivision (b) of Section 165 of the Vehicle Code in the performance of his or her duty during the hours of his or her employment. In lieu of a written declaration, the peace officer or firefighter may submit to the private automobile insurer a copy of the incident report filed by the peace officer or firefighter with his or her employer.

As used in this section, "peace officer" means every person defined in Section 830.1, subdivisions (a), (b), (c), (d), (e), (f), (g), and (h) of Section 830.2, subdivisions (a), (b), and (d) of Section 830.31, subdivisions (a) and (b) of Section 830.32, subdivisions (a), (b), (c), (d), and (e) of Section 830.33, subdivisions (a) and (b) of Section 830.5, and Sections 830.38 and 830.6, of the Penal Code, and "firefighter" means every person defined in Section 50925 of the Government Code.

SEC. 2. Section 669.5 of the Insurance Code is amended to read:

669.5. No insurer shall fail to renew any private automobile insurance policy of a peace officer, member of the California Highway Patrol, or firefighter, with respect to his or her operation of a private motor vehicle, for the reason that the insured has been involved in an accident while operating an authorized emergency

vehicle, as defined in subdivision (a) of Section 165 of the Vehicle Code or in paragraph (1) or (2) of subdivision (b) or (f) of Section 165 of the Vehicle Code, in the performance of his or her duty during the hours of his or her employment. As used in this section, "peace officer" shall have the same meaning as defined in Section 830.1, subdivisions (a), (b), (c), (d), (e), (g), and (h) of Section 830.2, subdivisions (a), (b), and (d) of Section 830.31, subdivisions (a) and (b) of Section 830.32, subdivisions (a), (b), (c), (d), and (e) of Section 830.33, Section 830.38, subdivisions (a) and (b) of Section 830.5, and Section 830.6 of the Penal Code, and "firefighter" means every person defined in Section 50925 of the Government Code.

In the case of a volunteer firefighter, this section applies to the regular employer of the volunteer firefighter to the extent that the involvement of the volunteer firefighter in the accident shall not be cause for the employer's insurer's decision to renew the employer's insurance policy as it applies to the employee covered by this section.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the 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 920

An act to amend Sections 22143, 22221, 23701, 24200.2, 24205, and 24612 of, to add Sections 22401.1 and 22401.2 to, to repeal Section 22801 of, and to repeal and add Section 24609 of, the Education Code, relating to the State Teachers' Retirement System.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 22143 of the Education Code is amended to read:

22143. "Proof of death" means providing to the system such evidence of death as may be required by the system.

SEC. 2. Section 22221 of the Education Code is amended to read:

22221. (a) Data filed by any member, retirant, or beneficiary with the board is confidential. No official or employee who has access to the individual records shall divulge any information concerning those records to any person other than the member or retirant to

whom the information relates or that person's authorized representative, the governing board of the school district or agency by which the member or retirant is employed, or any state department or agency, except as necessary to locate a person to whom a benefit or refund may be payable. The information shall be used by the board for the sole purpose of carrying into effect the provisions of this part.

(b) The information is not open to inspection by anyone except the board and its officers and employees, and any person authorized by the Legislature to make inspections.

(c) Information filed with the board in a beneficiary designation form may be released, after the death of the member or retirant, to those persons who can provide information necessary for the distribution of benefits.

SEC. 3. Section 22401.1 is added to the Education Code, to read:

22401.1. (a) Upon request by the system, a member shall provide proof of his or her date of birth to resolve any discrepancy between the member's date of birth as originally documented on the records of the system and the member's birthdate as subsequently submitted.

(b) A member shall provide proof of the date of birth of a person designated by the member as beneficiary under an option selected pursuant to Chapter 23 (commencing with Section 24200) if the beneficiary is not also a member of the system.

(c) Documentation substantiating the birthdate of a member's child shall be provided if a disability allowance, a disability retirement allowance, a family allowance, or a survivor benefit allowance payable under this part will include an amount for that child.

(d) At the time application is made for payment of a family allowance or survivor benefit allowance to a surviving spouse or dependent parent, a member's surviving spouse or dependent parent shall provide proof of his or her date of birth.

(e) At the discretion of the board, an original document, a certified copy of the original, or a photocopy shall be acceptable to establish proof of the date of birth.

SEC. 4. Section 22401.2 is added to the Education Code, to read:

22401.2. The system may withhold benefit payments until proof of the date of birth of a member, beneficiary under an option selected pursuant to Chapter 23 (commencing with Section 24200), child, surviving spouse, or dependent parent has been received and accepted by the system.

SEC. 5. Section 22801 of the Education Code is repealed.

SEC. 6. Section 23701 of the Education Code is amended to read:

23701. If no beneficiary designation is in effect on the date of death, any benefit payable shall be paid to the estate of the member or retirant.

Payment pursuant to the board's determination in good faith upon evidence satisfactory to it of the existence, identity or other facts

relating to entitlement of persons under this section shall constitute a complete discharge of and release of the system from liability for the benefit.

SEC. 7. Section 24200.2 of the Education Code is amended to read:

24200.2. (a) A retirant who elected Option 2, Option 3, Option 4, or Option 5 may name a new option beneficiary and select a second joint and survivor option described in Section 24200 if the option beneficiary designated at the time the option was elected predeceases the retirant.

The effective date of the election of the new joint and survivor option shall be one year following the date notification is received by the board, provided both the retirant and the designated option beneficiary are then living. The notification shall include proof of death of the predeceased beneficiary and a properly executed form for the new joint and survivor option.

The selection of the new joint and survivor option under this subdivision and Section 24200 is subject to an actuarial modification in the amount of the retirement allowance; provided, that a retirant may not elect a joint and survivor option that would result in any additional liability to the fund.

(b) If the option beneficiary designated in the election of an Option 6 or Option 7 pursuant to Section 24200 or 24203 dies after the member's retirement, the retirement allowance without modification for the option shall be payable to the retirant upon notification to the board and shall commence to accrue to the retirant as of the day following the date of the death of the option beneficiary. Notification to the board shall include proof of death of the predeceased beneficiary.

SEC. 8. Section 24205 of the Education Code is amended to read:

24205. (a) If a member cancels the election of an option made pursuant to Section 24203, written cancellation shall be received by the board on or before the day preceding the effective date of retirement or during the period between reinstatement pursuant to Section 23913 or Section 24166 and the effective date of the subsequent retirement. Regardless of how the member elects to receive his or her retirement allowance, that allowance shall be reduced by one-half of 1 percent for each year or partial year that Option 3, Option 5, or Option 7 is in effect, or by six-tenths of 1 percent for each year or partial year that Option 4 is in effect, or by three-fourths of 1 percent for each year or partial year that Option 2 or Option 6 is in effect.

(b) If the option beneficiary designated in the preretirement election of an option pursuant to Section 24203 dies prior to the member's retirement, the preretirement election shall be canceled as of the day following the date of death and the member's subsequent retirement allowance shall be subject to the allowance reduction prescribed in this section.

SEC. 9. Section 24609 of the Education Code is repealed.

SEC. 10. Section 24609 is added to the Education Code, to read:

24609. If a benefit or refund of contributions cannot be paid because, after a good faith effort, the member or beneficiary cannot be located, the amounts payable shall be retained in the Teachers' Retirement Fund until such time as the party entitled to payment is located.

Interest shall continue to accrue on the accumulated contributions pursuant to this part.

SEC. 11. Section 24612 of the Education Code is amended to read:

24612. The initial payment to a retirant shall be issued within 45 days of either the effective date of retirement or receipt by the system of a completed application for retirement, whichever is later. The initial payment to an option beneficiary shall be issued within 45 days following receipt by the system of a completed application for death benefits and proof of death of the member or retirant. Monthly payments shall continue thereafter. Payments may be based on a good faith estimated amount pending receipt by the system of all necessary employment information.

The retirant or option beneficiary shall be placed on the final roll and issued a retroactive payment, if one is due, within 45 days of receipt by the system of all necessary information.

CHAPTER 921

An act to amend Section 95 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. The Legislature hereby finds and declares that the funding of county free libraries should not be jeopardized because of a recent, controversial interpretation of legislation enacted more than 10 years ago. Chapter 242 of the Statutes of 1981 made technical and related amendments to the definition of "special district" in Section 95 of the Revenue and Taxation Code. The interpretation of those amendments that would exclude county free libraries from being considered as special districts would deprive those libraries of a secure and important part of their funding.

The Legislature further finds and declares that this act is necessary to clarify the intent of Section 95 of the Revenue and Taxation Code and to thereby assure libraries of a vital source of funding.

SEC. 2. Section 95 of the Revenue and Taxation Code is amended to read:

95. For the purpose of this chapter:

(a) "Local agency" means a city, county, and special district.

(b) "Jurisdiction" means a local agency, school district, community college district, or county superintendent of schools.

For jurisdictions located in more than one county, the county auditor of each county in which that jurisdiction is located shall, for the purposes of computing the amount for that jurisdiction pursuant to this chapter, treat the portion of the jurisdiction located within that county as a separate jurisdiction.

(c) "Property tax revenue" includes the amount of state reimbursement for the homeowners' exemption.

"Property tax revenue" does not include the amount of property tax levied for the purpose of making payments for the interest and principal on (1) general obligation bonds or other indebtedness approved by the voters prior to July 1, 1978, including tax rates levied pursuant to Part 10 (commencing with Section 15000) of Division 1 of, and Sections 39308 and 39311 and former Sections 81338 and 81341 of the Education Code, and Section 26912.7 of the Government Code, and (2) bonded indebtedness for the acquisition or improvement of real property approved by two-thirds of the voters on or after June 4, 1986.

(d) "Taxable assessed value" means total assessed value minus all exemptions other than the homeowners' and business inventory exemptions.

(e) "Jurisdictional change" includes a change of organization, as defined in Section 35027 of the Government Code, an incorporation, as defined in Section 35037 of the Government Code, a municipal reorganization, as defined in Section 35042 of the Government Code, a change of organization, as defined in Section 56028 of the Government Code, a formation, as defined in Section 56042 of the Government Code, and a reorganization, as defined in Section 56068 of the Government Code. "Jurisdictional change" also includes any change in the boundary of those special districts which are not under the jurisdiction of a local agency formation commission.

"Jurisdictional change" also includes a functional consolidation where two or more local agencies, except two or more counties, exchange or otherwise reassign functions and any change in the boundaries of a school district or community college district or county superintendent of schools.

(f) "School entities" means school districts, community college districts, the Educational Revenue Augmentation Fund, and county superintendents of schools.

(g) Except as otherwise provided in this subdivision, "tax rate area" means a specific geographic area all of which is within the jurisdiction of the same combination of local agencies and school entities for the current fiscal year.

In the case of a jurisdictional change pursuant to Section 99, the area subject to the change shall constitute a new tax rate area, except that if the area subject to change is within the same combinations of local agencies and school entities as an existing tax rate area, the two tax rate areas may be combined into one tax rate area.

Existing tax rate areas having the same combinations of local agencies and school entities may be combined into one tax rate area. For the combination of existing tax rate areas, the factors used to allocate the annual tax increment pursuant to Section 98 shall be determined by calculating a weighted average of the annual tax increment factors used in the tax rate areas being combined.

(h) "State assistance payments" means:

(1) For counties, amounts determined pursuant to subdivision (b) of Section 16260 of the Government Code, increased by the amount specified for each county pursuant to Section 94 of Chapter 282 of the Statutes of 1979, with the resultant sum reduced by an amount derived by the calculation made pursuant to Section 16713 of the Welfare and Institutions Code.

(2) For cities, 82.91 percent of the amounts determined pursuant to subdivisions (b) and (i) of Section 16250 of the Government Code, plus for any city an additional amount equal to one-half of the amount of any outstanding debt as of June 30, 1978, for "museums" as shown in the Controller's "Annual Report of Financial Transactions of Cities for Fiscal Year 1977–78."

(3) For special districts, 95.24 percent of the amounts received pursuant to Chapter 3 (commencing with Section 16270) of Part 1.5 of Division 4 of Title 2 of the Government Code, Section 35.5 of Chapter 332 of the Statutes of 1978, and Chapter 12 of the Statutes of 1979.

(i) "City clerk" means the clerk of the governing body of a city or city and county.

(j) "Executive officer" means the executive officer of a local agency formation commission.

(k) "City" means any city whether general law or charter, except a city and county.

(*l*) "County" means any chartered or general law county. "County" includes a city and county.

(m) "Special district" means any agency of the state for the local performance of governmental or proprietary functions within limited boundaries. "Special district" includes a county service area, a maintenance district or area, an improvement district or improvement zone, or any other zone or area, formed for the purpose of designating an area within which a property tax rate will be levied to pay for a service or improvement benefiting that area. "Special district" includes the Bay Area Air Quality Management District. "Special district" does not include a city, a county, a school district or a community college district. "Special district" does not include any agency which is not authorized by statute to levy a property tax rate. However, any special district authorized to levy a property tax by the statute under which the district was formed shall be considered a special district. Additionally, a county free library established pursuant to Article 1 (commencing with Section 19100) of Chapter 6 of Part 11 of Division 1 of Title 1 of the Education Code, and for which a property tax was levied in the 1977–78 fiscal year,

shall be considered a special district.

SEC. 3. The Legislature finds and declares that the changes made by this act are declaratory of existing law and do not constitute a change in existing law. For that reason, the Legislature further finds and declares that this act does not mandate a new program or higher level of service that will result in any additional cost to any local government.

SEC. 4. Pursuant to Section 17579 of the Government Code, the Legislature finds that there is no mandate contained in this act which will result in costs incurred by a local agency or school district for a new program or higher level of service which require reimbursement pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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

CHAPTER 922

An act to amend Section 43501 of, and to add Sections 40131.5 and 43501.5 to, the Public Resources Code, relating to solid waste.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 40131.5 is added to the Public Resources Code, to read:

40131.5. "Federal act" means the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.).

SEC. 2. Section 43501 of the Public Resources Code is amended to read:

43501. (a) Any person owning or operating a solid waste landfill, as defined in Section 46027, shall do both of the following:

(1) Upon application to become an operator of a solid waste facility pursuant to Section 44001, certify to the board and the local enforcement agency that all of the following have been accomplished:

(A) The owner or operator has prepared an initial estimate of closure and postclosure maintenance costs. The board shall adopt regulations that provide for an increase in the initial cost estimate to account for cost overruns due to unforseeable circumstances, and to provide a reasonable contingency comparable to that which is built into cost estimates for other, similar public works projects.

(B) The owner or operator has established a trust fund or

equivalent financial arrangement acceptable to the board, as specified in Article 4 (commencing with Section 43600).

(C) The amounts that the owner or operator will deposit annually in the trust fund or equivalent financial arrangement acceptable to the board will ensure adequate resources for closure and postclosure maintenance.

(2) Submit to the regional water board, the local enforcement agency, and the board a plan for the closure of the solid waste landfill and a plan for the postclosure maintenance of the solid waste landfill.

(b) Notwithstanding subparagraph (C) of paragraph (1) of subdivision (a) or any other provision of law, if the owner or operator is a county with a population of 200,000 or less, as determined by the 1990 decennial census, the county shall not be required to make annual deposits in excess of the amount required by the federal act or any other applicable federal law, or by any board-approved formula which meets the requirements of the federal act.

(c) If not in conflict with federal law or regulations, a county or city may, with regard to a solid waste landfill owned or operated by the county or city, base its estimate of closure and postclosure maintenance costs on the costs of employing county or city employees or persons under contract with the county or city in performing closure and postclosure maintenance. However, even if, to meet federal requirements, the costs estimate is based on the most expensive costs of closure and postclosure maintenance performed by a third party, the county or city may, to effect cost savings, employ county or city employees or employ persons under contract to actually perform closure operations or postclosure maintenance operations.

SEC. 3. Section 43501.5 is added to the Public Resources Code, to read:

43501.5. (a) On or before January 1, 1995, the board shall conduct and complete a study to determine reasonable and necessary closure and postclosure maintenance requirements for class III landfills, as classified by Section 2520 of Title 23 of the California Code of Regulations, in counties that have a population of 200,000 or less, as determined by the 1990 decennial census, and report the results of the study to the Legislature. The study shall include, but not be limited to, both of the following:

(1) A review and assessment of existing closure and postclosure maintenance requirements for those solid waste landfills.

(2) An analysis of the economic impact, fiscal constraints, geographic and demographic factors, and any other impediments to closure and postclosure maintenance of those solid waste landfills.

(b) 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.

CHAPTER 923

An act to amend Sections 1240, 1622, 1625, 42127, 42127.3, and 42131 of the Education Code, relating to school finance.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 1240 of the Education Code is amended to read:

1240. The superintendent of schools of each county shall:

(a) Superintend the schools of his or her county.

(b) Visit and examine each school in his or her county at reasonable intervals to observe its operation and to learn of its problems. He or she may annually present a report of the state of the schools in his or her county, and of his or her office, including, but not limited to, his or her observations while visiting the schools, to the board of education and the board of supervisors of his or her county.

(c) Distribute all laws, reports, circulars, instructions, and blanks that he or she may receive for the use of the school officers.

(d) Keep in his or her office the reports of the Superintendent of Public Instruction.

(e) Keep a record of his or her official acts, and of all the proceedings of the county board of education, including a record of the standing, in each study, of all applicants for certificates who have been examined, which shall be open to the inspection of any applicant or his or her authorized agent.

(f) Enforce the course of study.

(g) Enforce the use of state textbooks and of high school textbooks regularly adopted by the proper authority.

(h) Preserve carefully all reports of school officers and teachers.

(i) Deliver to his or her successor, at the close of his or her official term, all records, books, documents, and papers belonging to the office, taking a receipt for them, which shall be filed with the State Department of Education.

(j) Submit two reports during the fiscal year to the county board of education in accordance with the following:

(1) The first report shall cover the financial and budgetary status of the county office of education for the period ending October 31. The second report shall cover the period ending January 31. Both reports shall be reviewed by the county board of education and approved by the county superintendent of schools no later than 45 days after the close of the period being reported.

(2) As part of each report, the superintendent shall certify in writing whether or not the county office of education is able to meet its financial obligations for the remainder of the fiscal year and, based

on current forecasts, for the subsequent fiscal year. The certifications shall be classified as positive, qualified, or negative, pursuant to standards prescribed by the Superintendent of Public Instruction, for the purposes of determining subsequent state agency actions pursuant to Section 1240.1. For purposes of this subdivision, a negative certification shall be assigned to any county office of education that, based upon current projections, will be unable to meet its financial obligations for the remainder of the fiscal year or for the subsequent fiscal year. A qualified certification will be assigned to any county office of education that may not meet its financial obligations for the current fiscal year or two subsequent fiscal years. A positive certification will be assigned to any county office of education that will meet its financial obligations for the current fiscal year and subsequent two fiscal years. In accordance with those standards, the Superintendent of Public Instruction may reclassify any certification. As to any county office of education having a negative certification, the Superintendent of Public Instruction or his or her designee may exercise the authority set forth in subdivision (b) of Section 1630. Copies of each certification, and of the report containing that certification, shall be sent to the Superintendent of Public Instruction at the time the certification is submitted to the county board of education. Copies of each qualified or negative certification, and of the report containing that certification, shall be sent to the Controller at the time the certification is submitted to the county board of education.

(3) All reports and certifications required under this subdivision shall be in a format or on forms prescribed by the Superintendent of Public Instruction, and shall be based on standards and criteria for fiscal stability adopted by the State Board of Education pursuant to Section 33127. The reports, and supporting data, shall be made available by the county superintendent of schools to any interested party upon request.

(4) This subdivision does not preclude the submission of additional budgetary or financial reports by the superintendent to the county board of education or to the Superintendent of Public Instruction.

(k) When so requested, act as agent for the purchase of supplies for the city and high school districts of his or her county.

(*l*) For purposes of Section 44421.5, report to the Commission on Teacher Credentialing the identity of any certificated person who knowingly and willingly reports false fiscal expenditure data relative to the conduct of any educational program. This requirement applies only if, in the course of his or her normal duties, the county superintendent of schools discovers information that gives him or her reasonable cause to believe that false fiscal expenditure data relative to the conduct of any educational program has been reported.

SEC. 2. Section 1622 of the Education Code is amended to read:

1622. (a) On or before July 1 of each fiscal year, the county board of education shall adopt an annual budget for the budget year and

shall file that budget with the Superintendent of Public Instruction, the county board of supervisors, and the county auditor. The budget, and supporting data, shall be maintained and made available for public review. The budget shall indicate the date, time, and location at which the county board of education held the public hearing required under Section 1620.

(b) The Superintendent of Public Instruction shall examine the budget to determine whether it (1) complies with the standards and criteria adopted by the State Board of Education pursuant to Section 33127 for application to final local educational agency budgets, (2) allows the county office of education to meet its financial obligations during the fiscal year, and (3) is consistent with a financial plan that will enable the county office of education to satisfy its multiyear financial commitments. In addition, the Superintendent shall identify any technical corrections to the budget that must be made. On or before August 15, the Superintendent of Public Instruction shall approve or disapprove the budget and, in the event of a disapproval, transmit to the county office of education in writing his or her recommendations regarding revision of the budget and the reasons for those recommendations.

(c) On or before September 8, the county board of education shall revise the county office of education budget to reflect changes in projected income or expenditures subsequent to July 1, and to include any response to the recommendations of the Superintendent of Public Instruction, shall adopt the revised budget, and shall file the revised budget with the Superintendent of Public Instruction, the county board of supervisors, and the county auditor. Prior to revising the budget, the county board of education shall hold a public hearing regarding the proposed revisions, which shall be made available for public inspection not less than three working days prior to the hearing. The agenda for that hearing shall be posted at least 72 hours prior to the public hearing and shall include the location where the budget will be available for public inspection. The revised budget, and supporting data, shall be maintained and made available for public review.

(d) The Superintendent of Public Instruction shall examine the revised budget to determine whether it complies with the standards and criteria adopted by the State Board of Education pursuant to Section 33127 for application to final local educational agency budgets and, no later than October 8, shall approve or disapprove the revised budget. If the Superintendent of Public Instruction disapproves the budget, he or she shall call for the formation of a budget review committee pursuant to Section 1623.

(e) Notwithstanding any other provision of this section, the budget review for a county office of education shall be governed by paragraphs (1), (2), and (3) of this subdivision, rather than by subdivisions (c) and (d), if the county board of education so elects, and notifies the Superintendent of Public Instruction in writing of that decision, no later than October 31 of the immediately preceding

calendar year.

(1) In the event of the disapproval of the budget of a county office of education pursuant to subdivision (b), on or before September 8, the county superintendent of schools and the county board of education shall review the recommendations of the Superintendent of Public Instruction at a regularly scheduled meeting of the county board of education and respond to those recommendations. That response shall include the proposed actions to be taken, if any, as a result of those recommendations.

(2) No later than October 8, after receiving the response required under paragraph (1), the Superintendent of Public Instruction shall review that response and either approve or disapprove the budget of the county office of education. If the Superintendent of Public Instruction disapproves the budget, he or she shall call for the formation of a budget review committee pursuant to Section 1623.

(3) Not later than 45 days after the Governor signs the annual Budget Act, the county office of education shall make available for public review any revisions in revenues and expenditures that it has made to its budget to reflect the funding made available by that Budget Act.

SEC. 3. Section 1625 of the Education Code is amended to read:

1625. The county superintendent of schools for any county office of education that reports a negative unrestricted fund balance or a negative cash balance in the annual report required by Section 1622 or in the audited annual financial statements required by Section 41020 shall include, with the budget submitted in accordance with Section 1622 and the certifications required by subdivision (j) of Section 1240, a statement identifying the reasons for the negative unrestricted fund balance or negative cash balance and the steps that will be taken to ensure that the negative balance will not occur at the end of the budget year.

SEC. 4. Section 42127 of the Education Code is amended to read:

42127. (a) On or before July 1 of each year, the governing board of each school district shall accomplish the following:

(1) Hold a public hearing on the budget to be adopted for the subsequent fiscal year. The agenda for that hearing shall be posted at least 72 hours prior to the public hearing and shall include the location where the budget will be available for public inspection.

(2) Adopt a budget. Not later than five days after that adoption or by July 1, whichever occurs first, the governing board shall file that budget with the county superintendent of schools. That budget, and supporting data, shall be maintained and made available for public review. If the governing board of the district does not want all or a portion of the property tax requirement levied for the purpose of making payments for the interest and redemption charges on indebtedness as described in paragraph (1) or (2) of subdivision (b) of Section 1 of Article XIII A of the California Constitution, the budget shall include a statement of the amount or portion for which a levy shall not be made.

(b) The county superintendent of schools may accept changes in any statement included in the budget, pursuant to subdivision (a), of the amount or portion for which a property tax levy shall not be made. The county superintendent or the county auditor shall compute the actual amounts to be levied on the property tax rolls of the district for purposes that exceed apportionments to the district pursuant to Sections 95 to 100, inclusive, of the Revenue and Taxation Code. Each school district shall provide all data needed by the county superintendent or the county auditor to compute the amounts. On or before August 15, the county superintendent shall transmit the amounts so computed to the county auditor who shall compute the tax rates necessary to produce the amounts. On or before September 1, the county auditor shall submit the rate so computed to the board of supervisors for adoption.

(c) The county superintendent of schools shall do all of the following:

(1) Examine the adopted budget to determine whether it complies with the standards and criteria adopted by the State Board of Education pursuant to Section 33127 for application to final local educational agency budgets. The superintendent shall identify, if necessary, any technical corrections that must be made to bring the budget into compliance with those standards and criteria.

(2) Determine whether the adopted budget will allow the district to meet its financial obligations during the fiscal year and is consistent with a financial plan that will enable the district to satisfy its multiyear financial commitments.

(d) On or before August 15, the county superintendent of schools shall approve or disapprove the adopted budget for each school district. If, pursuant to the review conducted pursuant to subdivision (c), the superintendent determines that the adopted budget for a school district does not satisfy paragraph (1) or (2) of that subdivision, he or she shall disapprove the budget and, not later than August 15, transmit to the governing board of the school district, in writing, his or her recommendations regarding revision of the budget and the reasons for those recommendations. The county superintendent of schools may assign a fiscal adviser to assist the district to develop a budget in compliance with those revisions. In addition, the county superintendent of schools may appoint a committee to examine and comment on the superintendent's review and recommendations, subject to the requirement that the committee report its findings to the superintendent no later than August 20.

(e) On or before September 8, the governing board of the school district shall revise the adopted budget to reflect changes in projected income or expenditures subsequent to July 1, and to include any response to the recommendations of the county superintendent of schools, shall adopt the revised budget, and shall file the revised budget with the county superintendent of schools. Prior to revising the budget, the governing board shall hold a public

hearing regarding the proposed revisions, to be conducted in accordance with Section 42103. The revised budget, and supporting data, shall be maintained and made available for public review.

(f) On or before September 22, the county superintendent of schools shall provide a list to the Superintendent of Public Instruction identifying all school districts for which budgets may be disapproved.

(g) The county superintendent of schools shall examine the revised budget to determine whether it (1) complies with the standards and criteria adopted by the State Board of Education pursuant to Section 33127 for application to final local educational agency budgets, (2) allows the district to meet its financial obligations during the fiscal year, and (3) is consistent with a financial plan that will enable the district to satisfy its multiyear financial commitments, and, not later than October 8, shall approve or disapprove the revised budget. If the county superintendent of schools disapproves the budget, he or she shall call for the formation of a budget review committee pursuant to Section 42127.1.

(h) Not later than October 8, the county superintendent of schools shall submit a report to the Superintendent of Public Instruction identifying all school districts for which budgets have been disapproved, including a copy of the written response transmitted to each of those districts pursuant to subdivision (d).

(i) Notwithstanding any other provision of this section, the budget review for a school district shall be governed by paragraphs (1), (2), and (3) of this subdivision, rather than by subdivisions (e) and (g), if the governing board of the school district so elects, and notifies the county superintendent in writing of that decision, not later than October 31 of the immediately preceding calendar year. On or before July 1, the governing board of a school district for which the budget review is governed by this subdivision, rather than by subdivisions (e) and (g), shall conduct a public hearing regarding its proposed budget in accordance with Section 42103.

(1) In the event of the disapproval of the adopted budget of a school district pursuant to subdivision (d), on or before September 8, the governing board of the school district, in conjunction with the county superintendent of schools, shall review the superintendent's recommendations at a regular meeting of the governing board and respond to those recommendations. The response shall include any revisions to the adopted budget and other proposed actions to be taken, if any, as a result of those recommendations.

(2) On or before September 22, the county superintendent of schools will provide a list to the Superintendent of Public Instruction identifying all school districts for which a budget may be tentatively disapproved.

(3) Not later than October 8, after receiving the response required under paragraph (1), the county superintendent of schools shall review that response and either approve or disapprove the budget. If the county superintendent of schools disapproves the

budget, he or she shall call for the formation of a budget review committee pursuant to Section 42127.1.

(4) Not later than 45 days after the Governor signs the annual Budget Act, the school district shall make available for public review any revisions in revenues and expenditures that it has made to its budget to reflect the funding made available by that Budget Act.

(j) Any school district for which the county board of education serves as the governing board is not subject to subdivisions (c) to (h), inclusive, but is governed instead by the budget procedures set forth in Section 1622.

SEC. 5. Section 42127.3 of the Education Code is amended to read:

42127.3. (a) If the budget review committee established pursuant to Sections 42127.1 and 42127.2 recommends approval of the school district budget, the county superintendent of schools shall accept the recommendation of the budget review committee and approve the budget.

(b) If the budget review committee established pursuant to Sections 42127.1 and 42127.2 disapproves the school district budget, the school district governing board, not later than five working days after receipt of the report described in paragraph (2) of subdivision (b) of Section 42127.2, may submit a response to the Superintendent of Public Instruction, including any revisions to the adopted final budget and any other proposed actions to be taken as a result of the recommendations of the budget review committee. Based upon the recommendations of the budget review committee, and any response to those recommendations provided by the school district governing board, the Superintendent of Public Instruction shall either approve or disapprove the budget. If the Superintendent of Public Instruction disapproves the budget, he or she shall notify the school district governing board in writing of the reasons for that disapproval and, for the remainder of the current fiscal year, the county superintendent of schools shall do all of the following:

(1) Not later than November 30, develop and adopt, in consultation with the Superintendent of Public Instruction and the school district governing board, a fiscal plan and budget that will govern the district and will allow the district to meet its financial obligations, both in the current fiscal year and with regard to the district's multiyear financial commitments. The governing board of the district shall govern the operation of the district for the current fiscal year in accordance with that adopted budget.

(2) Cancel purchase orders, prohibit the issuance of nonsalary warrants, and otherwise stay or rescind any action that is inconsistent with the budget adopted pursuant to paragraph (1). The county superintendent of schools shall inform the school district governing board in writing of his or her justification for any exercise of authority under this paragraph.

(3) Monitor and review the operation of the district.

(c) If, during the selection of the budget review committee or

during the review by the budget review committee, an agreement is reached between the governing board of the school district and the county superintendent of schools, and the school district revises its budget to comply with this agreement, the county superintendent of schools shall approve the district budget and the budget review committee selection, or its review of the budget, shall be canceled.

(d) The school district shall pay reasonable fees charged by the county superintendent of schools for actual administrative expenses incurred pursuant to subdivision (b). The Superintendent of Public Instruction shall develop, and distribute to affected school districts and county offices of education, advisory guidelines regarding the appropriate amount of any fees charged pursuant to this subdivision.

(e) This section shall not be construed to authorize the county superintendent of schools to abrogate any provision of a collective bargaining agreement that was entered into by a school district prior to the date upon which the county superintendent of schools disapproved the budget of the school district pursuant to subdivision (b).

SEC. 6. Section 42131 of the Education Code is amended to read:

42131. (a) (1) Pursuant to the reports required by Section 42130, the governing board of each school district shall certify, in writing, within 45 days after the close of the period being reported, whether or not the school district is able to meet its financial obligations for the remainder of the fiscal year and, based on current forecasts, for the subsequent fiscal year. These certifications shall be based upon the board's assessment, on the basis of standards and criteria for fiscal stability adopted by the State Board of Education pursuant to Section 33127, of the district budget, as revised to reflect current information regarding the adopted state budget, district property tax revenues pursuant to Sections 95 to 100, inclusive, of the Revenue and Taxation Code, and ending balances for the preceding fiscal year as reported pursuant to Section 42100. The certifications shall be classified as positive, qualified, or negative, as prescribed by the Superintendent of Public Instruction for the purposes of determining subsequent actions by the Superintendent of Public Instruction, the Controller, or the county superintendent of schools, pursuant to subdivisions (b) and (c). These certifications shall be based upon the financial and budgetary reports required by Section 42130 but may include additional financial information known by the governing board to exist at the time of each certification. For purposes of this subdivision, a negative certification shall be assigned to any school district that, based upon current projections, will be unable to meet its financial obligations for the remainder of the fiscal year or for the subsequent fiscal year. A qualified certification shall be assigned to any school district that may not meet its financial obligations for the current fiscal year or two subsequent fiscal years. A positive certification shall be assigned to any school district that will meet its financial obligations for the current fiscal year and subsequent two fiscal years.

(2) A copy of each certification and a copy of the report submitted to the governing board pursuant to Section 42130 shall be filed with the county superintendent of schools. If a county office of education receives a positive certification when it determines a negative or qualified certification should have been filed, the county superintendent of schools shall change the certification to negative or qualified, as appropriate, and, no later than 75 days after the close of the period being reported, shall provide notice of that action to the governing board of the school district and to the Superintendent of Public Instruction. No later than five days after a school district receives notice of a change by the county superintendent of schools in the district's certification to negative or qualified, the governing board of the district may submit an appeal to the Superintendent of Public Instruction regarding the validity of that change, in accordance with the criteria applied to those designations pursuant to this subdivision. No later than 30 days after receiving that appeal, the Superintendent of Public Instruction shall determine the certification to be assigned to the district, and shall notify the school district governing board and the county superintendent of schools of that determination.

Copies of any certification in which the governing board is unable to certify unqualifiedly that these financial obligations will be met and a copy of the report submitted to the governing board pursuant to Section 42130 shall be sent to the Controller and the Superintendent of Public Instruction at the time of the certification, together with a completed transmittal form provided by the Superintendent of Public Instruction. Within 75 days after the close of the reporting period on all school district certifications that are classified as qualified or negative pursuant to this section, the appropriate county superintendent of schools shall submit to the Superintendent of Public Instruction and the Controller his or her comments on those certifications and report any action proposed or taken pursuant to subdivision (b).

(3) All reports and certifications required under this subdivision shall be in a format or on forms prescribed by the Superintendent of Public Instruction, and shall be based on standards and criteria for fiscal stability adopted by the State Board of Education pursuant to Section 33127.

(4) This subdivision shall not preclude the submission of additional budgetary or financial reports by the county superintendent of schools to the district governing board, or to the Superintendent of Public Instruction.

(b) As to any school district having a negative or qualified certification, the county superintendent of schools may do one or more of the following:

(1) Exercise the authority granted in Section 42637, in accordance with the provisions of that section.

(2) Direct the district to submit to the county superintendent of schools a proposal for addressing the fiscal conditions that resulted in

the negative or qualified certification.

(3) As to any school district having a negative certification, exercise the authority granted in subdivision (c) of Section 42127.6, in accordance with the provisions of that section.

(c) Whenever a district governing board transmits to the Controller and the Superintendent of Public Instruction a qualified or negative certification as required by subdivision (a), the Superintendent of Public Instruction, in cooperation with the Controller's office, shall review the certification and the attached report together with the comments of the county superintendent of schools and any other pertinent information available to them, and shall review the actions proposed or taken by the county superintendent of schools pursuant to subdivision (b). After consulting with the county superintendent of schools, the Superintendent of Public Instruction, in cooperation with the Controller's office, may take the following actions, or other actions as appropriate:

(1) With respect to qualified certifications, direct the county superintendent of schools to exercise his or her authority as prescribed in Section 42637.

(2) With respect to negative certifications, conduct an onsite review, direct the county superintendent of schools to exercise the authority granted in Section 42637 or in subdivision (c) of Section 42127.6, or direct the district to prepare alternative plans for resolving the identified fiscal problems.

(d) Within 75 days after the close of each reporting period, each county superintendent of schools shall report to the Controller and the Superintendent of Public Instruction as to whether the governing board of each of the school districts under his or her jurisdiction has submitted the certification required by subdivision (a). That report shall account for all districts under the jurisdiction of the county office of education and indicate the type of certification filed by each district.

(e) The Controller's office may conduct an audit or review of the fiscal condition of any district having a negative or qualified certification.

(f) The governing board of each school district that files a qualified or negative certification for the second report required for any fiscal year under Section 42130, or for which the second report is classified as qualified or negative by the county superintendent of schools, shall provide to the county superintendent of schools, the Controller, and the Superintendent of Public Instruction no later than June 1, a financial statement that projects the fund and cash balances of the district as of June 30. The governing boards of all other school districts are encouraged to develop a similar financial statement for use in developing the beginning fund balances of the district for the ensuing fiscal year.

(g) Any school district for which the county board of education serves as the governing board is not subject to subdivisions (a) to (f),

inclusive, but is governed instead by the interim report, monitoring, and review procedures set forth in subdivision (j) of Section 1240 and in Article 2 (commencing with Section 1620) of Chapter 5 of Part 2.

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 924

An act to amend Sections 1240, 1240.1, 1624, 42127.3, 42127.8, 42127.9, 42128, and 42131 of, to add Sections 41020.8, 41322, 42120, and 42652 to, and to repeal and add Sections 1630 and 42127.6 of, the Education Code, and to add Section 3540.2 to the Government Code, relating to education, and making an appropriation therefor.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 1240 of the Education Code is amended to read:

1240. The superintendent of schools of each county shall:

(a) Superintend the schools of his or her county.

(b) Visit and examine each school in his or her county at reasonable intervals to observe its operation and to learn of its problems. He or she may annually present a report of the state of the schools in his or her county, and of his or her office, including, but not limited to, his or her observations while visiting the schools, to the board of education and the board of supervisors of his or her county.

(c) Distribute all laws, reports, circulars, instructions, and blanks that he or she may receive for the use of the school officers.

(d) Keep in his or her office the reports of the Superintendent of Public Instruction.

(e) Keep a record of his or her official acts, and of all the proceedings of the county board of education, including a record of the standing, in each study, of all applicants for certificates who have been examined, which shall be open to the inspection of any

applicant or his or her authorized agent.

(f) Enforce the course of study.

(g) Enforce the use of state textbooks and of high school textbooks regularly adopted by the proper authority.

(h) Preserve carefully all reports of school officers and teachers.

(i) Deliver to his or her successor, at the close of his or her official term, all records, books, documents, and papers belonging to the office, taking a receipt for them, which shall be filed with the State Department of Education.

(j) Submit two reports during the fiscal year to the county board of education in accordance with the following:

(1) The first report shall cover the financial and budgetary status of the county office of education for the period ending October 31. The second report shall cover the period ending January 31. Both reports shall be reviewed by the county board of education and approved by the county superintendent of schools no later than 45 days after the close of the period being reported.

(2) As part of each report, the superintendent shall certify in writing whether or not the county office of education is able to meet its financial obligations for the remainder of the fiscal year and, based on current forecasts, for the subsequent fiscal year. The certifications shall be classified as positive, qualified, or negative, pursuant to standards prescribed by the Superintendent of Public Instruction, for the purposes of determining subsequent state agency actions pursuant to Section 1240.1. For purposes of this subdivision, a negative certification shall be assigned to any county office of education that, based upon current projections, will be unable to meet its financial obligations for the remainder of the fiscal year or for the subsequent fiscal year. A qualified certification will be assigned to any county office of education that may not meet its financial obligations for the current fiscal year or two subsequent fiscal years. A positive certification will be assigned to any county office of education that will meet its financial obligations for the current fiscal year and subsequent two fiscal years. In accordance with those standards, the Superintendent of Public Instruction may reclassify any certification. If a county office of education receives a negative certification, the Superintendent of Public Instruction, or his or her designee, may exercise the authority set forth in subdivision (c) of Section 1630. Copies of each certification, and of the report containing that certification, shall be sent to the Superintendent of Public Instruction at the time the certification is submitted to the county board of education. Copies of each qualified or negative certification, and of the report containing that certification, shall be sent to the Controller at the time the certification is submitted to the county board of education.

(3) All reports and certifications required under this subdivision shall be in a format or on forms prescribed by the Superintendent of Public Instruction, and shall be based on standards and criteria for fiscal stability adopted by the State Board of Education pursuant to

Section 33127. The reports, and supporting data, shall be made available by the county superintendent of schools to any interested party upon request.

(4) This subdivision does not preclude the submission of additional budgetary or financial reports by the superintendent to the county board of education or to the Superintendent of Public Instruction.

(k) When so requested, act as agent for the purchase of supplies for the city and high school districts of his or her county.

(*l*) For purposes of Section 44421.5, report to the Commission on Teacher Credentialing the identity of any certificated person who knowingly and willingly reports false fiscal expenditure data relative to the conduct of any educational program. This requirement applies only if, in the course of his or her normal duties, the county superintendent of schools discovers information that gives him or her reasonable cause to believe that false fiscal expenditure data relative to the conduct of any educational program has been reported.

SEC. 2. Section 1240.1 of the Education Code is amended to read:

1240.1. Whenever a county superintendent of schools transmits to the Controller and the Superintendent of Public Instruction a qualified or negative certification as required by subdivision (j) of Section 1240, the State Department of Education, in cooperation with the Controller's office, shall review the certification and the attached report and any other pertinent information, and the Superintendent of Public Instruction shall exercise his or her authority pursuant to Section 1630.

SEC. 3. Section 1624 of the Education Code is amended to read:

1624. (a) If the budget review committee established pursuant to Section 1623 disapproves the budget of the county office of education, within five working days following the receipt of the committee's report, the county superintendent of schools and the county board of education may submit a response to the Superintendent of Public Instruction, including any revisions to the adopted budget and any other proposed action to be taken as a result of the recommendations of the budget review committee.

(b) Based upon the recommendations of the budget review committee provided pursuant to subdivision (c) of Section 1623, and any response provided pursuant to subdivision (a), the Superintendent of Public Instruction shall either approve or disapprove the budget of the county office of education. If the Superintendent of Public Instruction disapproves the budget, the superintendent or his or her designee may do any of the following for the remainder of the current fiscal year:

(1) On or before November 30, develop and adopt, in consultation with the county superintendent of schools and the county board of education, a fiscal plan and budget for the county office of education that will allow the county office of education to meet its financial obligations both in the budget year and with regard to the multiyear financial commitments. The county board of education and the

county superintendent of schools shall govern the operation of the county office of education for the budget year in accordance with that fiscal plan and budget. The deadline set forth in this paragraph shall be modified to reflect any extension granted under subdivision (d) of Section 1623.

(2) Cancel purchase orders, prohibit the issuance of nonsalary warrants, and otherwise stay or rescind any action that is inconsistent with the fiscal plan and budget adopted pursuant to paragraph (1). The Superintendent of Public Instruction shall inform the county board of education and the county superintendent of schools in writing of his or her justification for any exercise of authority under this paragraph.

(3) Monitor and review the operation of the county office of education.

(4) Determine the need for additional staff and may employ, at county office of education expense, short-term analytical assistance or expertise to validate financial information if the district staff does not have the expertise or staff.

(5) Require the county office of education to encumber all contracts and other obligations, to prepare appropriate cash flow analyses and monthly or quarterly budget revisions, and to appropriately record all receivables and payables.

(6) Determine whether there are any financial problem areas and may employ, at county office of education expense a certified public accounting firm to investigate financial problem areas.

(7) Withhold compensation of the members of the county board of education and the county superintendent for failure to provide requested financial information.

(c) The county office of education shall pay reasonable fees charged by the Superintendent of Public Instruction for actual administrative expenses incurred pursuant to subdivision (b), or costs associated with improving the county office of education's financial management practices.

(d) This section shall not be construed to authorize the Superintendent of Public Instruction to abrogate any provision of a collective bargaining agreement that was entered into by a county office of education prior to the date upon which the Superintendent of Public Instruction disapproved the budget of the county office of education pursuant to subdivision (b).

(e) As he or she deems necessary for the purposes set forth in subdivision (b), the Superintendent of Public Instruction may seek from the county office of education, or otherwise obtain, additional information regarding the budget or operations of the county office of education, through a financial or management review of the county office of education, a cash-flow projection, or other appropriate means.

SEC. 4. Section 1630 of the Education Code is repealed.

SEC. 5. Section 1630 is added to the Education Code, to read:

1630. (a) If at any time during the fiscal year the Superintendent

of Public Instruction determines that the county office of education may be unable to meet its financial obligations for the current or two subsequent fiscal years or if the county office has a qualified or negative certification pursuant to Section 1240, he or she shall notify the county board of education and the county superintendent in writing of that determination, the basis for the determination, and shall do the following, as necessary, to ensure that the county office meets its financial obligations:

(1) Assign a fiscal expert, paid for by the Superintendent of Public Instruction, to advise the county office on its financial problems.

(2) Conduct a study of the financial and budgetary conditions of the county office. If, in the course of this review, the Superintendent of Public Instruction determines that his or her office requires analytical assistance or expertise that is not available through the county office, he or she may employ, at county office expense, on a short-term basis, staff, including certified public accountants, to provide the assistance and expertise.

(3) Direct the county office to submit a financial projection of all fund and cash balances of the county office as of June 30 of the current year and subsequent fiscal years as he or she requires.

(4) Require the county office to encumber all contracts and other obligations, to prepare appropriate cash flow analyses and monthly or quarterly budget revisions, and to appropriately record all receivables and payables.

(5) Direct the county office to submit a proposal for addressing the fiscal conditions that resulted in the determination that the county office may not be able to meet its financial obligations.

(6) Withhold compensation of the county board of education and the county superintendent for failure to provide requested financial information.

(b) If, after taking the actions identified in subdivision (a), the Superintendent of Public Instruction determines that a county office will be unable to meet its financial obligations for the current or subsequent fiscal year, he or she shall notify the county board of education and the county superintendent in writing of that determination and the basis for that determination.

(c) If the Superintendent of Public Instruction makes that determination, or if the county office has a negative certification pursuant to Section 1240, the Superintendent of Public Instruction, shall, as necessary to enable the county office to meet its financial obligations, do one or more of the following:

(1) Develop and impose, in consultation with the county office governing board and the county superintendent, revisions to the county office budget that will enable the district to meet its financial obligations.

(2) Stay or rescind any action that is inconsistent with any revision adopted pursuant to paragraph (1). The Superintendent of Public Instruction shall inform the county office governing board in writing of his or her justification for any exercise of authority under this

paragraph.

(d) This section does not authorize the Superintendent of Public Instruction to abrogate any provision of a collective bargaining agreement that was entered into by a county office prior to the date upon which the Superintendent of Public Instruction assumed authority pursuant to subdivision (c).

(e) The county office shall pay reasonable fees charged by the Superintendent of Public Instruction for any administrative expenses incurred pursuant to subdivision (c) or costs associated with improving the office's financial management practices.

(f) Notwithstanding any other provision of law, a county treasurer shall not honor any warrant when the Superintendent of Public Instruction, as appropriate, has disapproved that warrant, or has disapproved the order on county office funds for which a warrant was prepared.

(g) For any purpose of errors and liability insurance, a fiscal expert appointed pursuant to this section shall be deemed to be an employee of the county office of education.

(h) If staff are hired pursuant to paragraph (2) of subdivision (a), the Superintendent of Public Instruction may certify to the Controller an amount to be transferred to the State Department of Education, from the funds that otherwise would be apportioned to the county office of education pursuant to Section 2558, for the purpose of paying all costs incurred by that staff in performing their respective services. The Controller, upon receipt of that certification, shall transfer that amount.

SEC. 6. Section 41020.8 is added to the Education Code, to read:

41020.8. Notwithstanding any other provision of law, the auditor conducting the annual audit pursuant to Section 41020 shall, upon request, provide the county superintendent or the Superintendent of Public Instruction with fiscal information on a school district within his or her jurisdiction if the county superintendent of schools determines, pursuant to Section 42127.6, that a school district may not be able to meet its obligations of the current or subsequent fiscal year. Information provided by an auditor to a county superintendent or the Superintendent of Public Instruction pursuant to this section shall be submitted simultaneously to the named district and shall not constitute a violation of auditor-client confidentiality.

SEC. 7. Section 41322 is added to the Education Code, to read:

41322. (a) If a trustee has been appointed over a school district pursuant to Section 41320.1, the trustee may stay or rescind the actions of the personnel commission of the school district if a personnel commission exists.

(b) If an administrator has been appointed over a school district pursuant to Section 41326, the administrator shall suspend the actions of the personnel commission of the school district if a personnel commission exists.

SEC. 8. Section 42120 is added to the Education Code, to read:

42120. If the county board of education neglects or refuses to

make a county office of education budget in the manner as prescribed by this article, the Superintendent of Public Instruction shall not make any apportionment of state or federal money for that particular county office of education for the current fiscal year, and the Superintendent of Public Instruction shall notify the appropriate county official that he or she shall not approve any warrants issued by the county office of education.

SEC. 9. Section 42127.3 of the Education Code is amended to read:

42127.3. (a) If the budget review committee established pursuant to Sections 42127.1 and 42127.2 recommends approval of the school district budget, the county superintendent of schools shall accept the recommendation of the budget review committee and approve the budget.

(b) If the budget review committee established pursuant to Sections 42127.1 and 42127.2 disapproves the school district budget, the school district governing board, not later than five working days after receipt of the report described in paragraph (2) of subdivision (b) of Section 42127.2, may submit a response to the Superintendent of Public Instruction, including any revisions to the adopted final budget and any other proposed actions to be taken as a result of the recommendations of the budget review committee. Based upon the recommendations of the budget review committee, and any response to those recommendations provided by the school district governing board, the Superintendent of Public Instruction shall either approve or disapprove the budget. If the Superintendent of Public Instruction disapproves the budget, he or she shall notify the school district governing board in writing of the reasons for that disapproval and, for the remainder of the current fiscal year, the county superintendent of schools shall do all of the following:

(1) Not later than November 30, develop and adopt, in consultation with the Superintendent of Public Instruction and the school district governing board, a fiscal plan and budget that will govern the district and will allow the district to meet its financial obligations, both in the current fiscal year and with regard to the district's multiyear financial commitments. The governing board of the district shall govern the operation of the district for the current fiscal year in accordance with that adopted budget.

(2) Cancel purchase orders, prohibit the issuance of nonsalary warrants, and otherwise stay or rescind any action that is inconsistent with the budget adopted pursuant to paragraph (1). The county superintendent of schools shall inform the school district governing board in writing of his or her justification for any exercise of authority under this paragraph.

(3) Monitor and review the operation of the district.

(4) Determine the need for additional staff and may employ, subject to approval by the Superintendent of Public Instruction, short-term analytical assistance or expertise to validate financial information if the district staff does not have the expertise or staff.

(5) Require the district to encumber all contracts and other obligations, to prepare appropriate cash flow analyses and monthly or quarterly budget revisions, and to appropriately record all receivables and payables.

(6) Determine whether there are any financial problem areas and may employ, subject to approval by the Superintendent of Public Instruction, a certified public accounting firm to investigate financial problem areas.

(7) Withhold compensation of the members of the governing board and the district superintendent for failure to provide requested financial information. A forfeiture may be appealed to the Superintendent of Public Instruction pursuant to subdivision (b) of Section 42127.6.

(c) If, during the selection of the budget review committee or during the committee's review of the budget, an agreement is reached between the governing board of the school district and the county superintendent of schools, and the school district revises its budget to comply with this agreement, the county superintendent of schools shall approve the district budget and the budget review committee selection, or its review of the budget, shall be canceled.

(d) The school district shall pay 75 percent and the county office of education shall pay 25 percent of the actual administrative expenses incurred pursuant to subdivision (b), or costs associated with improving the district's financial management practices. The Superintendent of Public Instruction shall develop, and distribute to affected school districts and county offices of education, advisory guidelines regarding the appropriate amount of any fees charged pursuant to this subdivision.

(e) This section shall not be construed to authorize the county superintendent of schools to abrogate any provision of a collective bargaining agreement that was entered into by a school district prior to the date upon which the county superintendent of schools disapproved the budget of the school district pursuant to subdivision (b).

SEC. 10. Section 42127.6 of the Education Code is repealed.

SEC. 11. Section 42127.6 is added to the Education Code, to read:

42127.6. (a) If at any time during the fiscal year the county superintendent of schools determines that a school district may be unable to meet its financial obligations for the current or two subsequent fiscal years or if a school district has a qualified or negative certification pursuant to Section 42131, he or she shall notify the school district governing board and the Superintendent of Public Instruction in writing of that determination, the basis for the determination, and shall do the following, as necessary, to ensure that the district meets it financial obligations:

(1) Assign a fiscal expert, paid for by the county superintendent, to advise the district on its financial problems.

(2) Conduct a study of the financial and budgetary conditions of the district. If, in the course of this review, the county

superintendent determines that his or her office requires analytical assistance or expertise that is not available through the district, he or she may employ, on a short-term basis, with the approval of the Superintendent of Public Instruction, staff, including certified public accountants, to provide the assistance and expertise. The school district shall pay 75 percent and the county office of education shall pay 25 percent of these staff costs.

(3) Direct the school district to submit a financial projection of all fund and cash balances of the district as of June 30 of the current year and subsequent fiscal years as he or she requires.

(4) Require the district to encumber all contracts and other obligations, to prepare appropriate cash flow analyses and monthly or quarterly budget revisions, and to appropriately record all receivables and payables.

(5) Direct the district to submit a proposal for addressing the fiscal conditions that resulted in the determination that the district may not be able to meet its financial obligations.

(6) Withhold compensation of the members of the governing board and the district superintendent for failure to provide requested financial information. This action may be appealed to the Superintendent of Public Instruction pursuant to subdivision (b).

Any contract entered into by a county superintendent of schools for the purposes of this subdivision is subject to the approval of the Superintendent of Public Instruction.

(b) Within five days of the county superintendent making the determination specified in subdivision (a), a school district may appeal the basis of the determination, and any of the proposed actions that the county superintendent has indicated that he or she will take to further examine the financial condition of the district. The Superintendent of Public Instruction shall sustain or deny any or all parts of the appeal within 10 days.

(c) If, after taking the actions identified in subdivision (a), the county superintendent determines that a district will be unable to meet its financial obligations for the current or subsequent fiscal year, he or she shall notify the school district governing board and the Superintendent of Public Instruction in writing of that determination and the basis for that determination.

(d) Within five days of the county superintendent making the determination specified in subdivision (c), a school district may appeal that determination to the Superintendent of Public Instruction. The Superintendent of Public Instruction shall sustain or deny the appeal within 10 days.

(e) If the appeal described in subdivision (d) is denied or the district has a negative certification pursuant to Section 42131, the county superintendent, in consultation with the Superintendent of Public Instruction, shall, as necessary to enable the district to meet its financial obligation, do one or more of the following:

(1) Develop and impose, in consultation with the Superintendent of Public Instruction and the school district governing board,

revisions to the school district budget that will enable the district to meet its financial obligations.

(2) Stay or rescind any action that is inconsistent with any revision adopted pursuant to paragraph (1). The county superintendent of schools shall inform the school district governing board in writing of his or her justification for any exercise of authority under this paragraph.

(f) This section does not authorize the county superintendent to abrogate any provision of a collective bargaining agreement that was entered into by a school district prior to the date upon which the county superintendent of schools assumed authority pursuant to subdivision (e).

(g) The school district shall pay 75 percent and the county office of education shall pay 25 percent of the administrative expenses incurred pursuant to subdivision (e) or costs associated with improving the district's financial management practices. The Superintendent of Public Instruction shall develop, and distribute to affected school districts and county offices of education, advisory guidelines regarding the appropriate amount of administrative expenses charged pursuant to this subdivision.

(h) Notwithstanding Section 42647 or 42650, or any other provision of law, a county treasurer shall not honor any warrant when, pursuant to Sections 42127 to 42127.6, inclusive, the county superintendent of schools or the Superintendent of Public Instruction, as appropriate, has disapproved that warrant, or has disapproved the order on school district funds for which a warrant was prepared.

SEC. 12. Section 42127.8 of the Education Code is amended to read:

42127.8. (a) The governing board provided for in subdivision (b) shall establish a unit to be known as the County Office Fiscal Crisis and Management Assistance Team. The team shall consist of persons having extensive experience in school district budgeting, accounting, data processing, risk management, food services, pupil transportation, purchasing and warehousing, facilities maintenance and operation, personnel administration, organization, and staffing. The Superintendent of Public Instruction may appoint one employee of the State Department of Education to serve on the unit. The unit shall be operated under the immediate direction of an appropriate county office of education selected jointly, in response to an application process, by the Superintendent of Public Instruction and the Secretary of Child Development and Education.

(b) The unit established under subdivision (a) shall be selected and governed by an eleven-member governing board consisting of one representative chosen by the California Association of County Superintendents of Schools from each of the 10 county service regions designated by the association, and one representative from the State Department of Education chosen by the Superintendent of Public Instruction.

(c) The Superintendent of Public Instruction may request the unit to provide the assistance described in subdivision (b) of Section 1624, Section 1630, Section 33132, subdivision (b) of Section 42127.3, subdivision (c) of Section 42127.6, and Section 42127.9, and to review the fiscal and administrative condition of any county office of education.

(d) In addition to the functions described in subdivision (c), the unit shall provide management assistance at the request of any school district or county office of education. Each district or county office of education receiving that assistance shall be required to pay the onsite personnel costs and travel costs incurred by the unit for that purpose, pursuant to rates determined by the governing board established under subdivision (b). The governing board annually shall distribute rate information to each school district and county office of education.

(e) The governing board shall reserve not less than 25 percent, nor more than 50 percent, of its revenues each year for expenditure for the costs of contracts and professional services as management assistance to school districts or county offices of education in which the board determines a fiscal emergency to exist.

(f) The governing board established under subdivision (b) may levy an annual assessment against each county office of education that elects to participate under this section in an amount not to exceed twenty cents ($0.20) per unit of total average daily attendance for all school districts within the county. The revenues collected pursuant to that assessment shall be applied to the expenses of the unit.

(g) The governing board established under subdivision (b) may pay to the State Department of Education, from any available funds, a reasonable amount to reimburse the department for actual administrative expenses incurred in the review of the budgets and fiscal conditions of school districts and county offices of education.

(h) When employed as a fiscal advisor by the State Department of Education pursuant to Section 1630, employees of the unit established pursuant to subdivision (a) shall be considered employees of the state department for purposes of errors and omissions liability insurance.

SEC. 13. Section 42127.9 of the Education Code is amended to read:

42127.9. (a) No later than five days after a school district receives notice of any change or changes adopted by the county superintendent of schools in the district's budget pursuant to subdivision (b) of Section 42127.3, subdivision (e) of Section 42127.6, or subdivision (b) of Section 42131, the governing board of the district may submit an appeal to the Superintendent of Public Instruction, based upon the contention that the change or changes would do one or more of the following:

(1) Exceed the financial or program changes necessary to allow the district to meet its financial obligations in the current fiscal year

and with regard to its multiyear financial commitments. It is the intent of the Legislature that any change or changes adopted by the county superintendent of schools in a school district's budget minimize, to the extent possible, any impact upon the educational program of the district.

(2) Require reductions that are unnecessary in view of other reductions that are proposed by the governing board of the district and that reasonably can be expected to be realized.

(3) Make one or more changes in the district's operations that are inconsistent with any provision of state or federal law.

(b) No later than five days after receiving that appeal, the Superintendent of Public Instruction shall deny or uphold the appeal. If the appeal is denied, the district shall implement the change or changes adopted by the county superintendent of schools. If the appeal is upheld, the Superintendent of Public Instruction may revise the change or changes adopted by the county superintendent of schools or issue guidelines governing the manner in which the governing board of the district or the county superintendent of schools shall be required to change the district budget.

SEC. 14. Section 42128 of the Education Code is amended to read:

42128. If the governing board of any school district neglects or refuses to make a school district budget as prescribed by this article, the county superintendent of schools shall not make any apportionment of state or county school money for the particular school district for the current school year, and the county superintendent shall notify the appropriate county official that he or she shall not approve any warrants issued by the school district.

SEC. 15. Section 42131 of the Education Code is amended to read:

42131. (a) (1) Pursuant to the reports required by Section 42130, the governing board of each school district shall certify, in writing, within 45 days after the close of the period being reported, whether or not the school district is able to meet its financial obligations for the remainder of the fiscal year and, based on current forecasts, for the subsequent fiscal year. These certifications shall be based upon the board's assessment, on the basis of standards and criteria for fiscal stability adopted by the State Board of Education pursuant to Section 33127, of the district budget, as revised to reflect current information regarding the adopted state budget, district property tax revenues pursuant to Sections 95 to 100, inclusive, of the Revenue and Taxation Code, and ending balances for the preceding fiscal year as reported pursuant to Section 42100. The certifications shall be classified as positive, qualified, or negative, as prescribed by the Superintendent of Public Instruction for the purposes of determining subsequent actions by the Superintendent of Public Instruction, the Controller, or the county superintendent of schools, pursuant to subdivisions (b) and (c). These certifications shall be based upon the financial and budgetary reports required by Section 42130 but may include additional financial information known by the governing board to exist at the time of each certification. For

purposes of this subdivision, a negative certification shall be assigned to any school district that, based upon current projections, will be unable to meet its financial obligations for the remainder of the fiscal year or the subsequent fiscal year. A qualified certification shall be assigned to any school district that may not meet its financial obligations for the current fiscal year or two subsequent fiscal years. A positive certification shall be assigned to any school district that will meet its financial obligations for the current fiscal year and subsequent two fiscal years.

(2) A copy of each certification and a copy of the report submitted to the governing board pursuant to Section 42130 shall be filed with the county superintendent of schools. If a county office of education receives a positive certification when it determines a negative or qualified certification should have been filed, the county superintendent of schools shall change the certification to negative or qualified, as appropriate, and, no later than 75 days after the close of the period being reported, shall provide notice of that action to the governing board of the school district and to the Superintendent of Public Instruction. No later than five days after a school district receives notice of a change by the county superintendent of schools in the district's certification to negative or qualified, the governing board of the district may submit an appeal to the Superintendent of Public Instruction regarding the validity of that change, in accordance with the criteria applied to those designations pursuant to this subdivision. No later than 10 days after receiving that appeal, the Superintendent of Public Instruction shall determine the certification to be assigned to the district, and shall notify the school district governing board and the county superintendent of schools of that determination.

Copies of any certification in which the governing board is unable to certify unqualifiedly that these financial obligations will be met and a copy of the report submitted to the governing board pursuant to Section 42130 shall be sent to the Controller and the Superintendent of Public Instruction at the time of the certification, together with a completed transmittal form provided by the Superintendent of Public Instruction. Within 75 days after the close of the reporting period on all school district certifications that are classified as qualified or negative pursuant to this section, the appropriate county superintendent of schools shall submit to the Superintendent of Public Instruction and the Controller his or her comments on those certifications and report any action proposed or taken pursuant to subdivision (b).

(3) All reports and certifications required under this subdivision shall be in a format or on forms prescribed by the Superintendent of Public Instruction, and shall be based on standards and criteria for fiscal stability adopted by the State Board of Education pursuant to Section 33127.

(4) This subdivision shall not preclude the submission of additional budgetary or financial reports by the county

superintendent of schools to the district governing board, or to the Superintendent of Public Instruction.

(b) As to any school district having a negative or qualified certification, the county superintendent of schools shall exercise his or her authority pursuant to Section 42127.6.

(c) Within 75 days after the close of each reporting period, each county superintendent of schools shall report to the Controller and the Superintendent of Public Instruction as to whether the governing board of each of the school districts under his or her jurisdiction has submitted the certification required by subdivision (a). That report shall account for all districts under the jurisdiction of the county office of education and indicate the type of certification filed by each district.

(d) The Controller's office may conduct an audit or review of the fiscal condition of any district having a negative or qualified certification.

(e) The governing board of each school district that files a qualified or negative certification for the second report required for any fiscal year under Section 42130, or for which the second report is classified as qualified or negative by the county superintendent of schools, shall provide to the county superintendent of schools, the Controller, and the Superintendent of Public Instruction no later than June 1, a financial statement that projects the fund and cash balances of the district as of June 30. The governing boards of all other school districts are encouraged to develop a similar financial statement for use in developing the beginning fund balances of the district for the ensuing fiscal year.

(f) Any school district for which the county board of education serves as the governing board is not subject to subdivisions (a) to (f), inclusive, but is governed instead by the interim report, monitoring, and review procedures set forth in subdivision (j) of Section 1240 and in Article 2 (commencing with Section 1620) of Chapter 5 of Part 2.

SEC. 16. Section 42652 is added to the Education Code, to read:

42652. (a) The approval of a school district to draw all warrants on the county treasury pursuant to Section 42647 may be revoked or suspended by the Superintendent of Public Instruction for any school district that has a qualified or negative certification pursuant to Section 42131.

(b) The approval of a school district to draw warrants on the county treasury pursuant to Section 42650 may be revoked or suspended by the county superintendent of schools for any school district that has a qualified or negative certification pursuant to Section 42131.

SEC. 17. Section 3540.2 is added to the Government Code, to read:

3540.2. (a) A school district that has a qualified or negative certification pursuant to Section 42131 of the Education Code shall allow the county office of education in which the school district is located at least six working days to review and comment on any

proposed agreement made between the exclusive representative and the public school employer, or designated representatives of the employer, pursuant to this chapter. The appropriate parties shall provide the county superintendent of schools with all information relevant to yield an understanding of the financial impact of that agreement.

(b) The Superintendent of Public Instruction shall develop standardized forms for use by the appropriate parties in generating the financial information required pursuant to subdivision (a).

(c) The county superintendent of schools shall notify the school district publicly within those six days if, in his or her opinion, the agreement reviewed pursuant to subdivision (a) would endanger the fiscal well-being of the school district.

SEC. 18. The sum of nine million four hundred fifty-one thousand two hundred fifty-nine dollars ($9,451,259) is hereby appropriated from the General Fund to Section A of the State School Fund, without regard to fiscal year, for apportionment by the Superintendent of Public Instruction to the Compton Unified School District for the purpose of an emergency loan. In order to qualify for the loan, the district shall comply with the terms and conditions set forth in Chapter 78 of the Statutes of 1993 and Article 2.5 (commencing with Section 41325) of Chapter 3 of Part 24 of the Education Code. The funds appropriated in this section shall be expended by the district according to the following schedule:

(a) Capital Facilities Fund	$ 900,790
(b) Deductible Insurance Fund	$1,277,000
(c) Worker's Compensation Fund	$2,692,000
(d) Payroll Clearance Fund	$1,212,000
(e) Child Development Fund	$ 69,469
(f) General Restricted Fund	$3,300,000

SEC. 19. Due to the unique circumstances relating to the Compton 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.

SEC. 20. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs that are in accordance with the request of a local agency or school district which desired legislative authority to carry out the programs specified in this act.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state in addition to those costs that are in accordance with the request of a local agency or school district, 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 925

An act to amend Section 575.1 of, and to add Section 575.6 to, the Code of Civil Procedure, and to amend Section 68070 of the Government Code, relating to courts.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 575.1 of the Code of Civil Procedure is amended to read:

575.1. (a) The presiding judge of each superior, municipal, and justice court may prepare, with the assistance of appropriate committees of the court, proposed local rules designed to expedite and facilitate the business of the court. The rules need not be limited to those actions on the civil active list, but may provide for the supervision and judicial management of actions from the date they are filed. Rules prepared pursuant to this section shall be submitted for consideration to the judges of the court and, upon approval by a majority of the judges, the judges shall have the proposed rules published and submitted to the local bar and others, as specified by the Judicial Council, for consideration and recommendations.

(b) After a majority of the judges have officially adopted the rules, 61 copies or a greater number as specified by Judicial Council rule, shall be filed with the Judicial Council as required by Section 68071 of the Government Code. The Judicial Council shall deposit a copy of each rule and amendment with each county law library or county clerk where it shall be made available for public examination. The local rules shall also be published for general distribution in accordance with rules adopted by the Judicial Council. Each court shall make its local rules available for inspection and copying in every location of the court that generally accepts filing of papers. The court may impose a reasonable charge for copying the rules and may impose a reasonable page limit on copying. The rules shall be accompanied by a notice indicating where a full set of the rules may be purchased.

(c) If a judge of a court adopts a rule which applies solely to cases in that judge's courtroom, or a particular branch or district of a court adopts a rule that applies solely to cases in that particular branch or

district of a court, the court shall publish these rules as part of the general publication of rules required by the California Rules of Court. The court shall organize the rules so that rules on a common subject, whether individual, branch, district, or courtwide appear sequentially. Individual judges' rules and branch and district rules are local rules of court for purposes of this section and for purposes of the adoption, publication, comment, and filing requirements set forth in the Judicial Council rules applicable to local court rules.

SEC. 2. Section 575.6 is added to the Code of Civil Procedure, to read:

575.6. Notwithstanding Section 575.5, the superior court of each county shall adopt a rule enabling the appearance of counsel by telephone at trial setting conferences in civil cases. A local rule adopted pursuant to this section may require the personal appearance of counsel at a civil trial setting conference for good cause stated.

SEC. 3. Section 68070 of the Government Code is amended to read:

68070. (a) Every court may make rules for its own government and the government of its officers not inconsistent with law or with the rules adopted and prescribed by the Judicial Council. These rules shall not:

(1) Impose any tax, charge, or penalty upon any legal proceeding, or for filing any pleading allowed by law.

(2) Give any allowance to any officer for services.

(b) The Judicial Council shall adopt rules or procedures to encourage uniformity of requirements throughout a court and statewide. The subjects on which uniformity should be sought shall include, but are not limited to, (1) the form of papers, (2) limitations on the filing of papers, (3) rules relating to law and motion, and (4) requirements concerning documents to be filed at or prior to trial.

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 926

An act to amend Sections 6086.13 and 17204 of the Business and Professions Code, to amend Sections 575.1, 712.020, 1094.6, 1987.5, 2020, and 2025 of, and to repeal Section 1167.6 of, the Code of Civil Procedure, and to amend Sections 6259 and 26800 of the Government Code, relating to civil remedies.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 6086.13 of the Business and Professions Code is amended to read:

6086.13. (a) Any order of the Supreme Court imposing suspension or disbarment of a member of the State Bar, or accepting a resignation with a disciplinary matter pending may include an order that the member pay a monetary sanction not to exceed five thousand dollars ($5,000) for each violation, subject to a total limit of fifty thousand dollars ($50,000).

(b) Monetary sanctions collected under subdivision (a) shall be deposited into the Client Security Fund.

(c) The State Bar shall, with the approval of the Supreme Court, adopt rules setting forth guidelines for the imposition and collection of monetary sanctions under this section.

(d) The authority granted under this section is in addition to the provisions of Section 6086.10 and any other authority to impose costs or monetary sanctions.

(e) Monetary sanctions imposed under this section shall not be collected to the extent that the collection would impair the collection of criminal penalties or civil judgments arising out of transactions connected with the discipline of the attorney. In the event monetary sanctions are collected under this section and criminal penalties or civil judgments arising out of transactions connected with the discipline of the attorney are otherwise uncollectible, those penalties or judgments may be reimbursed from the Client Security Fund to the extent of the monetary sanctions collected under this section.

SEC. 2. Section 17204 of the Business and Professions Code is amended to read:

17204. Actions for any relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county in the

name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

SEC. 3. Section 575.1 of the Code of Civil Procedure is amended to read:

575.1. (a) The presiding judge of each superior or municipal court may prepare with the assistance of appropriate committees of the court, proposed local rules designed to expedite and facilitate the business of the court. The rules need not be limited to those actions on the civil active list, but may provide for the supervision and judicial management of actions from the date they are filed. Rules prepared pursuant to this section shall be submitted for consideration to the judges of the court and, upon approval by a majority of the judges, the judges shall have the proposed rules published and submitted to the local bar for consideration and recommendations.

(b) After a majority of the judges have officially adopted the rules, 61 copies shall be filed with the Judicial Council as required by Section 68071 of the Government Code. The Judicial Council shall deposit a copy of each rule and amendment with each county law library or county clerk where it shall be made available for public examination. The local rules shall also be published for general distribution.

(c) Rules adopted pursuant to this section shall not be inconsistent with law or with the rules adopted and prescribed by the Judicial Council. The clerk of the court may charge a reasonable fee to persons requesting copies of the local rules, to cover the cost of reproduction and distribution.

SEC. 3.5. Section 575.1 of the Code of Civil Procedure is amended to read:

575.1. (a) The presiding judge of each superior, municipal, and justice court may prepare, with the assistance of appropriate committees of the court, proposed local rules designed to expedite and facilitate the business of the court. The rules need not be limited to those actions on the civil active list, but may provide for the supervision and judicial management of actions from the date they are filed. Rules prepared pursuant to this section shall be submitted for consideration to the judges of the court and, upon approval by a majority of the judges, the judges shall have the proposed rules published and submitted to the local bar and others, as specified by the Judicial Council, for consideration and recommendations.

(b) After a majority of the judges have officially adopted the rules, 61 copies or a greater number as specified by Judicial Council rule, shall be filed with the Judicial Council as required by Section 68071 of the Government Code. The Judicial Council shall deposit a copy of each rule and amendment with each county law library or county clerk where it shall be made available for public examination. The local rules shall also be published for general distribution in

accordance with rules adopted by the Judicial Council. Each court shall make its local rules available for inspection and copying in every location of the court that generally accepts filing of papers. The court may impose a reasonable charge for copying the rules and may impose a reasonable page limit on copying. The rules shall be accompanied by a notice indicating where a full set of the rules may be purchased.

(c) If a judge of a court adopts a rule which applies solely to cases in that judge's courtroom, or a particular branch or district of a court adopts a rule that applies solely to cases in that particular branch or district of a court, the court shall publish these rules as part of the general publication of rules required by the California Rules of Court. The court shall organize the rules so that rules on a common subject, whether individual, branch, district, or courtwide appear sequentially. Individual judges' rules and branch and district rules are local rules of court for purposes of this section and for purposes of the adoption, publication, comment, and filing requirements set forth in the Judicial Council rules applicable to local court rules.

SEC. 4. Section 712.020 of the Code of Civil Procedure is amended to read:

712.020. A writ of possession or sale issued pursuant to this division shall require the levying officer to whom it is directed to enforce the judgment and shall include the following information:

(a) The date of issuance of the writ.

(b) The title of the court where the judgment for possession or sale is entered and the cause and number of the action.

(c) The name and address of the creditor and the name and last known address of the judgment debtor.

(d) The date the judgment was entered, and the date of any subsequent renewals, and where entered in the records of the court.

(e) If the judgment for possession or sale includes a money judgment, the amount required to satisfy the money judgment on the date the writ is issued and the amount of interest accruing daily on the principal amount of the judgment from the date the writ is issued may be included on the writ at the option of the creditor.

(f) Whether any person has requested notice of sale under the judgment and, if so, the name and address of such person.

(g) Any other information required to be included in the particular writ.

SEC. 5. Section 1094.6 of the Code of Civil Procedure is amended to read:

1094.6. (a) Judicial review of any decision of a local agency, other than school district, as the term local agency is defined in Section 54951 of the Government Code, or of any commission, board, officer or agent thereof, may be had pursuant to Section 1094.5 of this code only if the petition for writ of mandate pursuant to such section is filed within the time limits specified in this section.

(b) Any such petition shall be filed not later than the 90th day following the date on which the decision becomes final. If there is no

provision for reconsideration of the decision, or for a written decision or written findings supporting the decision, in any applicable provision of any statute, charter, or rule, for the purposes of this section, the decision is final on the date it is announced. If the decision is not announced at the close of the hearing, the date, time, and place of the announcement of the decision shall be announced at the hearing. If there is a provision for reconsideration, the decision is final for purposes of this section upon the expiration of the period during which such reconsideration can be sought; provided, that if reconsideration is sought pursuant to any such provision the decision is final for the purposes of this section on the date that reconsideration is rejected. If there is a provision for a written decision or written findings, the decision is final for purposes of this section upon the date it is mailed by first-class mail, postage prepaid, including a copy of the affidavit or certificate of mailing, to the party seeking the writ. Subdivision (a) of Section 1013 does not apply to extend the time, following deposit in the mail of the decision or findings, within which a petition shall be filed.

(c) The complete record of the proceedings shall be prepared by the local agency or its commission, board, officer, or agent which made the decision and shall be delivered to the petitioner within 190 days after he has filed a written request therefor. The local agency may recover from the petitioner its actual costs for transcribing or otherwise preparing the record. Such record shall include the transcript of the proceedings, all pleadings, all notices and orders, any proposed decision by a hearing officer, the final decision, all admitted exhibits, all rejected exhibits in the possession of the local agency or its commission, board, officer, or agent, all written evidence, and any other papers in the case.

(d) If the petitioner files a request for the record as specified in subdivision (c) within 10 days after the date the decision becomes final as provided in subdivision (b), the time within which a petition pursuant to Section 1094.5 may be filed shall be extended to not later than the 30th day following the date on which the record is either personally delivered or mailed to the petitioner or his attorney of record, if he has one.

(e) As used in this section, decision means a decision subject to review pursuant to Section 1094.5, suspending, demoting, or dismissing an officer or employee, revoking, or denying an application for a permit, license, or other entitlement, or denying an application for any retirement benefit or allowance.

(f) In making a final decision as defined in subdivision (e), the local agency shall provide notice to the party that the time within which judicial review must be sought is governed by this section.

As used in this subdivision, "party" means an officer or employee who has been suspended, demoted or dismissed; a person whose permit, license, or other entitlement has been revoked or suspended, or whose application for a permit, license, or other entitlement has been denied; or a person whose application for a retirement benefit

or allowance has been denied.

(g) This section shall prevail over any conflicting provision in any otherwise applicable law relating to the subject matter, unless the conflicting provision is a state or federal law which provides a shorter statute of limitations, in which case the shorter statute of limitations shall apply.

SEC. 6. Section 1167.6 of the Code of Civil Procedure is repealed.

SEC. 7. Section 1987.5 of the Code of Civil Procedure is amended to read:

1987.5. The service of a subpoena duces tecum is invalid unless at the time of such service a copy of the affidavit upon which the subpoena is based is served on the person served with the subpoena. In the case of a subpoena duces tecum which requires appearance and the production of matters and things at the taking of a deposition, the subpoena shall not be valid unless a copy of the affidavit upon which the subpoena is based and the designation of the materials to be produced, as set forth in the subpoena, is attached to the notice of taking the deposition served upon each party or its attorney as provided in Chapter 3 (commencing with Section 2002). If matters and things are produced pursuant to a subpoena duces tecum in violation of this section, any other party to the action may file a motion for, and the court may grant, an order providing appropriate relief, including, but not limited to, exclusion of the evidence affected by the violation, a retaking of the deposition notwithstanding any other limitation on discovery proceedings, or a continuance. The party causing the subpoena to be served shall retain the original affidavit until final judgment in the action, and shall file the affidavit with the court only upon reasonable request by any party or witness affected thereby. This section does not apply to deposition subpoenas commanding only the production of business records for copying under subdivision (d) of Section 2020.

SEC. 8. Section 2020 of the Code of Civil Procedure is amended to read:

2020. (a) The method for obtaining discovery within the state from one who is not a party to the action is an oral deposition under Section 2025, a written deposition under Section 2028, or a deposition for production of business records and things under subdivisions (d) and (e). Except as provided in paragraph (1) of subdivision (h) of Section 2025, the process by which a nonparty is required to provide discovery is a deposition subpoena. The deposition subpoena may command any of the following:

(1) Only the attendance and the testimony of the deponent, under subdivision (c).

(2) Only the production of business records for copying, under subdivision (d).

(3) Both the attendance and the testimony of the deponent, as well as the production of business records, other documents, and tangible things, under subdivision (e).

Except as modified in this section, the provisions of Chapter 2

(commencing with Section 1985), and of Article 4 (commencing with Section 1560) of Chapter 2 of Division 11 of the Evidence Code, apply to a deposition subpoena.

(b) The clerk of the court in which the action is pending shall issue a deposition subpoena signed and sealed, but otherwise in blank, to a party requesting it, who shall fill it in before service. In lieu of the court-issued deposition subpoena, an attorney of record for any party may sign and issue a deposition subpoena; the deposition subpoena in that case need not be sealed.

(c) A deposition subpoena that commands only the attendance and the testimony of the deponent shall specify the time when and the place where the deponent is commanded to attend for the deposition. It shall set forth a summary of (1) the nature of a deposition, (2) the rights and duties of the deponent, and (3) the penalties for disobedience of a deposition subpoena described in subdivision (h). If the deposition will be recorded by videotape under paragraph (2) of subdivision (*l*) of Section 2025, the deposition subpoena shall state that it will be recorded in that manner. If the deponent is an organization, the deposition subpoena shall describe with reasonable particularity the matters on which examination is requested, and shall advise that organization of its duty to make the designation of employees or agents who will attend described in subdivision (d) of Section 2025.

(d) (1) A deposition subpoena that commands only the production of business records for copying shall designate the business records to be produced either by specifically describing each individual item or by reasonably particularizing each category of item. This deposition subpoena need not be accompanied by an affidavit or declaration showing good cause for the production of the business records designated in it. It shall be directed to the custodian of those records or another person qualified to certify the records. It shall command compliance in accordance with paragraph (4) on a date that is no earlier than 20 days after the issuance, or 15 days after the service, of the deposition subpoena, whichever date is later.

(2) If, under Section 1985.3, the one to whom the deposition subpoena is directed is a witness, and the business records described in the deposition subpoena are personal records pertaining to a consumer, the service of the deposition subpoena shall be accompanied either by a copy of the proof of service of the notice to the consumer described in subdivision (e) of Section 1985.3, or by the consumer's written authorization to release personal records described in paragraph (2) of subdivision (c) of Section 1985.3.

(3) The officer for a deposition seeking discovery only of business records for copying under this subdivision shall be a professional photocopier registered under Chapter 20 (commencing with Section 22450) of Division 8 of the Business and Professions Code, or a person exempted from the registration requirements of that chapter under Section 22451 of the Business and Professions Code. This deposition officer shall not be financially interested in the action, or a relative

or employee of any attorney of the parties. Any objection to the qualifications of the deposition officer is waived unless made before the date of production or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(4) Unless directed to make the records available for inspection or copying by the subpoenaing party's attorney or a representative of that attorney at the witness' business address under subdivision (e) of Section 1560 of the Evidence Code, the custodian of the records or other qualified person shall, in person, by messenger, or by mail, deliver only to the deposition officer specified in the deposition subpoena (1) a true, legible, and durable copy of the records, and (2) an affidavit in compliance with Section 1561 of the Evidence Code. If this delivery is made to the office of the deposition officer, the records shall be enclosed, sealed, and directed as described in subdivision (c) of Section 1560 of the Evidence Code. If this delivery is made at the office of the business whose records are the subject of the deposition subpoena, the custodian of those records or other qualified person shall (1) permit the deposition officer specified in the deposition subpoena to make a copy of the originals of the designated business records, or (2) deliver to that deposition officer a true, legible, and durable copy of the records on receipt of payment in cash or by check, by or on behalf of the party serving the deposition subpoena, of the reasonable costs of preparing that copy as determined under subdivision (b) of Section 1563 of the Evidence Code. This copy need not be delivered in a sealed envelope. Unless the parties, and if the records are those of a consumer as defined in Section 1985.3, the consumer, stipulate to an earlier date, the custodian of the records shall not deliver to the deposition officer the records that are the subject of the deposition subpoena prior to the date and time specified in the deposition subpoena. The following legend shall appear in boldface type on the deposition subpoena immediately following the date and time specified for production: "Do not release the requested records to the deposition officer prior to the date and time stated above."

(5) Promptly on or after the deposition date and after the receipt or the making of a copy of business records under this subdivision, the deposition officer shall provide that copy to the party at whose instance the deposition subpoena was served, and a copy of those records to any other party to the action who then or subsequently notifies the deposition officer that the party desires to purchase a copy of those records.

(6) The provisions of Section 1562 of the Evidence Code concerning the admissibility of the affidavit of the custodian or other qualified person apply to a deposition subpoena served under this subdivision.

(e) A deposition subpoena that commands both the attendance and the testimony of the deponent, as well as the production of business records, documents, and tangible things, shall (1) comply

with the requirements of subdivision (c), (2) designate the business records, documents, and tangible things to be produced either by specifically describing each individual item or by reasonably particularizing each category of item, and (3) specify any testing or sampling that is being sought. This deposition subpoena need not be accompanied by an affidavit or declaration showing good cause for the production of the documents and things designated.

Where, as described in Section 1985.3, the person to whom the deposition subpoena is directed is a witness, and the business records described in the deposition subpoena are personal records pertaining to a consumer, the service of the deposition subpoena shall be accompanied either by a copy of the proof of service of the notice to the consumer described in subdivision (e) of Section 1985.3, or by the consumer's written authorization to release personal records described in paragraph (2) of subdivision (c) of Section 1985.3.

(f) Subject to paragraph (1) of subdivision (d), service of a deposition subpoena shall be effected a sufficient time in advance of the deposition to provide the deponent a reasonable opportunity to locate and produce any designated business records, documents, and tangible things, and, where personal attendance is commanded, a reasonable time to travel to the place of deposition. Any person may serve the subpoena by personal delivery of a copy of it (1) if the deponent is a natural person, to that person, and (2) if the deponent is an organization, to any officer, director, custodian of records, or to any agent or employee authorized by the organization to accept service of a subpoena.

If a deposition subpoena requires the personal attendance of the deponent, under subdivision (c) or (e), the party noticing the deposition shall pay to the deponent in cash or by check the same witness fee and mileage required by Chapter 1 (commencing with Section 68070) of Title 8 of the Government Code for attendance and testimony before the court in which the action is pending. This payment, whether or not demanded by the deponent, shall be made, at the option of the party noticing the deposition, either at the time of service of the deposition subpoena, or at the time the deponent attends for the taking of testimony.

Service of a deposition subpoena that does not require the personal attendance of a custodian of records or other qualified person, under subdivision (d), shall be accompanied, whether or not demanded by the deponent, by a payment in cash or by check of the witness fee required by paragraph (6) of subdivision (b) of Section 1563 of the Evidence Code.

(g) Personal service of any deposition subpoena is effective to require of any deponent who is a resident of California at the time of service (1) personal attendance and testimony, if the subpoena so specifies, (2) any specified production, inspection, testing, and sampling, and (3) the deponent's attendance at a court session to consider any issue arising out of the deponent's refusal to be sworn,

or to answer any question, or to produce specified items, or to permit inspection or specified testing and sampling of the items produced.

(h) A deponent who disobeys a deposition subpoena in any manner described in subdivision (g) may be punished for contempt under Section 2023 without the necessity of a prior order of court directing compliance by the witness, and is subject to the forfeiture and the payment of damages set forth in Section 1992.

SEC. 9. Section 2025 of the Code of Civil Procedure is amended to read:

2025. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

(b) Subject to subdivisions (f) and (t), an oral deposition may be taken as follows:

(1) The defendant may serve a deposition notice without leave of court at any time after that defendant has been served or has appeared in the action, whichever occurs first.

(2) The plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. However, on motion with or without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date.

(c) A party desiring to take the oral deposition of any person shall give notice in writing in the manner set forth in subdivision (d). However, where under subdivision (d) of Section 2020 only the production by a nonparty of business records for copying is desired, a copy of the deposition subpoena shall serve as the notice of deposition. The notice of deposition shall be given to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of privacy rights specified in subdivision (e) of Section 1985.3, and (3) a copy of the deposition subpoena.

(d) The deposition notice shall state all of the following:

(1) The address where the deposition will be taken.

(2) The date of the deposition, selected under subdivision (f), and the time it will commence.

(3) The name of each deponent, and the address and telephone number, if known, of any deponent who is not a party to the action. If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the

person or particular class to which the person belongs.

(4) The specification with reasonable particularity of any materials or category of materials to be produced by the deponent.

(5) Any intention to record the testimony by audio tape or video tape, in addition to recording the testimony by the stenographic method as required by paragraph (1) of subdivision (*l*).

(6) Any intention to reserve the right to use at trial a video tape deposition of a treating or consulting physician or of any expert witness under paragraph (4) of subdivision (u). In this event, the operator of the video tape camera shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties.

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent. A deposition subpoena shall advise a nonparty deponent of its duty to make this designation, and shall describe with reasonable particularity the matters on which examination is requested.

If the attendance of the deponent is to be compelled by service of a deposition subpoena under Section 2020, an identical copy of that subpoena shall be served with the deposition notice.

(e) (1) The deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence, unless the court orders otherwise under paragraph (3).

(2) The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal executive or business office in California, or within the county where the action is pending and within 150 miles of that office. The deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in California, unless the organization consents to a more distant place. If the organization has not designated a principal executive or business office in California, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office in California of the organization.

(3) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a motion for an order that the

deponent attend for deposition at a place that is more distant than that permitted under paragraph (1). This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion.

In exercising its discretion to grant or deny this motion, the court shall take into consideration any factor tending to show whether the interests of justice will be served by requiring the deponent's attendance at that more distant place, including, but not limited to, the following:

(A) Whether the moving party selected the forum.

(B) Whether the deponent will be present to testify at the trial of the action.

(C) The convenience of the deponent.

(D) The feasibility of conducting the deposition by written questions under Section 2028, or of using a discovery method other than a deposition.

(E) The number of depositions sought to be taken at a place more distant than that permitted under paragraph (1).

(F) The expense to the parties of requiring the deposition to be taken within the distance permitted under paragraph (1).

(G) The whereabouts of the deponent at the time for which the deposition is scheduled.

The order may be conditioned on the advancement by the moving party of the reasonable expenses and costs to the deponent for travel to the place of deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to increase travel limits for party-deponent, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena. However, in unlawful detainer actions, an oral deposition shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial.

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

(g) Any party served with a deposition notice that does not comply with subdivisions (b) to (f), inclusive, waives any error or irregularity unless that party promptly serves a written objection

specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served. If an objection is made three calendar days before the deposition date, the objecting party shall make personal service of that objection pursuant to Section 1011 on the party who gave notice of the deposition. Any deposition taken after the service of a written objection shall not be used against the objecting party under subdivision (u) if the party did not attend the deposition and if the court determines that the objection was a valid one.

In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and quashing the deposition notice. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. The taking of the deposition is stayed pending the determination of this motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(h) (1) The service of a deposition notice under subdivision (c) is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.

(2) The attendance and testimony of any other deponent, as well as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Section 2020.

(i) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the deposition not be taken at all.

(2) That the deposition be taken at a different time.

(3) That a video tape deposition of a treating or consulting physician or of any expert witness, intended for possible use at trial under paragraph (4) of subdivision (u), be postponed until the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent, or other means, for cross-examination.

(4) That the deposition be taken at a place other than that specified in the deposition notice, if it is within a distance permitted by subdivision (e).

(5) That the deposition be taken only on certain specified terms and conditions.

(6) That the deponent's testimony be taken by written, instead of oral, examination.

(7) That the method of discovery be interrogatories to a party instead of an oral deposition.

(8) That the testimony be recorded in a manner different from that specified in the deposition notice.

(9) That certain matters not be inquired into.

(10) That the scope of the examination be limited to certain matters.

(11) That all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, or copied.

(12) That designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition.

(13) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only to specified persons or only in a specified way.

(14) That the parties simultaneously file specified documents enclosed in sealed envelopes to be opened as directed by the court.

(15) That the deposition be sealed and thereafter opened only on order of the court.

If the motion for a protective order is denied in whole or in part, the court may order that the deponent provide or permit the discovery against which protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) (1) If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If a deponent does not appear for a deposition because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, in favor of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in

the expectation that the deponent's testimony would be taken, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent on whom a deposition subpoena has been served fails to attend a deposition or refuses to be sworn as a witness, the court may impose on the deponent the sanctions described in subdivision (h) of Section 2020.

(3) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under subdivision (d), without having served a valid objection under subdivision (g), fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice. This motion (A) shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by it. If this motion is granted, the court shall also impose a monetary sanction under Section 2023 against the deponent or the party with whom the deponent is affiliated, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. On motion of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, the court shall also impose a monetary sanction under Section 2023, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023 against that party deponent or against the party with whom the deponent is affiliated. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order.

(k) Except as provided in paragraph (3) of subdivision (d) of Section 2020, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath. This officer shall not be financially interested in the action and shall not

be a relative or employee of any attorney of any of the parties. Any objection to the qualifications of the deposition officer is waived unless made before the deposition begins or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(*l*) (1) The deposition officer shall put the deponent under oath. Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically. The party noticing the deposition may also record the testimony by audio tape or video tape if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make a simultaneous audio tape or video tape record of the deposition, provided that other party promptly, and in no event less than three calendar days before the date for which the deposition is scheduled, serves a written notice of this intention to audio tape or video tape the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served under subdivision (c), and on any deponent whose attendance is being compelled by a deposition subpoena under Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011. Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.

(2) If the deposition is being recorded by means of audio tape or video tape, the following procedure shall be observed:

(A) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a video tape of deposition testimony is to be used under paragraph (4) of subdivision (u), the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions.

(C) The operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

(D) The deposition shall begin with an oral or written statement on camera or on the audio tape that includes the operator's name and business address, the name and business address of the operator's employer, the date, time, and place of the deposition, the caption of the case, the name of the deponent, a specification of the party on

whose behalf the deposition is being taken, and any stipulations by the parties.

(E) Counsel for the parties shall identify themselves on camera or on the audio tape.

(F) The oath shall be administered to the deponent on camera or on the audio tape.

(G) If the length of a deposition requires the use of more than one unit of tape, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audio tape.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audio tape that the deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audio tape or video tape recording and the exhibits, or concerning other pertinent matters.

(I) A party intending to offer an audio taped or video taped recording of a deposition in evidence under subdivision (u) shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the tape. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audio taped or video taped deposition that are not designated by any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition tape be prepared for use at the trial or hearing. The original audio tape or video tape of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering a video tape or an audio tape recording of that testimony under subdivision (u) shall accompany that offer with a stenographic transcript prepared from that recording.

(3) In lieu of participating in the oral examination, parties may transmit written questions in a sealed envelope to the party taking the deposition for delivery to the deposition officer, who shall unseal the envelope and propound them to the deponent after the oral examination has been completed.

(m) (1) The protection of information from discovery on the ground that it is privileged or that it is protected work product under Section 2018 is waived unless a specific objection to its disclosure is timely made during the deposition.

(2) Errors and irregularities of any kind occurring at the oral examination that might be cured if promptly presented are waived unless a specific objection to them is timely made during the deposition. These errors and irregularities include, but are not limited to, those relating to the manner of taking the deposition, to the oath or affirmation administered, to the conduct of a party,

attorney, deponent, or deposition officer, or to the form of any question or answer. Unless the objecting party demands that the taking of the deposition be suspended to permit a motion for a protective order under subdivision (n), the deposition shall proceed subject to the objection.

(3) Objections to the competency of the deponent, or to the relevancy, materiality, or admissibility at trial of the testimony or of the materials produced are unnecessary and are not waived by failure to make them before or during the deposition.

(4) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking that answer or production may adjourn the deposition or complete the examination on other matters without waiving the right at a later time to move for an order compelling that answer or production under subdivision (o).

(n) On demand of any party or the deponent, the deposition officer shall suspend the taking of testimony to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court, for good cause shown, may terminate the examination or may limit the scope and manner of taking the deposition as provided in subdivision (i). If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a

deposition is recorded by audio tape or video tape, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion. If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent fails to obey an order entered under this subdivision, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that party deponent or against any party with whom the deponent is affiliated.

(p) Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. The party noticing the deposition shall bear the cost of that transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party. Any other party, at that party's expense, may obtain a copy of the transcript. At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audio tape or video tape shall promptly (1) permit that other party to hear the audio tape or to view the video tape, and (2) furnish a copy of the audio tape or video tape to that other party on receipt of payment of the reasonable cost of making that copy of the tape.

If the testimony at the deposition is recorded both stenographically, and by audio tape or video tape, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

(q) (1) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony for each session of the deposition is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record that the reading, correcting, and signing of the transcript of the testimony will be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time. For 30 days following each such notice,

unless the attending parties and the deponent agree on the record or otherwise in writing to a longer or shorter time period, the deponent may change the form or the substance of the answer to an question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it.

Alternatively, within this same period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition. For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

The deposition officer shall indicate on the original of the transcript, if the deponent has not already done so at the office of the deposition officer, any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person. If the deponent fails or refuses to approve the transcript within the allotted period, the deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If there is no stenographic transcription of the deposition, the deposition officer shall send written notice to the deponent and to all parties attending the deposition that the recording is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of an audio tape or video tape recording of the testimony. For 30 days following this notice the deponent, either in person or by signed letter to the deposition officer, may change the substance of the answer to any question.

The deposition officer shall set forth in a writing to accompany the recording any changes made by the deponent, as well as either the deponent's signature identifying the deposition as his or her own, or a statement of the deponent's failure to supply such signature, or to contact the officer within the allotted period. When a deponent fails to contact the officer within the allotted period, or expressly refuses

by a signature to identify the deposition as his or her own, the deposition shall be given the same effect as though signed. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(r) The deposition officer shall certify on the transcript of the deposition, or in the writing accompanying an audio taped or video taped deposition as described in paragraph (2) of subdivision (q), that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given and of any changes made by the deponent.

(s) (1) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that transcript in an envelope or package endorsed with the title of the action and marked: "Deposition of (here insert name of deponent)", and shall promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

The attorney to whom the transcript of a deposition is transmitted shall retain custody of it until six months after final disposition of the action. At that time, the transcript may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the transcript be preserved for a longer period.

(2) An audio tape or video tape record of deposition testimony, including a certified tape made by an operator qualified under subparagraph (B) of paragraph (2) of subdivision (*l*), shall not be filed with the court. Instead, the operator shall retain custody of that record and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the tape and the integrity of the testimony and images it contains.

At the request of any party to the action, including a party who did not attend the taking of the deposition testimony, or at the request of the deponent, that operator shall promptly (A) permit the one making the request to hear or to view the tape on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the tape, and (B) furnish a copy of the audio tape or the video tape recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the tape.

The attorney or operator who has custody of an audio tape or video tape record of deposition testimony shall retain custody of it until six months after final disposition of the action. At that time, the audio

tape or video tape may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the tape be preserved for a longer period.

(t) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who has been served with a deposition notice pursuant to subdivision (c) may take a subsequent deposition of that deponent. However, for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken. This subdivision does not preclude taking one subsequent deposition of a natural person who has previously been examined as a result of that person's designation to testify on behalf of an organization under subdivision (d).

(u) At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under subdivision (g), so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:

(1) Any party may use a deposition for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Evidence Code.

(2) An adverse party may use for any purpose, a deposition of a party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under subdivision (d) of a party. It is not ground for objection to the use of a deposition of a party under this paragraph by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.

(3) Any party may use for any purpose the deposition of any person or organization, including that of any party to the action, if the court finds any of the following:

(A) The deponent resides more than 150 miles from the place of the trial or other hearing.

(B) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is (i) exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant, (ii) disqualified from testifying, (iii) dead or unable to attend or testify because of existing physical or mental illness or infirmity, (iv) absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process, or (v) absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but has been unable to procure the deponent's attendance by the court's process.

(C) Exceptional circumstances exist that make it desirable to

allow the use of any deposition in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

(4) Any party may use a video tape deposition of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under subdivision (d) reserved the right to use the deposition at trial, and if that party has complied with subparagraph (I) of paragraph (2) of subdivision (*l*).

(5) Subject to the requirements of this section, a party may offer in evidence all or any part of a deposition, and if the party introduces only part of the deposition, any other party may introduce any other parts that are relevant to the parts introduced.

(6) Substitution of parties does not affect the right to use depositions previously taken.

(7) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the Evidence Code.

SEC. 10. 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 20 days after service upon him or her of a written notice of entry of the order, or within such further time not exceeding an additional 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.

SEC. 11. Section 26800 of the Government Code is amended to read:

26800. The county clerk shall act as clerk of the superior court in and for his or her county. However, in any county in which a superior court executive officer has been appointed pursuant to Section 69898, the term "county clerk" shall mean the superior court executive officer to the extent that the superior court, by local rule, has delegated any duties of the county clerk to the superior court executive officer.

SEC. 11.5. Section 3.5 of this bill incorporates amendments to Section 575.1 of the Code of Civil Procedure proposed by both this bill and SB 425. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 575.1 of the Code of Civil Procedure, and (3) this bill is enacted after SB 425, in which case Section 3 of this bill shall not become operative.

SEC. 12. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. 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 927

An act to amend Section 6401.7 of the Labor Code, relating to occupational safety and health.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 6401.7 of the Labor Code is amended to read:

6401.7. (a) Every employer shall establish, implement, and maintain an effective injury prevention program. The program shall be written, except as provided in subdivision (e), and shall include, but not be limited to, the following elements:

(1) Identification of the person or persons responsible for implementing the program.

(2) The employer's system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices.

(3) The employer's methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner.

(4) An occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each employee's job assignment.

(5) The employer's system for communicating with employees on occupational health and safety matters, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal.

(6) The employer's system for ensuring that employees comply with safe and healthy work practices, which may include disciplinary action.

(b) The employer shall correct unsafe and unhealthy conditions and work practices in a timely manner based on the severity of the hazard.

(c) The employer shall train all employees when the training program is first established, all new employees, and all employees given a new job assignment, and shall train employees whenever new substances, processes, procedures, or equipment are introduced to the workplace and represent a new hazard, and whenever the employer receives notification of a new or previously unrecognized hazard.

(d) The employer shall keep appropriate records of steps taken to implement and maintain the program.

(e) (1) The standards board shall adopt a standard setting forth the employer's duties under this section, on or before January 1, 1991, consistent with the requirements specified in subdivisions (a), (b),

(c), and (d). The standards board, in adopting the standard, shall include substantial compliance criteria for use in evaluating an employer's injury prevention program. The board may adopt less stringent criteria for employers with few employees in industries with insignificant occupational safety or health hazards.

(2) Notwithstanding subdivision (a), for employers with fewer than 20 employees who are in industries that are not on a designated list of high hazard industries and who have a workers' compensation experience modification rate of 1.1 or less, and for any employers with fewer than 20 employees who are in industries that are on a designated list of low hazard industries, the board shall adopt a standard setting forth the employer's duties under this section consistent with the requirements specified in subdivisions (a), (b), and (c), except that the standard shall only require written documentation to the extent of documenting the person or persons responsible for implementing the program pursuant to paragraph (1) of subdivision (a), keeping a record of periodic inspections pursuant to paragraph (2) of subdivision (a), and keeping a record of employee training pursuant to paragraph (4) of subdivision (a). To any extent beyond the specifications of this subdivision, the standard shall not require the employer to keep the records specified in subdivision (d).

(3) The division shall establish a list of high hazard industries using the methods prescribed in Section 6314.1 for identifying and targeting employers in high hazard industries. For purposes of this subdivision, the "designated list of high hazard industries" shall be the list established pursuant to this paragraph.

For the purpose of implementing this subdivision, the Department of Industrial Relations shall periodically review, and as necessary revise, the list.

(4) For the purpose of implementing this subdivision, the Department of Industrial Relations shall also establish a list of low hazard industries, and shall periodically review, and as necessary revise, that list.

(f) The standard adopted pursuant to subdivision (e) shall specifically permit employer and employee occupational safety and health committees to be included in the employer's injury prevention program. The board shall establish criteria for use in evaluating employer and employee occupational safety and health committees. The criteria shall include minimum duties, including the following:

(1) Review of the employer's (A) periodic, scheduled worksite inspections, (B) investigation of causes of incidents resulting in injury, illness, or exposure to hazardous substances, and (C) investigation of any alleged hazardous condition brought to the attention of any committee member. When determined necessary by the committee, the committee may conduct its own inspections and investigations.

(2) Upon request from the division, verification of abatement

action taken by the employer as specified in division citations.

If an employer's occupational safety and health committee meets the criteria established by the board, it shall be presumed to be in substantial compliance with paragraph (5) of subdivision (a).

(g) The division shall adopt regulations specifying the procedures for selecting employee representatives for employer-employee occupational health and safety committees when these procedures are not specified in an applicable collective bargaining agreement. No employee or employee organization shall be held liable for any act or omission in connection with a health and safety committee.

(h) The employer's injury prevention program, as required by this section, shall cover all of the employer's employees and all other workers whom the employer controls or directs and directly supervises on the job to the extent these workers are exposed to worksite and job assignment specific hazards. Nothing in this subdivision shall affect the obligations of a contractor or other employer that controls or directs and directly supervises its own employees on the job.

(i) Where a contractor supplies its employee to a state agency employer on a temporary basis, the state agency employer may assess a fee upon the contractor to reimburse the state agency for the additional costs, if any, of including the contract employee within the state agency's injury prevention program.

CHAPTER 928

An act to amend Sections 6401.7 and 6427 of, and to add Section 6319.3 to, the Labor Code, relating to occupational safety and health.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 6319.3 is added to the Labor Code to read:

6319.3. (a) Except as provided in subdivision (b) of this section and subdivision (j) of Section 6401.7, no civil penalty shall be assessed against any new employer in the state for a violation of any standard developed pursuant to subdivision (a) of Section 6401.7 for a period of one year after the date the new employer establishes a business in the state.

(b) Subdivision (a) shall only apply to an employer who has made a good faith effort to comply with any standard developed pursuant to subdivision (a) of Section 6401.7, but shall not apply if the employer is found to have committed a serious, willful, or repeated violation of that standard, or fails to abate the violation and is assessed a penalty pursuant to Section 6430.

SEC. 2. Section 6401.7 of the Labor Code is amended to read:

6401.7. (a) Every employer shall establish, implement, and maintain an effective injury prevention program. The program shall be written and shall include, but not be limited to, the following elements:

(1) Identification of the person or persons responsible for implementing the program.

(2) The employer's system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices.

(3) The employer's methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner.

(4) An occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each employee's job assignment.

(5) The employer's system for communicating with employees on occupational health and safety matters, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal.

(6) The employer's system for ensuring that employees comply with safe and healthy work practices, which may include disciplinary action.

(b) The employer shall correct unsafe and unhealthy conditions and work practices in a timely manner based on the severity of the hazard.

(c) The employer shall train all employees when the training program is first established, all new employees, and all employees given a new job assignment, and shall train employees whenever new substances, processes, procedures, or equipment are introduced to the workplace and represent a new hazard, and whenever the employer receives notification of a new or previously unrecognized hazard. Beginning January 1, 1994, an employer in the construction industry who is required to be licensed under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code may use employee training provided to the employer's employees under a construction industry occupational safety and health training program approved by the division to comply with the requirements of subdivision (a) relating to employee training, and shall only be required to provide training on hazards specific to an employee's job duties.

(d) The employer shall keep appropriate records of steps taken to implement and maintain the program. Beginning January 1, 1994, employers in the construction industry who are required to be licensed under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code may use records relating to employee training provided to the employer in connection with an occupational safety and health training program approved by the division to comply with the requirements of this subdivision, and shall only be required to keep records of those steps

taken to implement and maintain the program with respect to hazards specific to an employee's job duties.

(e) The standards board shall adopt a standard setting forth the employer's duties under this section, on or before January 1, 1991, consistent with the requirements specified in subdivisions (a), (b), (c), and (d). The standards board, in adopting the standard, shall include substantial compliance criteria for use in evaluating an employer's injury prevention program. The board may adopt less stringent criteria for employers with few employees and for employers in industries with insignificant occupational safety or health hazards.

(f) The standard adopted pursuant to subdivision (e) shall specifically permit employer and employee occupational safety and health committees to be included in the employer's injury prevention program. The board shall establish criteria for use in evaluating employer and employee occupational safety and health committees. The criteria shall include minimum duties, including the following:

(1) Review of the employer's (A) periodic, scheduled worksite inspections, (B) investigation of causes of incidents resulting in injury, illness, or exposure to hazardous substances, and (C) investigation of any alleged hazardous condition brought to the attention of any committee member. When determined necessary by the committee, the committee may conduct its own inspections and investigations.

(2) Upon request from the division, verification of abatement action taken by the employer as specified in division citations.

If an employer's occupational safety and health committee meets the criteria established by the board, it shall be presumed to be in substantial compliance with paragraph (5) of subdivision (a).

(g) The division shall adopt regulations specifying the procedures for selecting employee representatives for employer-employee occupational health and safety committees when these procedures are not specified in an applicable collective bargaining agreement. No employee or employee organization shall be held liable for any act or omission in connection with a health and safety committee.

(h) The employer's injury prevention program, as required by this section, shall cover all of the employer's employees and all other workers who the employer controls or directs and directly supervises on the job to the extent these workers are exposed to worksite and job assignment specific hazards. Nothing in this subdivision shall affect the obligations of a contractor or other employer which controls or directs and directly supervises its own employees on the job.

(i) Where a contractor supplies its employee to a state agency employer on a temporary basis, the state agency employer may assess a fee upon the contractor to reimburse the state agency for the additional costs, if any, of including the contract employee within the state agency's injury prevention program.

(j) (1) The division shall prepare a Model Injury and Illness Prevention Program for Non-High-Hazard Employment, and shall make copies of the model program prepared pursuant to this subdivision available to employers, upon request, for posting in the workplace. An employer who adopts and implements the model program prepared by the division pursuant to this paragraph in good faith shall not be assessed a civil penalty for the first citation for a violation of this section issued after the employer's adoption and implementation of the model program.

(2) For purposes of this subdivision, the division shall establish a list of non-high-hazard industries in California, that may include the industries that, pursuant to Section 14316 of Title 8 of the California Code of Regulations, are not currently required to keep records of occupational injuries and illnesses under Article 2 (commencing with Section 14301) of Subchapter 1 of Chapter 7 of Division 1 of Title 8 of the California Code of Regulations. These industries, identified by their Standard Industrial Classification Codes, as published by the United States Office of Management and Budget in the Manual of Standard Industrial Classification Codes, 1987 Edition, are apparel and accessory stores (Code 56), eating and drinking places (Code 58), miscellaneous retail (Code 59), finance, insurance, and real estate (Codes 60–67), personal services (Code 72), business services (Code 73), motion pictures (Code 78) except motion picture production and allied services (Code 781), legal services (Code 81), educational services (Code 82), social services (Code 83), museums, art galleries, and botanical and zoological gardens (Code 84), membership organizations (Code 86), engineering, accounting, research, management, and related services (Code 87), private households (Code 88), and miscellaneous services (Code 89). To further identify industries that may be included on the list, the division shall also consider data from a rating organization as defined in Section 11750.1 of the Insurance Code, the Division of Labor Statistics and Research, including the logs of occupational injuries and illnesses maintained by employers on Form CAL/OSHA No. 200, or its equivalent, as required by Section 14301 of Title 8 of the California Code of Regulations, and all other appropriate information. The list shall be established by June 30, 1994, and shall be reviewed, and as necessary revised, biennially.

(3) The division shall prepare a Model Injury and Illness Prevention Program for Employers in Industries with Intermittent Employment, and shall determine which industries have historically utilized seasonal or intermittent employees. An employer in an industry determined by the division to have historically utilized seasonal or intermittent employees shall be deemed to have complied with the requirements of subdivision (a) with respect to a written injury prevention program if the employer adopts the model program prepared by the division pursuant to this paragraph and complies with any instructions relating thereto.

SEC. 2.5. Section 6401.7 of the Labor Code is amended to read:

6401.7. (a) Every employer shall establish, implement, and maintain an effective injury prevention program. The program shall be written, except as provided in subdivision (e), and shall include, but not be limited to, the following elements:

(1) Identification of the person or persons responsible for implementing the program.

(2) The employer's system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices.

(3) The employer's methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner.

(4) An occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each employee's job assignment.

(5) The employer's system for communicating with employees on occupational health and safety matters, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal.

(6) The employer's system for ensuring that employees comply with safe and healthy work practices, which may include disciplinary action.

(b) The employer shall correct unsafe and unhealthy conditions and work practices in a timely manner based on the severity of the hazard.

(c) The employer shall train all employees when the training program is first established, all new employees, and all employees given a new job assignment, and shall train employees whenever new substances, processes, procedures, or equipment are introduced to the workplace and represent a new hazard, and whenever the employer receives notification of a new or previously unrecognized hazard. Beginning January 1, 1994, an employer in the construction industry who is required to be licensed under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code may use employee training provided to the employer's employees under a construction industry occupational safety and health training program approved by the division to comply with the requirements of subdivision (a) relating to employee training, and shall only be required to provide training on hazards specific to an employee's job duties.

(d) The employer shall keep appropriate records of steps taken to implement and maintain the program. Beginning January 1, 1994, an employer in the construction industry who is required to be licensed under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code may use records relating to employee training provided to the employer in connection with an occupational safety and health training program approved by the division to comply with the requirements of this subdivision, and shall only be required to keep records of those steps taken to

implement and maintain the program with respect to hazards specific to an employee's job duties.

(e) (1) The standards board shall adopt a standard setting forth the employer's duties under this section, on or before January 1, 1991, consistent with the requirements specified in subdivisions (a), (b), (c), and (d). The standards board, in adopting the standard, shall include substantial compliance criteria for use in evaluating an employer's injury prevention program. The board may adopt less stringent criteria for employers with few employees and for employers in industries with insignificant occupational safety or health hazards.

(2) Notwithstanding subdivision (a), for employers with fewer than 20 employees who are in industries that are not on a designated list of high hazard industries and who have a workers' compensation experience modification rate of 1.1 or less, and for any employers with fewer than 20 employees who are in industries that are on a designated list of low hazard industries, the board shall adopt a standard setting forth the employer's duties under this section consistent with the requirements specified in subdivisions (a), (b), and (c), except that the standard shall only require written documentation to the extent of documenting the person or persons responsible for implementing the program pursuant to paragraph (1) of subdivision (a), keeping a record of periodic inspections pursuant to paragraph (2) of subdivision (a), and keeping a record of employee training pursuant to paragraph (4) of subdivision (a). To any extent beyond the specifications of this subdivision, the standard shall not require the employer to keep the records specified in subdivision (d).

(3) The division shall establish a list of high hazard industries using the methods prescribed in Section 6314.1 for identifying and targeting employers in high hazard industries. For purposes of this subdivision, the "designated list of high hazard industries" shall be the list established pursuant to this paragraph.

For the purpose of implementing this subdivision, the Department of Industrial Relations shall periodically review, and as necessary revise, the list.

(4) For the purpose of implementing this subdivision, the Department of Industrial Relations shall also establish a list of low hazard industries, and shall periodically review, and as necessary revise, that list.

(f) The standard adopted pursuant to subdivision (e) shall specifically permit employer and employee occupational safety and health committees to be included in the employer's injury prevention program. The board shall establish criteria for use in evaluating employer and employee occupational safety and health committees. The criteria shall include minimum duties, including the following:

(1) Review of the employer's (A) periodic, scheduled worksite inspections, (B) investigation of causes of incidents resulting in

injury, illness, or exposure to hazardous substances, and (C) investigation of any alleged hazardous condition brought to the attention of any committee member. When determined necessary by the committee, the committee may conduct its own inspections and investigations.

(2) Upon request from the division, verification of abatement action taken by the employer as specified in division citations.

If an employer's occupational safety and health committee meets the criteria established by the board, it shall be presumed to be in substantial compliance with paragraph (5) of subdivision (a).

(g) The division shall adopt regulations specifying the procedures for selecting employee representatives for employer-employee occupational health and safety committees when these procedures are not specified in an applicable collective bargaining agreement. No employee or employee organization shall be held liable for any act or omission in connection with a health and safety committee.

(h) The employer's injury prevention program, as required by this section, shall cover all of the employer's employees and all other workers who the employer controls or directs and directly supervises on the job to the extent these workers are exposed to worksite and job assignment specific hazards. Nothing in this subdivision shall affect the obligations of a contractor or other employer which controls or directs and directly supervises its own employees on the job.

(i) Where a contractor supplies its employee to a state agency employer on a temporary basis, the state agency employer may assess a fee upon the contractor to reimburse the state agency for the additional costs, if any, of including the contract employee within the state agency's injury prevention program.

(j) (1) The division shall prepare a Model Injury and Illness Prevention Program for Non-High-Hazard Employment, and shall make copies of the model program prepared pursuant to this subdivision available to employers, upon request, for posting in the workplace. An employer who adopts and implements the model program prepared by the division pursuant to this paragraph in good faith shall not be assessed a civil penalty for the first citation for a violation of this section issued after the employer's adoption and implementation of the model program.

(2) For purposes of this subdivision, the division shall establish a list of non-high-hazard industries in California, that may include the industries that, pursuant to Section 14316 of Title 8 of the California Code of Regulations, are not currently required to keep records of occupational injuries and illnesses under Article 2 (commencing with Section 14301) of Subchapter 1 of Chapter 7 of Division 1 of Title 8 of the California Code of Regulations. These industries, identified by their Standard Industrial Classification Codes, as published by the United States Office of Management and Budget in the Manual of Standard Industrial Classification Codes, 1987 Edition, are apparel and accessory stores (Code 56), eating and drinking places (Code

58), miscellaneous retail (Code 59), finance, insurance, and real estate (Codes 60–67), personal services (Code 72), business services (Code 73), motion pictures (Code 78) except motion picture production and allied services (Code 781), legal services (Code 81), educational services (Code 82), social services (Code 83), museums, art galleries, and botanical and zoological gardens (Code 84), membership organizations (Code 86), engineering, accounting, research, management, and related services (Code 87), private households (Code 88), and miscellaneous services (Code 89). To further identify industries that may be included on the list, the division shall also consider data from a rating organization as defined in Section 11750.1 of the Insurance Code, the Division of Labor Statistics and Research, including the logs of occupational injuries and illnesses maintained by employers on Form CAL/OSHA No. 200, or its equivalent, as required by Section 14301 of Title 8 of the California Code of Regulations, and all other appropriate information. The list shall be established by June 30, 1994, and shall be reviewed, and as necessary revised, biennially.

(3) The division shall prepare a Model Injury and Illness Prevention Program for Employers in Industries with Intermittent Employment, and shall determine which industries have historically utilized seasonal or intermittent employees. An employer in an industry determined by the division to have historically utilized seasonal or intermittent employees shall be deemed to have complied with the requirements of subdivision (a) with respect to a written injury prevention program if the employer adopts the model program prepared by the division pursuant to this paragraph and complies with any instructions relating thereto.

SEC. 3. Section 6427 of the Labor Code is amended to read:

6427. Any employer who violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, and the violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to seven thousand dollars ($7,000) for each violation.

SEC. 4. Section 2.5 of the bill incorporates amendments to Section 6401.7 of the Labor Code proposed by this bill and AB 1930. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 6401.7 of the Labor Code, and (3) this bill is enacted after AB 1930, in which case Section 2 of this shall not become operative.

CHAPTER 929

An act to amend Section 6401.7 of the Labor Code, relating to employment.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 6401.7 of the Labor Code is amended to read:

6401.7. (a) Every employer shall establish, implement, and maintain an effective injury prevention program. The program shall be written and shall include, but not be limited to, the following elements:

(1) Identification of the person or persons responsible for implementing the program.

(2) The employer's system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices.

(3) The employer's methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner.

(4) An occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each employee's job assignment.

(5) The employer's system for communicating with employees on occupational health and safety matters, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal.

(6) The employer's system for ensuring that employees comply with safe and healthy work practices, which may include disciplinary action.

(b) The employer shall correct unsafe and unhealthy conditions and work practices in a timely manner based on the severity of the hazard.

(c) The employer shall train all employees when the training program is first established, all new employees, and all employees given a new job assignment, and shall train employees whenever new substances, processes, procedures, or equipment are introduced to the workplace and represent a new hazard, and whenever the employer receives notification of a new or previously unrecognized hazard.

(d) The employer shall keep appropriate records of steps taken to implement and maintain the program.

(e) The standards board shall adopt a standard setting forth the employer's duties under this section, on or before January 1, 1991, consistent with the requirements specified in subdivisions (a), (b),

(c), and (d). The standards board, in adopting the standard, shall include substantial compliance criteria for use in evaluating an employer's injury prevention program. The board may adopt less stringent criteria for employers with few employees and for employers in industries with insignificant occupational safety or health hazards.

(f) The standard adopted pursuant to subdivision (e) shall specifically permit employer and employee occupational safety and health committees to be included in the employer's injury prevention program. The board shall establish criteria for use in evaluating employer and employee occupational safety and health committees. The criteria shall include minimum duties, including the following:

(1) Review of the employer's (A) periodic, scheduled worksite inspections, (B) investigation of causes of incidents resulting in injury, illness, or exposure to hazardous substances, and (C) investigation of any alleged hazardous condition brought to the attention of any committee member. When determined necessary by the committee, the committee may conduct its own inspections and investigations.

(2) Upon request from the division, verification of abatement action taken by the employer as specified in division citations.

If an employer's occupational safety and health committee meets the criteria established by the board, it shall be presumed to be in substantial compliance with paragraph (5) of subdivision (a).

(g) The division shall adopt regulations specifying the procedures for selecting employee representatives for employer-employee occupational health and safety committees when these procedures are not specified in an applicable collective bargaining agreement. No employee or employee organization shall be held liable for any act or omission in connection with a health and safety committee.

(h) The employer's injury prevention program, as required by this section, shall cover all of the employer's employees and all other workers who the employer controls or directs and directly supervises on the job to the extent these workers are exposed to worksite and job assignment specific hazards. Nothing in this subdivision shall affect the obligations of a contractor or other employer which controls or directs and directly supervises its own employees on the job.

(i) Where a contractor supplies its employee to a state agency employer on a temporary basis, the state agency employer may assess a fee upon the contractor to reimburse the state agency for the additional costs, if any, of including the contract employee within the state agency's injury prevention program.

(j) With respect to any county, city, city and county, or district, or any public or quasi-public corporation or public agency therein, including any public entity, other than a state agency, that is a member of, or created by, a joint powers agreement, the provisions of subdivision (d) shall not apply.

SEC. 2. Section 6401.7 of the Labor Code is amended to read:

6401.7. (a) Every employer shall establish, implement, and maintain an effective injury prevention program. The program shall be written, except as provided in subdivision (e), and shall include, but not be limited to, the following elements:

(1) Identification of the person or persons responsible for implementing the program.

(2) The employer's system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices.

(3) The employer's methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner.

(4) An occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each employee's job assignment.

(5) The employer's system for communicating with employees on occupational health and safety matters, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal.

(6) The employer's system for ensuring that employees comply with safe and healthy work practices, which may include disciplinary action.

(b) The employer shall correct unsafe and unhealthy conditions and work practices in a timely manner based on the severity of the hazard.

(c) The employer shall train all employees when the training program is first established, all new employees, and all employees given a new job assignment, and shall train employees whenever new substances, processes, procedures, or equipment are introduced to the workplace and represent a new hazard, and whenever the employer receives notification of a new or previously unrecognized hazard.

(d) The employer shall keep appropriate records of steps taken to implement and maintain the program.

(e) (1) The standards board shall adopt a standard setting forth the employer's duties under this section, on or before January 1, 1991, consistent with the requirements specified in subdivisions (a), (b), (c), and (d). The standards board, in adopting the standard, shall include substantial compliance criteria for use in evaluating an employer's injury prevention program. The board may adopt less stringent criteria for employers with few employees and for employers in industries with insignificant occupational safety or health hazards.

(2) Notwithstanding subdivision (a), for employers with fewer than 20 employees who are in industries that are not on a designated list of high hazard industries and who have a workers' compensation experience modification rate of 1.1 or less, and for any employers with fewer than 20 employees who are in industries that are on a

designated list of low hazard industries, the board shall adopt a standard setting forth the employer's duties under this section consistent with the requirements specified in subdivisions (a), (b), and (c), except that the standard shall only require written documentation to the extent of documenting the person or persons responsible for implementing the program pursuant to paragraph (1) of subdivision (a), keeping a record of periodic inspections pursuant to paragraph (2) of subdivision (a), and keeping a record of employee training pursuant to paragraph (4) of subdivision (a). To any extent beyond the specifications of this subdivision, the standard shall not require the employer to keep the records specified in subdivision (d).

(3) The division shall establish a list of high hazard industries using the methods prescribed in Section 6314.1 for identifying and targeting employers in high hazard industries. For purposes of this subdivision, the "designated list of high hazard industries" shall be the list established pursuant to this paragraph.

For the purpose of implementing this subdivision, the Department of Industrial Relations shall periodically review, and as necessary revise, the list.

(4) For the purpose of implementing this subdivision, the Department of Industrial Relations shall also establish a list of low hazard industries, and shall periodically review, and as necessary revise, that list.

(f) The standard adopted pursuant to subdivision (e) shall specifically permit employer and employee occupational safety and health committees to be included in the employer's injury prevention program. The board shall establish criteria for use in evaluating employer and employee occupational safety and health committees. The criteria shall include minimum duties, including the following:

(1) Review of the employer's (A) periodic, scheduled worksite inspections, (B) investigation of causes of incidents resulting in injury, illness, or exposure to hazardous substances, and (C) investigation of any alleged hazardous condition brought to the attention of any committee member. When determined necessary by the committee, the committee may conduct its own inspections and investigations.

(2) Upon request from the division, verification of abatement action taken by the employer as specified in division citations.

If an employer's occupational safety and health committee meets the criteria established by the board, it shall be presumed to be in substantial compliance with paragraph (5) of subdivision (a).

(g) The division shall adopt regulations specifying the procedures for selecting employee representatives for employer-employee occupational health and safety committees when these procedures are not specified in an applicable collective bargaining agreement. No employee or employee organization shall be held liable for any act or omission in connection with a health and safety committee.

(h) The employer's injury prevention program, as required by this section, shall cover all of the employer's employees and all other workers who the employer controls or directs and directly supervises on the job to the extent these workers are exposed to worksite and job assignment specific hazards. Nothing in this subdivision shall affect the obligations of a contractor or other employer which controls or directs and directly supervises its own employees on the job.

(i) Where a contractor supplies its employee to a state agency employer on a temporary basis, the state agency employer may assess a fee upon the contractor to reimburse the state agency for the additional costs, if any, of including the contract employee within the state agency's injury prevention program.

(j) With respect to any county, city, city and county, or district, or any public or quasi-public corporation or public agency therein, including any public entity, other than a state agency, that is a member of, or created by, a joint powers agreement, the provisions of subdivision (d) shall not apply.

SEC. 3. Section 6401.7 of the Labor Code is amended to read:

6401.7. (a) Every employer shall establish, implement, and maintain an effective injury prevention program. The program shall be written and shall include, but not be limited to, the following elements:

(1) Identification of the person or persons responsible for implementing the program.

(2) The employer's system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices.

(3) The employer's methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner.

(4) An occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each employee's job assignment.

(5) The employer's system for communicating with employees on occupational health and safety matters, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal.

(6) The employer's system for ensuring that employees comply with safe and healthy work practices, which may include disciplinary action.

(b) The employer shall correct unsafe and unhealthy conditions and work practices in a timely manner based on the severity of the hazard.

(c) The employer shall train all employees when the training program is first established, all new employees, and all employees given a new job assignment, and shall train employees whenever new substances, processes, procedures, or equipment are introduced to the workplace and represent a new hazard, and whenever the

employer receives notification of a new or previously unrecognized hazard. Beginning January 1, 1994, an employer in the construction industry who is required to be licensed under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code may use employee training provided to the employer's employees under a construction industry occupational safety and health training program approved by the division to comply with the requirements of subdivision (a) relating to employee training, and shall only be required to provide training on hazards specific to an employee's job duties.

(d) The employer shall keep appropriate records of steps taken to implement and maintain the program. Beginning January 1, 1994, an employer in the construction industry who is required to be licensed under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code may use records relating to employee training provided to the employer in connection with an occupational safety and health training program approved by the division to comply with the requirements of this subdivision, and shall only be required to keep records of those steps taken to implement and maintain the program with respect to hazards specific to an employee's job duties.

(e) The standards board shall adopt a standard setting forth the employer's duties under this section, on or before January 1, 1991, consistent with the requirements specified in subdivisions (a), (b), (c), and (d). The standards board, in adopting the standard, shall include substantial compliance criteria for use in evaluating an employer's injury prevention program. The board may adopt less stringent criteria for employers with few employees and for employers in industries with insignificant occupational safety or health hazards.

(f) The standard adopted pursuant to subdivision (e) shall specifically permit employer and employee occupational safety and health committees to be included in the employer's injury prevention program. The board shall establish criteria for use in evaluating employer and employee occupational safety and health committees. The criteria shall include minimum duties, including the following:

(1) Review of the employer's (A) periodic, scheduled worksite inspections, (B) investigation of causes of incidents resulting in injury, illness, or exposure to hazardous substances, and (C) investigation of any alleged hazardous condition brought to the attention of any committee member. When determined necessary by the committee, the committee may conduct its own inspections and investigations.

(2) Upon request from the division, verification of abatement action taken by the employer as specified in division citations.

If an employer's occupational safety and health committee meets the criteria established by the board, it shall be presumed to be in substantial compliance with paragraph (5) of subdivision (a).

(g) The division shall adopt regulations specifying the procedures for selecting employee representatives for employer-employee occupational health and safety committees when these procedures are not specified in an applicable collective bargaining agreement. No employee or employee organization shall be held liable for any act or omission in connection with a health and safety committee.

(h) The employer's injury prevention program, as required by this section, shall cover all of the employer's employees and all other workers who the employer controls or directs and directly supervises on the job to the extent these workers are exposed to worksite and job assignment specific hazards. Nothing in this subdivision shall affect the obligations of a contractor or other employer which controls or directs and directly supervises its own employees on the job.

(i) Where a contractor supplies its employee to a state agency employer on a temporary basis, the state agency employer may assess a fee upon the contractor to reimburse the state agency for the additional costs, if any, of including the contract employee within the state agency's injury prevention program.

(j) (1) The division shall prepare a Model Injury and Illness Prevention Program for Non-High-Hazard Employment, and shall make copies of the model program prepared pursuant to this subdivision available to employers, upon request, for posting in the workplace. An employer who adopts and implements the model program prepared by the division pursuant to this paragraph in good faith shall not be assessed a civil penalty for the first citation for a violation of this section issued after the employer's adoption and implementation of the model program.

(2) For purposes of this subdivision, the division shall establish a list of non-high-hazard industries in California, that may include the industries that, pursuant to Section 14316 of Title 8 of the California Code of Regulations, are not currently required to keep records of occupational injuries and illnesses under Article 2 (commencing with Section 14301) of Subchapter 1 of Chapter 7 of Division 1 of Title 8 of the California Code of Regulations. These industries, identified by their Standard Industrial Classification Codes, as published by the United States Office of Management and Budget in the Manual of Standard Industrial Classification Codes, 1987 Edition, are apparel and accessory stores (Code 56), eating and drinking places (Code 58), miscellaneous retail (Code 59), finance, insurance, and real estate (Codes 60–67), personal services (Code 72), business services (Code 73), motion pictures (Code 78) except motion picture production and allied services (Code 781), legal services (Code 81), educational services (Code 82), social services (Code 83), museums, art galleries, and botanical and zoological gardens (Code 84), membership organizations (Code 86), engineering, accounting, research, management, and related services (Code 87), private households (Code 88), and miscellaneous services (Code 89). To further identify industries that may be included on the list, the

division shall also consider data from a rating organization as defined in Section 11750.1 of the Insurance Code, the Division of Labor Statistics and Research, including the logs of occupational injuries and illnesses maintained by employers on Form CAL/OSHA No. 200, or its equivalent, as required by Section 14301 of Title 8 of the California Code of Regulations, and all other appropriate information. The list shall be established by June 30, 1994, and shall be reviewed, and as necessary revised, biennially.

(3) The division shall prepare a Model Injury and Illness Prevention Program for Employers in Industries with Intermittent Employment, and shall determine which industries have historically utilized seasonal or intermittent employees. An employer in an industry determined by the division to have historically utilized seasonal or intermittent employees shall be deemed to have complied with the requirements of subdivision (a) with respect to a written injury prevention program if the employer adopts the model program prepared by the division pursuant to this paragraph and complies with any instructions relating thereto.

(k) With respect to any county, city, city and county, or district, or any public or quasi-public corporation or public agency therein, including any public entity, other than a state agency, that is a member of, or created by, a joint powers agreement, the provisions of subdivision (d) shall not apply.

SEC. 4. Section 6401.7 of the Labor Code is amended to read:

6401.7. (a) Every employer shall establish, implement, and maintain an effective injury prevention program. The program shall be written, except as provided in subdivision (e), and shall include, but not be limited to, the following elements:

(1) Identification of the person or persons responsible for implementing the program.

(2) The employer's system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices.

(3) The employer's methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner.

(4) An occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each employee's job assignment.

(5) The employer's system for communicating with employees on occupational health and safety matters, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal.

(6) The employer's system for ensuring that employees comply with safe and healthy work practices, which may include disciplinary action.

(b) The employer shall correct unsafe and unhealthy conditions and work practices in a timely manner based on the severity of the hazard.

(c) The employer shall train all employees when the training program is first established, all new employees, and all employees given a new job assignment, and shall train employees whenever new substances, processes, procedures, or equipment are introduced to the workplace and represent a new hazard, and whenever the employer receives notification of a new or previously unrecognized hazard. Beginning January 1, 1994, an employer in the construction industry who is required to be licensed under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code may use employee training provided to the employer's employees under a construction industry occupational safety and health training program approved by the division to comply with the requirements of subdivision (a) relating to employee training, and shall only be required to provide training on hazards specific to an employee's job duties.

(d) The employer shall keep appropriate records of steps taken to implement and maintain the program. Beginning January 1, 1994, an employer in the construction industry who is required to be licensed under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code may use records relating to employee training provided to the employer in connection with an occupational safety and health training program approved by the division to comply with the requirements of this subdivision, and shall only be required to keep records of those steps taken to implement and maintain the program with respect to hazards specific to an employee's job duties.

(e) (1) The standards board shall adopt a standard setting forth the employer's duties under this section, on or before January 1, 1991, consistent with the requirements specified in subdivisions (a), (b), (c), and (d). The standards board, in adopting the standard, shall include substantial compliance criteria for use in evaluating an employer's injury prevention program. The board may adopt less stringent criteria for employers with few employees and for employers in industries with insignificant occupational safety or health hazards.

(2) Notwithstanding subdivision (a), for employers with fewer than 20 employees who are in industries that are not on a designated list of high hazard industries and who have a workers' compensation experience modification rate of 1.1 or less, and for any employers with fewer than 20 employees who are in industries that are on a designated list of low hazard industries, the board shall adopt a standard setting forth the employer's duties under this section consistent with the requirements specified in subdivisions (a), (b), and (c), except that the standard shall only require written documentation to the extent of documenting the person or persons responsible for implementing the program pursuant to paragraph (1) of subdivision (a), keeping a record of periodic inspections pursuant to paragraph (2) of subdivision (a), and keeping a record of employee training pursuant to paragraph (4) of subdivision (a).

To any extent beyond the specifications of this subdivision, the standard shall not require the employer to keep the records specified in subdivision (d).

(3) The division shall establish a list of high hazard industries using the methods prescribed in Section 6314.1 for identifying and targeting employers in high hazard industries. For purposes of this subdivision, the "designated list of high hazard industries" shall be the list established pursuant to this paragraph.

For the purpose of implementing this subdivision, the Department of Industrial Relations shall periodically review, and as necessary revise, the list.

(4) For the purpose of implementing this subdivision, the Department of Industrial Relations shall also establish a list of low hazard industries, and shall periodically review, and as necessary revise, that list.

(f) The standard adopted pursuant to subdivision (e) shall specifically permit employer and employee occupational safety and health committees to be included in the employer's injury prevention program. The board shall establish criteria for use in evaluating employer and employee occupational safety and health committees. The criteria shall include minimum duties, including the following:

(1) Review of the employer's (A) periodic, scheduled worksite inspections, (B) investigation of causes of incidents resulting in injury, illness, or exposure to hazardous substances, and (C) investigation of any alleged hazardous condition brought to the attention of any committee member. When determined necessary by the committee, the committee may conduct its own inspections and investigations.

(2) Upon request from the division, verification of abatement action taken by the employer as specified in division citations.

If an employer's occupational safety and health committee meets the criteria established by the board, it shall be presumed to be in substantial compliance with paragraph (5) of subdivision (a).

(g) The division shall adopt regulations specifying the procedures for selecting employee representatives for employer-employee occupational health and safety committees when these procedures are not specified in an applicable collective bargaining agreement. No employee or employee organization shall be held liable for any act or omission in connection with a health and safety committee.

(h) The employer's injury prevention program, as required by this section, shall cover all of the employer's employees and all other workers who the employer controls or directs and directly supervises on the job to the extent these workers are exposed to worksite and job assignment specific hazards. Nothing in this subdivision shall affect the obligations of a contractor or other employer which controls or directs and directly supervises its own employees on the job.

(i) Where a contractor supplies its employee to a state agency

employer on a temporary basis, the state agency employer may assess a fee upon the contractor to reimburse the state agency for the additional costs, if any, of including the contract employee within the state agency's injury prevention program.

(j) (1) The division shall prepare a Model Injury and Illness Prevention Program for Non-High-Hazard Employment, and shall make copies of the model program prepared pursuant to this subdivision available to employers, upon request, for posting in the workplace. An employer who adopts and implements the model program prepared by the division pursuant to this paragraph in good faith shall not be assessed a civil penalty for the first citation for a violation of this section issued after the employer's adoption and implementation of the model program.

(2) For purposes of this subdivision, the division shall establish a list of non-high-hazard industries in California, that may include the industries that, pursuant to Section 14316 of Title 8 of the California Code of Regulations, are not currently required to keep records of occupational injuries and illnesses under Article 2 (commencing with Section 14301) of Subchapter 1 of Chapter 7 of Division 1 of Title 8 of the California Code of Regulations. These industries, identified by their Standard Industrial Classification Codes, as published by the United States Office of Management and Budget in the Manual of Standard Industrial Classification Codes, 1987 Edition, are apparel and accessory stores (Code 56), eating and drinking places (Code 58), miscellaneous retail (Code 59), finance, insurance, and real estate (Codes 60–67), personal services (Code 72), business services (Code 73), motion pictures (Code 78) except motion picture production and allied services (Code 781), legal services (Code 81), educational services (Code 82), social services (Code 83), museums, art galleries, and botanical and zoological gardens (Code 84), membership organizations (Code 86), engineering, accounting, research, management, and related services (Code 87), private households (Code 88), and miscellaneous services (Code 89). To further identify industries that may be included on the list, the division shall also consider data from a rating organization as defined in Section 11750.1 of the Insurance Code, the Division of Labor Statistics and Research, including the logs of occupational injuries and illnesses maintained by employers on Form CAL/OSHA No. 200, or its equivalent, as required by Section 14301 of Title 8 of the California Code of Regulations, and all other appropriate information. The list shall be established by June 30, 1994, and shall be reviewed, and as necessary revised, biennially.

(3) The division shall prepare a Model Injury and Illness Prevention Program for Employers in Industries with Intermittent Employment, and shall determine which industries have historically utilized seasonal or intermittent employees. An employer in an industry determined by the division to have historically utilized seasonal or intermittent employees shall be deemed to have complied with the requirements of subdivision (a) with respect to a

written injury prevention program if the employer adopts the model program prepared by the division pursuant to this paragraph and complies with any instructions relating thereto.

(k) With respect to any county, city, city and county, or district, or any public or quasi-public corporation or public agency therein, including any public entity, other than a state agency, that is a member of, or created by, a joint powers agreement, the provisions of subdivision (d) shall not apply.

SEC. 5. (a) Section 2 of this bill incorporates amendments to Section 6401.7 of the Labor Code proposed by both this bill and AB 1930. It shall only become operative if (1) both bills are enacted and become effective January 1, 1994, (2) each bill amends Section 6401.7 of the Labor Code, and (3) AB 395 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1930, in which case Sections 1, 3, and 4 of this bill shall not become operative.

(b) Section 3 of this bill incorporates amendments to Section 6401.7 of the Labor Code proposed by both this bill and AB 395. It shall only become operative if (1) both bills are enacted and become effective January 1, 1994, (2) each bill amends Section 6401.7 of the Labor Code, (3) AB 1930 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 395 in which case Sections 1, 2, and 4 of this bill shall not become operative.

(c) Section 4 of this bill incorporates amendments to Section 6401.7 of the Labor Code proposed by this bill, AB 1930, and AB 395. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1994, (2) all three bills amend Section 6401.7 of the Labor Code, and (3) this bill is enacted after AB 1930 and AB 395, in which case Sections 1, 2, and 3 of this bill shall not become operative.

CHAPTER 930

An act to amend Sections 1250 and 1428 of the Health and Safety Code, relating to long-term health care facilities.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 1250 of the Health and Safety Code, as amended by Chapter 70 of the Statutes of 1993, is amended to read:

1250. As used in this chapter, "health facility" means any facility, place, or building that 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 that 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 that 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 that, 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 that 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 that 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 that 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 that 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 that provides inpatient or outpatient care in dentistry or maternity.

(g) "Intermediate care facility/developmentally disabled" means a facility that 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 that 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, that 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, that 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) that 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 that, 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 that 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 that were in the process of licensure in 1987.

(6) This subdivision as it applies to local agencies shall remain operative only until January 1, 1996.

(k) "Nursing facility" means a facility that is certified to

participate as a provider of care in the federal medicaid program under Title XIX of the federal Social Security Act and is licensed as either of the following:

(1) Skilled nursing facility.

(2) Intermediate care facility.

(*l*) Regulations defining a correctional treatment center described in subdivision (j) that is operated by a county, city, or city and county, shall not become effective prior to, or if effective, shall be inoperative until January 1, 1996, and until that time correctional facilities are exempt from any licensing requirements.

SEC. 2. Section 1428 of the Health and Safety Code is amended to read:

1428. (a) If the licensee desires to contest a citation or the proposed assessment of a civil penalt, therefor, the licensee shall use the processes described in subdivisions (b) and (c) for classes "AA," "A," or "B" citations. As a result of a citation review conference, a citation or the proposed assessment of a civil penalty may be affirmed, modified, or dismissed by the director or the director's designee. 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.

(b) If a licensee notifies the director that he or she intends to contest a class "AA" or a class "A" citation, the licensee may first within 15 business days after service of the citation notify the director in writing of his or her request for a citation review conference. The licensee shall inform the director in writing, within 15 business days of the service of the citation or the receipt of the decision of the director's designee after the citation review conference, of the licensee's intent to adjudicate the validity of the citation in the municipal or superior court in the county in which the long-term health care facility is located. In order to perfect a judicial appeal of a contested citation, a licensee shall file a civil action in the municipal or superior court in the county in which the long-term health care facility is located. The action shall be filed no later than 90 calendar days after a licensee notifies the director he or she intends to contest the citation, or no later than 90 days after the receipt of the decision by the director's designee after the citation review conference, and served not later than 90 days after filing. Notwithstanding any other provision of law, for those citations issued after January 1, 1993, 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, 1993, or within six months after the state department files its answer in the appeal, whichever is later. Notwithstanding subdivision (d), 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.

(c) If a licensee desires to contest a class "B" citation, the licensee may request, within 15 business days after service of the citation, a citation review conference, by writing the director or the director's designee of the licensee's intent to appeal the citation through the citation review conference. If the licensee wishes to appeal the citation which has been upheld in a citation review conference, the licensee shall, within 15 working days from the date the citation review conference decision was rendered, notify the director or the director's designee that he or she wishes to appeal the decision through the procedures set forth in subdivision (c) of Section 14123 of the Welfare and Institutions Code. The administrative law judge may affirm, modify, or dismiss the citation or the proposed assessment of a civil penalty. The licensee may choose to have his or her appeal heard by the administrative law judge without having first appealed the decision to a citation review conference by notifying the director in writing within 15 business days of the service of the citation.

(d) If a licensee is dissatisfied with the decision of the administrative law judge, the licensee may, in lieu of seeking judicial review of the decision as provided in Section 1094.5 of the Code of Civil Procedure, elect to submit the matter to binding arbitration by filing, within 60 days of its receipt of the decision, a request for arbitration with the American Arbitration Association. 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. Except as otherwise specifically provided in this subdivision, the arbitration hearing shall be conducted in accordance with the American Arbitration Association's established rules and procedures.

(e) If an appeal is prosecuted under this section, including an appeal taken in accordance with subdivision (c) of Section 14123 of the Welfare and Institutions Code, 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 proposed assessment of a civil penalty therefor, or the decision made by the director's designee, after a citation review conference, within the time specified in this section, 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 section. If a licensee appeals 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.

(f) 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.

(g) 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 or resident's mental and physical condition.

(2) The patient's or resident's medical condition.

(3) The patient's or resident'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.

(h) 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 and subsequent violation for which a citation of the same class was issued within any 12-month period. Trebling shall occur only if the first citation issued within the 12-month period was issued in the same class, a civil penalty was assessed, and a plan of correction was submitted for the previous same-class 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" citation is issued for 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.

(i) 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.

(j) 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.

(k) If the citation is dismissed, the state department shall take action immediately to ensure that the public records reflect in a prominent manner that the citation was dismissed.

(*l*) 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 chapter. 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 or residents of the facility.

(m) 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, that is also contained in those amendments, to request judicial relief from these time limits.

CHAPTER 931

An act to amend Section 1250 of, and to add Sections 1250.01 and 1250.02 to, the Health and Safety Code, relating to health facilities.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 1250 of the Health and Safety Code, as amended by Chapter 70 of the Statutes of 1993, is amended to read:

1250. As used in this chapter, "health facility" means any facility, place, or building that 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 that 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 that 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 that, 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.

A "general acute care hospital" includes a "rural general acute care hospital". However, a "rural general acute care hospital" shall not be required by the department to provide surgery and anesthesia services. A "rural general acute care hospital" shall meet either of the following conditions:

(1) The hospital meets the criteria for designation within peer group six or eight, as defined in the report entitled Hospital Peer Grouping for Efficiency Comparison, dated December 20, 1982.

(2) The hospital meets the criteria for designation within peer

group five or seven, as defined in the report entitled Hospital Peer Grouping for Efficiency Comparison, dated December 20, 1982, and has no more than 76 acute care beds and is located in a census dwelling place of 15,000 or less population according to the 1980 federal census.

(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 that 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 that 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 that 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 4 to 15 beds that 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 that provides inpatient or outpatient care in dentistry or maternity.

(g) "Intermediate care facility/developmentally disabled" means a facility that 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 that 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, that 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, that 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) that 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 that, 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 that 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 that were in the process of licensure in 1987.

(6) This subdivision as it applies to local agencies shall remain operative only until January 1, 1996.

(k) "Nursing facility" means a facility that is licensed as either of the following:

(1) Skilled nursing facility.

(2) Intermediate care facility.

(*l*) Regulations defining a correctional treatment center described in subdivision (j) that is operated by a county, city, or city and county, shall not become effective prior to, or if effective, shall be inoperative until January 1, 1996, and until that time correctional facilities are exempt from any licensing requirements.

SEC. 2. Section 1250.1 is added to the Health and Safety Code, to read:

1250.1. A rural general acute care hospital that does not provide surgical and anesthesia services shall maintain written transfer agreements with one or more general acute care hospitals that

provide surgical and anesthesia services.

SEC. 3. Section 1250.02 is added to the Health and Safety Code, to read:

1250.02. Article 9 (commencing with Section 70901) of Chapter 1 of Division 5 of Title 22 of the California Code of Regulations, as adopted to implement the requirements of Section 2 of Chapter 67 of the Statutes of 1988, shall apply to a rural general acute care hospital as defined in Section 1250. Any reference in those provisions to the Office of Statewide Health Planning and Development shall instead refer to the department. Any reference in those provisions to a small and rural hospital shall instead refer to a rural general acute care hospital. The department may adopt regulations to implement or administer this action.

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 932

An act to amend Sections 1250, 1250.1, 1267.10, 15026, and 15076 of the Health and Safety Code, to amend Section 6007 of, to add Sections 6006.5 and 6009 to, to add a chapter heading immediately preceding Section 6006 of Title 7 to Part 3 of, to add Title 8.7 (commencing with Section 7570) to Part 3 of, and to repeal Title 8.7 (commencing with Section 7580) of Part 3 of, the Penal Code, relating to correctional institutions, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 1250 of the Health and Safety Code, as amended by Section 7 of Chapter 70 of the Statutes of 1993, is amended to read:

1250. As used in this chapter, "health facility" means any facility, place, or building that 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 that 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 that 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 that, 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 that 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 that 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 that 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 that 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 that provides inpatient or outpatient care in dentistry or maternity.

(g) "Intermediate care facility/developmentally disabled" means a facility that 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 that 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, that 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, that 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) that 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 that, as determined by the state department, provides 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 law enforcement facility that houses inmates or wards that may be receiving outpatient services and are housed separately for reasons of improved access to health care, 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, 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 general acute care hospitals at the California Medical Facility, the California Men's Colony, and the California Institution for Men. This subdivision shall not be construed to prohibit the California Department of Corrections from obtaining a correctional treatment center license at these sites.

(6) This subdivision shall remain operative only until January 1,

1997.

(k) "Nursing facility" means a facility that is licensed as either of the following:

(1) Skilled nursing facility.

(2) Intermediate care facility.

(*l*) Regulations defining a correctional treatment center described in subdivision (j) that is operated by a county, city, or city and county, the Department of Corrections, or the Department of the Youth Authority, shall not become effective prior to, or if effective, shall be inoperative until January 1, 1996, and until that time these correctional facilities are exempt from any licensing requirements.

SEC. 1.3. 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 that 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 that 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 that 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 that, 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.

A "general acute care hospital" includes a rural general acute care hospital". However, a "rural general acute care hospital" shall not be required by the department to provide surgery and anesthesia services. A "rural general acute care hospital" shall meet either of the following conditions:

(1) The hospital meets the criteria for designation within peer group six or eight, as defined in the report entitled Hospital Peer Grouping for Efficiency Comparison, dated December 20, 1982.

(2) The hospital meets the criteria for designation within peer group five or seven, as defined in the report entitled Hospital Peer Grouping for Efficiency Comparison, dated December 20, 1982, and

has no more than 76 acute care beds and is located in a census dwelling place of 15,000 or less population according to the 1980 federal census.

(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 that 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 that 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 that 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 that 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 that provides inpatient or outpatient care in dentistry or maternity.

(g) "Intermediate care facility/developmentally disabled" means a facility that 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 that 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, that 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, that 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) that 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 that, as determined by the state department, provides 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 law enforcement facility that houses inmates or wards that may be receiving outpatient services and are housed separately for reasons of improved access to health care, 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, 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 general acute care hospitals at the California Medical Facility, the California Men's Colony, and the California Institution for Men. This subdivision shall not be construed to prohibit the California Department of Corrections from obtaining a correctional treatment center license at these sites.

(6) This subdivision shall remain operative only until January 1, 1997.

(k) "Nursing facility" means a facility that is licensed as either of the following:

(1) Skilled nursing facility.

(2) Intermediate care facility.

(*l*) Regulations defining a correctional treatment center described in subdivision (j) that is operated by a county, city, or city and county, the Department of Corrections, or the Department of the Youth Authority, shall not become effective prior to, or if effective, shall be inoperative until January 1, 1996, and until that time these correctional facilities are exempt from any licensing requirements.

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 that 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 that 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 that 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 that, 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 that 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 that 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 that 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 that 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

that provides inpatient or outpatient care in dentistry or maternity.

(g) "Intermediate care facility/developmentally disabled" means a facility that 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 that 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, that 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, that 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) that 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 that, as determined by the state department, provides 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 law enforcement facility that houses inmates or wards that may be receiving outpatient services and are housed separately for reasons of improved access to health care, 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, 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 general acute care hospitals at the California Medical Facility, the California Men's Colony, and the California Institution for Men. This subdivision shall not be construed

to prohibit the California Department of Corrections from obtaining a correctional treatment center license at these sites.

(6) This subdivision shall remain operative only until January 1, 1997.

(k) "Nursing facility" means a facility that is certified to participate as a provider of care in the federal medicaid program under Title XIX of the federal Social Security Act and is licensed as either of the following:

(1) Skilled nursing facility.

(2) Intermediate care facility.

(*l*) Regulations defining a correctional treatment center described in subdivision (j) that is operated by a county, city, or city and county, the Department of Corrections, or the Department of the Youth Authority, shall not become effective prior to, or if effective, shall be inoperative until January 1, 1996, and until that time these correctional facilities are exempt from any licensing requirements.

SEC. 1.7. 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 that 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 that 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 that 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 that, 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.

A "general acute care hospital" includes a "rural general acute care hospital". However, a "rural general acute care hospital" shall not be required by the department to provide surgery and anesthesia services. A "rural general acute care hospital" shall meet either of the following conditions:

(1) The hospital meets criteria for designation within peer group

six or eight, as defined in the report entitled Hospital Peer Grouping for Efficiency Comparison, dated December 20, 1982.

(2) The hospital meets the criteria for designation within peer group five or seven, as defined in the report entitled Hospital Peer Grouping for Efficiency Comparison, dated December 20, 1982, and has no more than 76 acute care beds and is located in a census dwelling place of 15,000 or less population according to the 1980 federal census.

(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 that 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 that 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 that 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 that 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 that provides inpatient or outpatient care in dentistry or maternity.

(g) "Intermediate care facility/developmentally disabled" means a facility that 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 that 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, that 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, that 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) that 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 that, as determined by the state department, provides 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 law enforcement facility that houses inmates or wards that may be receiving outpatient services and are housed separately for reasons of improved access to health care, 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, 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 general acute care hospitals at the California Medical Facility, the California Men's Colony, and the California Institution for Men. This subdivision shall not be construed to prohibit the California Department of Corrections from obtaining a correctional treatment center license at these sites.

(6) This subdivision shall remain operative only until January 1, 1997.

(k) "Nursing facility" means a facility that is certified to participate as a provider of care in the federal medicaid program under Title XIX of the federal Social Security Act and is licensed as either of the following:

(1) Skilled nursing facility.

(2) Intermediate care facility.

(*l*) Regulations defining a correctional treatment center described in subdivision (j) that is operated by a county, city, or city and county, the Department of Corrections, or the Department of the Youth Authority, shall not become effective prior to, or if

effective, shall be inoperative until January 1, 1996, and until that time these correctional facilities are exempt from any licensing requirements.

SEC. 2. Section 1250.1 of the Health and Safety Code is amended to read:

1250.1. (a) The state department shall adopt regulations that define all of the following bed classifications for health facilities:

(1) General acute care.

(2) Skilled nursing.

(3) Intermediate care-developmental disabilities.

(4) Intermediate care-other.

(5) Acute psychiatric.

(6) Specialized care, with respect to special hospitals only.

(7) Chemical dependency recovery.

(8) Intermediate care facility/developmentally disabled habilitative.

(9) Intermediate care facility/developmentally disabled nursing.

(10) Congregate living health facility.

(11) Pediatric day health and respite care facility, as defined in Section 1760.2.

(12) 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. 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, 1997.

(b) 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 the effective date shall continue to be applicable to the intermediate care-other classification unless and until amended or repealed by the state department.

SEC. 3. Section 1267.10 of the Health and Safety Code is amended to read:

1267.10. (a) The state department, in conjunction with the Office of Statewide Health Planning and Development and in consultation with the Department of Corrections, the Department of the Youth Authority, and the State Department of Mental Health, shall develop and adopt licensure regulations for correctional treatment centers, as defined in subdivision (j) of Section 1250. The regulations shall be submitted for review by the Assembly Health Committee, the Senate Health and Human Services Committee, the Joint Legislative Committee on Prison Construction and Operation

and the Joint Legislative Budget Committee 60 days prior to adoption. These regulations shall prescribe standards, based on the need of the inmate population, of adequacy, safety, and sanitation of the physical plant, staffing with duly licensed personnel, and services. The regulations shall prescribe a standard of care commensurate with community standards of practice applicable to the private sector health care delivery system in California. The department shall include with the regulations submitted for review during the public hearing required before adoption of regulations and for review by the legislative committees a list of differences between the requirements for license of a correctional treatment center and the requirements for license as an acute care general hospital, including, but not limited to, any special services or supplemental services, as appropriate. The list shall also include a rationale for the differences and the effect on services.

Correctional treatment center regulations shall be developed with assistance from the California Conference of Local Health Officers, the California Mental Health Directors Association, the California Conference of Directors of Environmental Health, the Board of Corrections, and the California State Sheriffs' Association. In developing the regulations, the state department and the State Department of Mental Health shall be guided by the need to provide safe and adequate medical care in a prison health facility where there is also a need to maintain integrity of the security of the correctional institution as determined by the Director of Corrections.

(b) The Maternal and Child Health Branch of the state department shall monitor and evaluate the standards and protocols of perinatal care utilized by the state department for the treatment of pregnant prisoners or inmates.

The state department shall report on these standards and protocols of perinatal care to the Legislature including submission of reports to the Chairpersons of the Senate Health and Human Services and Assembly Health Committees, as well as the Chairperson of the Joint Legislative Committee on Prison Construction and Operation, on or before June 1, 1988, and annually thereafter.

(c) During the legislative hearings on the 1994–95 Budget Act, the Department of Corrections shall provide detailed plans and cost estimates and schedules for implementation of correctional treatment center regulations.

(d) This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute that is enacted prior to January 1, 1997, deletes or extends that date.

SEC. 4. 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) that 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 (j) of Section 1250, the construction of which was completed on or after March 7, 1973.

(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 that 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 that is a single-story, wood-frame or light steel frame building.

(6) Any building that has been used as a community care facility licensed pursuant to Chapter 3 (commencing with Section 1500) of Division 2, and 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 that has been used as a community care facility pursuant to paragraph (1) or (2) of subdivision (a) of Section 1502, and 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 subject to licensure as a correctional treatment center, as defined in subdivision (j) of Section 1250, the construction of which was completed prior to March 7, 1973.

(9) (A) Any building that meets the definition of a correctional treatment center, pursuant to subdivision (j) of Section 1250, for which the final design documents were completed or the construction of which was begun prior to January 1, 1994, operated by or to be operated by the Department of Corrections, the Department of the Youth Authority, or by a law enforcement agency of a city, county, or a city and county.

(B) In the case of reconstruction, alteration, or addition to, the facilities identified in this paragraph, and paragraph (8) or any other building subject to licensure as a general acute care hospital, acute psychiatric hospital, correctional treatment center, or nursing facility, as defined in subdivisions (a), (b), (j), and (k) of Section 1250, operated or to be operated by the Department of Corrections, the Department of the Youth Authority, or by a law enforcement agency of a city, county, or city and county, only the reconstruction, alteration, or addition, itself, and not the building as a whole, nor any other aspect thereof, shall be required to comply with this chapter or the regulations adopted pursuant thereto.

SEC. 4.5. Section 15076 of the Health and Safety Code is amended to read:

15076. Subject to the complete exemption contained in paragraphs (8) and (9) of subdivision (b) of Section 15026, and notwithstanding any other provision of law, plans for the construction or alteration of any hospital building, as defined in Section 1250, or any building specified in Section 15071, that are prepared by or under the supervision of the Department of Corrections or on behalf of the Department of the Youth Authority shall not require the review and approval of the statewide office. In

lieu of review and approval by the statewide office, the Department of Corrections and the Department of the Youth Authority shall certify to the statewide office that their plans and construction are in full conformance with all applicable building standards, including, but not limited to, fire and life and safety standards, and the requirements of this chapter for the architectural, structural, mechanical, plumbing, and electrical systems. The Department of Corrections and the Department of the Youth Authority shall use a secondary peer review procedure to review designs to ensure the adherence to all design standards for all new construction projects, and shall ensure that the construction is inspected by a competent, onsite inspector to ensure the construction is in compliance with the design and plan specifications.

Subject to the complete exemption contained in paragraphs (8) and (9) of subdivision (b) of Section 15026, and notwithstanding any other provision of law, plans for the construction or alteration of any correctional treatment center that are prepared by or under the supervision of a law enforcement agency of a city, county, or city and county shall not require the review and approval of the statewide office. In lieu of review and approval by the statewide office, the law enforcement agency of a city, county, or city and county shall certify to the statewide office that the plans and construction are in full conformance with all applicable building standards, including, but not limited to, fire and life and safety standards, and the requirements of this chapter for the architectural, structural, mechanical, plumbing, and electrical systems.

It is the intent of the Legislature that, except as specified in this section, all hospital buildings as defined by this chapter constructed by or under the supervision of the Department of Corrections or local law enforcement agencies, or constructed on behalf of the Department of the Youth Authority shall at a minimum meet all applicable regulations adopted pursuant to this chapter and all other applicable state laws.

SEC. 5. A chapter heading is added immediately preceding Section 6006 of Title 7 of Part 3 of the Penal Code, to read:

CHAPTER 4.5. EXAMINATION OF STAFF FOR TUBERCULOSIS

SEC. 6. Section 6006.5 is added to the Penal Code, to read:

6006.5. For purposes of this chapter, the following definitions shall apply:

(a) "Department" means the Department of Corrections, the Department of the Youth Authority, the Board of Prison Terms, or the Youthful Offender Parole Board.

(b) "Examination or test" means methods, processes, or other means, including a chest X-ray, conducted in accordance with the recommendations of the Centers for Disease Control and Prevention and as specified in the department's guidelines for tuberculosis control, to determine if a person has, has had, or has been exposed

to tuberculosis.

(c) "Medical evaluation" means taking a history or gathering other information and may include, but is not limited to, listening to the chest or other examinations or tests, as specified in the department's guidelines for tuberculosis control, used to diagnose and assess the health conditions of the person.

(d) "Followup care" means the continued medical evaluations, monitoring, or care of a person after his or her initial visit, examination, or test, including, but not limited to, preventive therapy.

(e) "Certificate" means the official document developed and issued by the department that indicates the absence of tuberculosis in an infectious stage and that is signed by a physician and surgeon who is licensed by the Medical Board of California or the Osteopathic Medical Board of California under Division 2 (commencing with Section 500) of the Business and Professions Code or his or her designee. The certificate shall indicate that the examination, test, or evaluation was performed in accordance with the recommendations of the Centers for Disease Control and Prevention and as specified in the department's guidelines for tuberculosis control.

(f) "Negative skin test" shall have the same meaning as it is defined by the Centers for Disease Control and Prevention and the department's guidelines for tuberculosis control as the definition reads at the time of the examination.

(g) "Positive skin test" shall have the same meaning as it is defined by the Centers for Disease Control and Prevention and the department's guidelines for tuberculosis control as the definition reads at the time of the examination.

(h) "Institution" means any state prison, camp, center, office, or other facility under the jurisdiction of the Department of Corrections or the Department of the Youth Authority.

(i) "Infectious or contagious stage" means the period when a disease is capable of being transmitted from one person to another with or without contact.

(j) "Tuberculosis converter" shall have the same meaning as it is defined by the Centers for Disease Control and Prevention.

SEC. 7. Section 6007 of the Penal Code is amended to read:

6007. (a) No person shall be employed initially by the department unless that person, after an offer of employment, completes an examination, a test, or a medical evaluation and is found to be free of tuberculosis in an infectious or contagious stage prior to assuming work duties.

(b) As a condition of continued employment with the department, those employees who are skin-test negative shall receive an examination or test at least once a year, or more often if directed by the department, for as long as the employee remains skin-test negative. If an employee has a documented positive skin test, the employee shall have a medical evaluation to determine the need for followup care. An employee with a positive skin test shall

follow the department's guidelines for tuberculosis control.

(c) The department shall ensure that all examinations or tests and medical evaluations, as defined in subdivisions (b) and (c) of Section 6006.5, to diagnose and assess the health conditions of the person, meet the following conditions:

(1) Are made available to the employee promptly at a reasonable time and place.

(2) Are made available at no cost to the employee.

(3) Are performed by, or under the supervision of, a licensed health care professional.

(d) The examinations or tests or medical evaluations required pursuant to this chapter shall be offered by the department. The department may contract with a medical provider to administer the examinations or tests or medical evaluations. Employees who elect not to accept the department's offer shall obtain the examinations or tests or medical evaluations through their personal health care providers at no cost to the department.

(e) Followup care for tuberculosis infection or treatment for tuberculosis disease shall be pursued through the workers' compensation system as provided in Division 4 (commencing with Section 3200) and Division 5 (commencing with Section 6300) of the Labor Code for job-related incidents or through the employee's health insurance plan for non-job-related incidents. The department shall file a first report of injury for an employee whose examination or test for tuberculosis is positive. In addition, the department shall follow the guidelines, policies, and procedures of the workers' compensation early intervention program pursuant to Section 3214 of the Labor Code.

(f) Each employee, including employees who are employed initially, shall submit a signed certificate to the department annually that may be reviewed by the chief medical officer of the department.

(g) The department shall maintain a file containing an up-to-date certificate for each employee.

(h) Nothing in this section shall prevent the department from requiring and providing more extensive or more frequent examinations or tests.

(i) The department shall not discriminate against any employee because the employee tested positive for tuberculosis.

(j) All volunteers of the department shall be required to furnish the department with a certificate prior to assuming their volunteer duties and annually thereafter, showing that the volunteer has been examined and found to be free of tuberculosis in an infectious or contagious stage.

(k) The department shall maintain a file containing an up-to-date certificate for each volunteer.

(*l*) Employees from other state agencies, including, but not limited to, the State Department of Mental Health and the Department of Forestry and Fire Protection, who are assigned to work in an institution, as defined in subdivision (h) of Section 6006.5,

or who are assigned to work with inmates or wards on a regular basis, as defined in the department's guidelines, shall comply with the following requirements:

(1) Receive an examination or test prior to assuming their duties and at least once a year thereafter, or more often if directed by the department, for as long as the employee remains skin-test negative.

(2) Receive a medical evaluation to determine the need for followup care and follow the department's guidelines for tuberculosis control if an employee has a documented positive skin test.

(3) Submit a signed certificate to the department prior to assuming his or her duties and annually thereafter, showing that the employee has been found to be free of tuberculosis in an infectious or contagious state.

(4) Pursue followup care for tuberculosis infection or treatment for tuberculosis disease through the appropriate programs in their agency or department.

(m) The department shall offer the examinations, tests, or medical evaluations required pursuant to this chapter to employees of other state agencies or departments and may contract with a medical provider to administer the examinations, tests, or medical evaluations. Employees of other state agencies or departments who elect not to accept the department's offer shall obtain the examinations, tests, or medical evaluations from their personal health care provider at no cost to the department.

(n) The department shall maintain a file containing an up-to-date certificate for each employee from other state agencies who works in an institution.

SEC. 8. Section 6009 is added to the Penal Code, to read:

6009. In enacting this chapter, the Legislature hereby finds and declares that tuberculosis is a serious contagious disease. It is vital to the health and safety of inmates, employees, and the public at large, to conduct appropriate examinations and testing and to ensure that staff who test positive for tuberculosis obtain appropriate treatment in order to control the spread of tuberculosis in California's institutions.

SEC. 9. Title 8.7 (commencing with Section 7570) is added to Part 3 of the Penal Code, to read:

TITLE 8.7. EXAMINATION OF INMATES AND WARDS FOR TUBERCULOSIS

7570. In enacting this chapter, the Legislature hereby finds and declares that tuberculosis is a serious contagious disease. It is vital to the health and safety of inmates, employees, and the public at large, to conduct appropriate examinations, testing, and treatment in order to control the spread of tuberculosis in California's institutions.

7571. For purposes of this title, the following definitions shall apply:

(a) "Chief medical officer" means the chief medical officer or acting chief medical officer of a state prison or any facility under the jurisdiction of the Department of Corrections or the Department of the Youth Authority.

(b) "Inmate or ward" means any person incarcerated within the jurisdiction of the Department of Corrections or the Department of the Youth Authority, with the exception of a person on parole.

(c) "Institution" means any state prison, camp, center, office, or other facility under the jurisdiction of the Department of Corrections or the Department of the Youth Authority.

(d) "Examination, test, or treatment" means methods, processes, or other means, including medical evaluations, testing, followup examinations, or treatment, in accordance with the recommendations of the Centers for Disease Control and Prevention and as specified in the guidelines for tuberculosis control of the Department of Corrections and the Department of the Youth Authority.

(e) "Medical evaluation" means taking a history or gathering other information and may include, but is not limited to, listening to the chest or other examinations or tests as specified in the guidelines for tuberculosis control of the Department of Corrections and the Department of the Youth Authority.

(f) "Department" means the Department of Corrections and the Department of the Youth Authority.

(g) "Chief of medical services" means the medical officer, acting medical officer, or designee responsible for all medical services of the Department of Corrections or the Department of the Youth authority.

7572. The chief of medical services, or his or her designee, shall use every available means to ascertain the existence of, and to immediately investigate all reported or suspected cases of, tuberculosis in the infectious stages and to ascertain the source or sources of the infections. In carrying out these investigations, the chief of medical services, or his or her designee, is hereby invested with full powers of inspection, examination, and quarantine or isolation of all inmates or wards known to be, or reasonably suspected to be, infected with tuberculosis in an infectious stage.

7573. (a) The chief medical officer shall order an inmate or ward to receive an examination or test, or may order an inmate or ward to receive treatment if the medical officer has a reasonable suspicion that the inmate or ward has, has had, or has been exposed to tuberculosis in an infectious stage and the chief medical officer has reasonable grounds to believe that it is necessary for the preservation and protection of staff and inmates or wards.

(b) The chief medical officer shall ensure that examinations or tests for tuberculosis on all inmates or wards are conducted upon incarceration and at least annually thereafter.

7574. Notwithstanding Section 2600 or 2601, or any other provision of law, any inmate or ward who refuses to submit to an

examination, test, or treatment for tuberculosis as described in Section 7572 or 7573, or who refuses treatment for tuberculosis, or who, after notice, violates, or refuses or neglects to conform to, any rule, order, guideline, or regulation prescribed by the department with regard to tuberculosis control shall be tested involuntarily and may be treated involuntarily. This inmate or ward shall be subject to disciplinary action as described in Title 15 of the California Code of Regulations.

7575. To provide effective control of the spread of tuberculosis in institutions and to identify those among the inmate and ward populations with tuberculosis, the Department of Corrections shall operate pursuant to guidelines developed in consultation with the State Department of Health Services, which shall be adopted on or before July 1, 1994. The guidelines shall include, but not be limited to, establishing a reporting system which emphasizes standardized, uniform data collection, reporting, and assessment, as specified in Section 7576.

7576. (a) The Department of Corrections, the Department of the Youth Authority, the Board of Prison Terms, and the Youthful Offender Parole Board shall compile information through each department's respective reporting systems for individual institutions and each respective department as a whole and shall provide the results to the State Department of Health Services annually. The information reported shall consist of the following:

(1) Prevalence rates and conversion rates (tuberculin incidence) for tuberculosis infection for inmates or wards and staff in each institution.

(2) Case numbers and case rates for tuberculosis disease for inmates or wards in each institution.

(b) Subject to additional staffing resources provided through the state budget process, the departments described in subdivision (a) shall also compile the following information for individual institutions and each respective department as a whole and shall provide the results to the State Department of Health Services annually:

(1) Percentage of inmates and wards with tuberculosis disease who complete the prescribed course of directly observed curative therapy in accordance with the Centers for Disease Control and Prevention recommendations and as specified in the department's guidelines for tuberculosis control.

(2) Percentage of inmates and wards with culture positive sputum that convert to culture negative in accordance with the Centers for Disease Control and Prevention recommendations and as specified in the department's guidelines for tuberculosis control.

(3) Percentage of inmates and wards with tuberculosis who complete the prescribed INH (isoniazid) or other appropriate directly observed preventive therapy in accordance with the Centers for Disease Control and Prevention recommendations and as specified in the department's guidelines for tuberculosis control.

SEC. 10. Title 8.7 (commencing with Section 7580) of Part 3 of the Penal Code is repealed.

SEC. 11. The full costs of implementing Section 7 of this act regarding tuberculosis testing shall be met by the Department of Corrections.

SEC. 11.5. (a) Section 1.3 of this bill incorporates amendments to Section 1250 of the Health and Safety Code proposed by both this bill and AB 972. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 1250 of the Health and Safety Code, and (3) this bill is enacted after AB 972, in which case Section 1250 of the Health and Safety Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of AB 972, at which time Section 1.3 of this bill shall become operative.

(b) Section 1.5 of this bill incorporates amendments to Section 1250 of the Health and Safety Code proposed by both this bill and SB 560. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 1250 of the Health and Safety Code, and (3) this bill is enacted after SB 560, in which case Section 1250 of the Health and Safety Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of SB 560, at which time Section 1.5 of this bill shall become operative.

(c) Section 1.7 of this bill incorporates amendments to Section 1250 of the Health and Safety Code proposed by both this bill AB 972 and SB 560. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 1250 of the Health and Safety Code, and (3) this bill is enacted after AB 972 and SB 560, in which case Section 1250 of the Health and Safety Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of AB 972 and SB 560, at which time Section 1.7 of this bill shall become operative.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because 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.

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

It is vital to the health and safety of inmates, wards, employees, and the public at large to conduct appropriate examination, testing, and treatment to control the spread of tuberculosis in California's correctional system. In order to provide the public, employees, inmates, and wards within the state correctional system with immediate increased protection against the threat of tuberculosis, it is necessary that this act take effect immediately.

CHAPTER 933

An act relating to Medi-Cal, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 8, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. (a) For purposes of this section, the following definitions shall apply:

(1) "Capital outlay" means revenues received pursuant to Section 1905(a)(2)(C) of the federal Social Security Act (Title 42 U.S.C. 1396d(a)(2)(C)) used for projects that involve the acquisition, construction, renovation, improvement, modernization, expansion, or replacement of a plant, buildings, or fixed or movable equipment, including debt service, for facilities used in the provision of county health care services.

(2) "County health care services" means those services described in subdivision (a) of section 16801 of the Welfare and Institutions Code.

(3) "County financial maintenance of effort" means the level of financial support required of a county pursuant to Section 16990 of the Welfare and Institutions Code.

(4) "County" means a county of the sixteenth class as determined by Section 28037 of the Government Code.

(b) (1) The county shall deposit all revenues received pursuant to Section 1905(a)(2)(C) of the federal Social Security Act (42 U.S.C. 1396d(a)(2)(C)) into a fund or funds other than the county general fund, and shall retain these revenues until utilized for the purpose described in this section.

(2) All revenues received pursuant to Section 1905(a)(2)(C) of

the federal Social Security Act (42 U.S.C. 1396d(a)(2)(C)) are intended to support health care services rendered by a Federally Qualified Health Center (FQHC), including, but not limited to, health services and capital outlay. Revenues received pursuant to Section 1905(a)(2)(C) of the federal Social Security Act (42 U.S.C. 1396d(a)(2)(C)) shall not be used to supplant or offset county general funds or other funds that were expended or encumbered for those purposes prior to July 1, 1991.

(3) Revenues received pursuant to Section 1905(a)(2)(C) of the federal Social Security Act (42 U.S.C. 1396d(a)(2)(C)) shall be included in computing county financial maintenance of effort only as set forth in subdivision (c).

(c) For the 1991–92 fiscal year, and for each fiscal year thereafter, for purposes of computing county financial maintenance of effort, revenues received pursuant to Section 1905(a)(2)(C) of the federal Social Security Act (42 U.S.C. 1396d(a)(2)(C)) deposited in accordance with subdivision (b) shall be treated as follows to the extent permitted by federal law:

(1) Revenues utilized by a county for capital outlay, shall not be counted as revenue in the computation of county financial maintenance of effort.

(2) Revenues received pursuant to Section 1905(a)(2)(C) of the federal Social Security Act (42 U.S.C. 1396d(a)(2)(C)) not utilized as described in paragraph (1) shall be counted as revenue in the computation of county financial maintenance of effort only to the extent that by not counting these revenues for a particular fiscal year, a county's net county costs for county health services exceeds the amount of county funds required to satisfy the requirements of Section 16990 of the Welfare and Institutions Code for that fiscal year.

(3) Revenues received pursuant to Section 1905(a)(2)(C) of the federal Social Security Act (42 U.S.C. 1396d(a)(2)(C)) counted as revenue in the calculation of county financial maintenance of effort for a particular fiscal year pursuant to paragraph (2), shall not be counted as revenue in the calculation of county financial maintenance of effort relating to any subsequent fiscal year.

(d) As a condition of receiving the benefits of this section, the county shall make no health care curtailments and take no action to reduce health care services within the county's department of health services below the level that existed in the 1992–93 fiscal year in any fiscal year in which the county excludes from computation of its county financial maintenance of effort revenues received pursuant to Section 1905(a)(2)(C) of the federal Social Security Act (42 U.S.C. 1396d(a)(2)(C)). Except as provided in subdivision (e), these curtailments and reductions shall include all of the following:

(1) A reduction in the number or capacity of county clinics, hospitals, or other health care facilities maintained by the county's department of health services.

(2) A significant reduction in total staffing of all county health facilities within the county's department of health services.

(3) A change in the eligibility standards for health care services that results in a reduction in the number of eligible beneficiaries. This paragraph shall not prevent changes in verification methods otherwise permitted by law.

(4) A reduction in the level or scope of benefits provided.

(e) Subdivision (d) shall not apply to curtailments or reductions brought about by strike, natural disaster, a reduction in patient demand, or other factors beyond the control of the county, provided that staffing and service levels are restored to their levels as soon as practical.

(f) The county shall provide to the State Department of Health Services comparable baseline data and such other information as the department may require to verify compliance with this section. The data submitted pursuant to this subdivision shall be used only for the purposes of this act, and shall not affect any current or future reporting requirements pertaining to the distribution of funds from the Cigarette and Tobacco Tax Products Surtax Fund, revenues distributed to counties under the realignment of state and local programs under Chapters 89 and 97 of the Statutes of 1991, or any other revenue distributed to counties for county health services.

(g) If the county fails to comply with subdivisions (b), (c), or (d), the State Department of Health Services shall include the revenues in the computation of net county cost in determining financial maintenance of effort that would otherwise have been excluded pursuant to this section, and shall recover funds pursuant to subdivision (d) of Section 16990 of the Welfare and Institutions Code.

(h) Revenues received pursuant to section 1905(a)(2)(C) of the federal Social Security Act (42 U.S.C. 1396d(a)(2)(C)) shall not be used for deposits required by Sections 17608.05 and 17608.10 of the Welfare and Institutions Code, or as county funds required by Section 16990 of the Welfare and Institutions Code.

(i) This section shall become inoperative on July 1, 1994, and 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 the dates on which it becomes inoperative and is repealed.

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 permit the allocation of, and avoid the recoupment of, Cigarette and Tobacco Products Surtax revenues intended for the provision of needed health and mental health services by local agencies in the 1993–94 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 934

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

[Approved by Governor October 8, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. (a) Notwithstanding Section 16990 of the Welfare and Institutions Code, and paragraph (2) of subdivision (b) of Section 16990.5 of the Welfare and Institutions Code, as added by Assembly Bill 1433 of the 1993 portion of the 1993–94 Regular Session, for the 1993–94 fiscal year, the State Department of Health Services and a county with a population over seven million in computing the level of net county costs for the 1993–94 fiscal year to determine compliance with the financial maintenance of effort provisions of Section 16990 of the Welfare and Institutions Code shall exclude from allowable revenues an amount to be determined by the county, but no more than one hundred ten million dollars ($110,000,000) in allowable revenues the county actually receives through disproportionate share hospital payment adjustments for the 1993–94 fiscal year made pursuant to Section 14105.98 of the Welfare and Institutions Code and to the extent permitted by federal law provided the county complies with the following provisions:

(1) The county complies with the provisions of Sections 17608.10 and 17608.15 of the Welfare and Institutions Code pertaining to deposits of funds in the health account of its local health and welfare trust fund.

(2) The county make no health and mental health care curtailments within the county's department of health services and takes no action to reduce health and mental health care services within the county's department of health services in the 1993–94 fiscal year below the levels that existed in the 1992–93 fiscal year.

(b) (1) For purposes of paragraph (2) of subdivision (a), curtailments and reductions shall include the following:

(A) A reduction in the numbers or capacity of county clinics, hospitals, or other health care facilities or mental health facilities maintained by the county's department of health services.

(B) A significant reduction in the total staffing of all county health and mental health facilities within the county's department of health services.

(C) A change in the eligibility standards for health care services that results in a reduction in the number of eligible beneficiaries. A reduction described in this subparagraph shall not prevent changes in verification methods otherwise permitted by law.

(D) A reduction in the level or scope of benefits provided.

(2) Curtailments and reductions specified in paragraph (1) shall

not include reductions brought about by strike, natural disaster, a reduction in patient demand, or any other factor beyond the control of the county, so long as staffing and service levels are restored to the 1992–93 levels as soon as possible.

(c) (1) The county shall provide on a monthly basis, during the 1993–94 fiscal year, to the State Department of Health Services all of the following data relating to each facility operated by the county department of health services:

(A) The total number of employees, to the extent available.

(B) The number of full-time equivalent employees, to the extent available.

(C) The number of inpatient days.

(D) The number of outpatient visits.

(E) The number of budgeted beds.

(2) Data required pursuant to paragraph (1) shall be provided to the State Department of Health Services as soon as it becomes available. The county shall also provide to the State Department of Health Services comparable baseline data and such other information as the department may require to verify compliance with this section.

(3) The data submitted pursuant to this subdivision shall be used only for the purposes of this section, and shall not affect any current or future reporting requirements pertaining to the distribution of funds from the Cigarette and Tobacco Tax Products Surtax Fund, revenues distributed to counties under the realignment of state and local programs pursuant to Chapters 89 and 97 of the Statutes of 1991, or any other revenue distributed to counties for county health services.

(d) (1) The State Department of Health Services shall, in the course of its routine monitoring activities, review the county's compliance with this section, on a quarterly basis, as soon as the data is provided for each quarter of the 1993–94 fiscal year.

(2) (A) If the State Department of Health Services determines that there has been a reduction in overall services levels in violation of this section, the county shall, within 15 days of receipt of the department's determination, submit a plan of correction to the department. The department shall immediately review the county's plan of correction and approve or disapprove the plan within 15 days of receipt.

(B) If the State Department of Health Services is unable to negotiate an acceptable plan of correction with the county, or the county does not immediately and fully implement the plan, the State Department of Health Services may withhold further payment of funds to the county under Chapter 5 (commencing with Section 16940) of Part 4.7 of Division 9 of the Welfare and Institutions Code, until such time as the county complies with paragraph (2) of subdivision (a).

(e) This section shall not limit the right of the county to forego funding from the Cigarette and Tobacco Products Surtax Fund for

the California Health Care for the Indigent Program, provided for pursuant to Chapter 5 (commencing with Section 16940) of Part 4.7 of Division 9 of the Welfare and Institutions Code, to withdraw from the California Health Care for the Indigent Program pursuant to the provisions of its program contract with the State Department of Health Services, and to be relieved of any further responsibilities under this section.

(f) This section is not intended to alter the requirements of Sections 10000, 17000, and 17001 of the Welfare and Institutions Code.

(g) If the county fails to comply with the provisions of paragraphs (1) and (2) of subdivision (a), the department shall include the revenues in the computation of net county costs in determining financial maintenance of effort that would otherwise have been excluded pursuant to subdivision (a) and shall recover funds pursuant to subdivision (d) of Section 16990 of the Welfare and Institutions Code.

(h) This act shall be operative for the 1993–94 fiscal year and is repealed on July 1, 1995.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the provisions are voluntary on the part of the county.

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 permit the allocation of, and avoid the recoupment of, Cigarette and Tobacco Products Surtax revenues intended for the provision of needed health and mental health services by local agencies in the 1993–94 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 935

An act to amend Sections 4057 and 4323 of, and to add Section 4057.5 to, the Family Code, relating to family law.

[Approved by Governor October 8, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 4057 of the Family Code, as added by Section 138 of Chapter 219 of the Statutes of 1993, is amended to read:

4057. (a) The amount of child support established by the formula provided in subdivision (a) of Section 4055 is presumed to be the correct amount of child support to be ordered.

(b) The presumption of subdivision (a) is a rebuttable presumption affecting the burden of proof and may be rebutted by

admissible evidence showing that application of the formula would be unjust or inappropriate in the particular case, consistent with the principles set forth in Section 4053, because one or more of the following factors is found to be applicable by a preponderance of the evidence, and the court finds, in writing or on the record, that application of the formula would be unjust or inappropriate in the particular case and that the revised amount is in the best interests of the children:

(1) The parties have stipulated to a different amount of child support under subdivision (a) of Section 4065.

(2) The sale of the family residence is deferred pursuant to Chapter 8 (commencing with Section 3800) of Part 1 and the rental value of the family residence in which the children reside exceeds the mortgage payments, homeowner's insurance, and property taxes. The amount of any adjustment pursuant to this paragraph shall not be greater than the excess amount.

(3) The parent being ordered to pay child support has an extraordinarily high income and the amount determined under the formula would exceed the needs of the children.

(4) A party is not contributing to the needs of the children at a level commensurate with that party's custodial time.

(5) Application of the formula would be unjust or inappropriate due to special circumstances in the particular case. These special circumstances include, but are not limited to, the following:

(A) Cases in which the parents have different time-sharing arrangements for different children.

(B) Cases in which both parents have substantially equal time-sharing of the children and one parent has a much lower or higher percentage of income used for housing than the other parent.

(C) Cases in which the children have special medical or other needs that could require child support that would be greater than the formula amount.

SEC. 1.5. Section 4057 of the Family Code, as added by Section 138 of Chapter 219 of the Statutes of 1993, is amended to read:

4057. (a) The amount of child support established by the formula provided in subdivision (a) of Section 4055 is presumed to be the correct amount of child support to be ordered.

(b) The presumption of subdivision (a) is a rebuttable presumption affecting the burden of proof and may be rebutted by admissible evidence showing that application of the formula would be unjust or inappropriate in the particular case, consistent with the principles set forth in Section 4053, because one or more of the following factors is found to be applicable by a preponderance of the evidence, and the court states in writing or on the record the information required in subdivision (a) of Section 4056:

(1) The parties have stipulated to a different amount of child support under subdivision (a) of Section 4065.

(2) The sale of the family residence is deferred pursuant to Chapter 8 (commencing with Section 3800) of Part 1 and the rental

value of the family residence in which the children reside exceeds the mortgage payments, homeowner's insurance, and property taxes. The amount of any adjustment pursuant to this paragraph shall not be greater than the excess amount.

(3) The parent being ordered to pay child support has an extraordinarily high income and the amount determined under the formula would exceed the needs of the children.

(4) A party is not contributing to the needs of the children at a level commensurate with that party's custodial time.

(5) Application of the formula would be unjust or inappropriate due to special circumstances in the particular case. These special circumstances include, but are not limited to, the following:

(A) Cases in which the parents have different time-sharing arrangements for different children.

(B) Cases in which both parents have substantially equal time-sharing of the children and one parent has a much lower or higher percentage of income used for housing than the other parent.

(C) Cases in which the children have special medical or other needs that could require child support that would be greater than the formula amount.

SEC. 2. Section 4057.5 is added to the Family Code, to read:

4057.5. (a) (1) The income of the obligor parent's subsequent spouse or nonmarital partner shall not be considered when determining or modifying child support, except in an extraordinary case where excluding that income would lead to extreme and severe hardship to any child subject to the child support award, in which case the court shall also consider whether including that income would lead to extreme and severe hardship to any child supported by the obligor or by the obligor's subsequent spouse or nonmarital partner.

(2) The income of the obligee parent's subsequent spouse or nonmarital partner shall not be considered when determining or modifying child support, except in an extraordinary case where excluding that income would lead to extreme and severe hardship to any child subject to the child support award, in which case the court shall also consider whether including that income would lead to extreme and severe hardship to any child supported by the obligee or by the obligee's subsequent spouse or nonmarital partner.

(b) For purposes of this section, an extraordinary case may include a parent voluntarily or intentionally quitting work or reducing income.

(c) If any portion of the income of either parent's subsequent spouse or nonmarital partner is allowed to be considered pursuant to this section, discovery for the purposes of determining income shall be based on W2 and 1099 income tax forms, except where the court determines that application would be unjust or inappropriate.

(d) If any portion of the income of either parent's subsequent spouse or nonmarital partner is allowed to be considered pursuant to this section, the court shall allow a hardship deduction based on the

minimum living expenses for one or more stepchildren of the party subject to the order.

(e) The enactment of this section constitutes cause to bring an action for modification of a child support order entered prior to the operative date of this section.

SEC. 3. Section 4323 of the Family Code is amended to read:

4323. (a) (1) Except as otherwise agreed to by the parties in writing, there is a rebuttable presumption, affecting the burden of proof, of decreased need for spousal support if the supported party is cohabiting with a person of the opposite sex. Upon a determination that circumstances have changed, the court may modify or terminate the spousal support as provided for in Chapter 6 (commencing with Section 3650) of Part 1.

(2) Holding oneself out to be the husband or wife of the person with whom one is cohabiting is not necessary to constitute cohabitation as the term is used in this subdivision.

(b) The income of a supporting spouse's subsequent spouse or nonmarital partner shall not be considered when determining or modifying spousal support.

(c) Nothing in this section precludes later modification or termination of spousal support on proof of change of circumstances.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 4057 of the Family Code proposed by both this bill and SB 541. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 4057 of the Family Code, and (3) this bill is enacted after SB 541, in which case Section 1 of this bill shall not become operative.

CHAPTER 936

An act to add Sections 1257.7 and 1257.8 to the Health and Safety Code, and to amend Section 14083 of the Welfare and Institutions Code, relating to health facilities.

[Approved by Governor October 8, 1993. Filed with Secretary of State October 8, 1993.]

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

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

(a) Violence is an escalating problem in hospital emergency departments throughout California and the nation.

(b) The emergency department is particularly vulnerable to violence because of its accessibility to all members of the public. The emergency department is open 24 hours a day, seven days a week, to anyone desiring care.

(c) During the past few years in California, deaths to nurses and

other health care workers occurred in emergency rooms, psychiatric hospitals, and community mental health clinics.

(d) Actual incidence of the problem in all types of health care facilities is greater than documented because of failure to report or failure to maintain records of incidents that are reported.

(e) A 1991 national survey of emergency room nurses found that two-thirds reported at least one assault during their careers, and over a third had been assaulted at least once during the previous year.

(f) A 1992 survey of California hospitals reported that nearly 60 percent of hospitals in Fresno, Los Angeles, Sacramento, San Diego, and San Francisco reported injuries to staff, visitors, or patients. Over 40 percent of the incidents involved the use of a gun.

(g) Patients and emergency personnel should be assured of access to health care in a safe environment. Personnel training and appropriate safety controls should be implemented to minimize the risks and dangers affecting all people in emergency room settings.

(h) Many hospitals have undertaken numerous efforts to assure that patients and workers are safe from violence. These efforts will be enhanced by the enactment of this act.

SEC. 2. Section 1257.7 is added to the Health and Safety Code, to read:

1257.7. (a) By July 1, 1995, all hospitals licensed pursuant to subdivisions (a), (b), and (f) of Section 1250 shall conduct a security and safety assessment and, using the assessment, develop a security plan with measures to protect personnel, patients, and visitors from aggressive or violent behavior. The security and safety assessment shall examine trends of aggressive or violent behavior at the facility. These hospitals shall track incidents of aggressive or violent behavior as part of the quality assessment and improvement program and for the purposes of developing a security plan to deter and manage further aggressive or violent acts of a similar nature. The plan may include, but shall not be limited to, security considerations relating to all of the following:

(1) Physical layout.

(2) Staffing.

(3) Security personnel availability.

(4) Policy and training related to appropriate responses to violent acts.

In developing this plan, the hospital shall consider any guidelines or standards on violence in health care facilities issued by the state department, the Division of Occupational Safety and Health, and the federal Occupational Safety and Health Administration. As part of the security plan, a hospital shall adopt security policies including, but not limited to, personnel training policies designed to protect personnel, patients, and visitors from aggressive or violent behavior.

(b) The individual or members of a hospital committee responsible for developing the security plan shall be familiar with all of the following:

(1) The role of security in hospital operations.

(2) Hospital organization.
(3) Protective measures, including alarms and access control.
(4) The handling of disturbed patients, visitors, and employees.
(5) Identification of aggressive and violent predicting factors.
(6) Hospital safety and emergency preparedness.
(7) The rudiments of documenting and reporting crimes, including, by way of example, not disturbing a crime scene.

(c) The hospital shall have sufficient personnel to provide security pursuant to the security plan developed pursuant to subdivision (a). Persons regularly assigned to provide security in a hospital setting shall be trained regarding the role of security in hospital operations, including the identification of aggressive and violent predicting factors, and management of violent disturbances.

(d) Any act of assault, as defined in Section 240 of the Penal Code, or battery, as defined in Section 242 of the Penal Code, against any on-duty hospital personnel shall be reported to the local law enforcement agency within 72 hours of the incident. Any individual knowingly interfering with or obstructing the reporting process shall be guilty of a misdemeanor.

SEC. 3. Section 1257.8 is added to the Health and Safety Code, to read:

1257.8. (a) All hospital employees regularly assigned to the emergency department shall receive, by July 1, 1995, and thereafter, on a continuing basis as provided for in the security plan developed pursuant to Section 1257.7, security education and training relating to the following topics:
(1) General safety measures.
(2) Personal safety measures.
(3) The assault cycle.
(4) Aggression and violence predicting factors.
(5) Obtaining patient history from a patient with violent behavior.
(6) Characteristics of aggressive and violent patients and victims.
(7) Verbal and physical maneuvers to diffuse and avoid violent behavior.
(8) Strategies to avoid physical harm.
(9) Restraining techniques.
(10) Appropriate use of medications as chemical restraints.
(11) Any resources available to employees for coping with incidents of violence, including, by way of example, critical incident stress debriefing or employee assistance programs.

(b) As provided in the security plan developed pursuant to Section 1257.7, members of the medical staff of each hospital and all other practitioners, including, but not limited to, nurse practitioners, physician assistants, and other personnel, who are regularly assigned to the emergency department or other departments identified in the security plan shall receive the same training as that provided to hospital employees or, at a minimum, training determined to be sufficient pursuant to the security plan.

(c) Temporary personnel shall be oriented as required pursuant to the security plan. This section shall not be construed to preempt state law or regulations generally affecting temporary personnel in hospitals.

SEC. 4. Section 14083 of the Welfare and Institutions Code is amended to read:

14083. The factors to be considered by the negotiator in negotiating contracts under this article, or in drawing specifications for competitive bidding, include, but are not limited to, all of the following:

(a) Beneficiary access.

(b) Utilization controls.

(c) Ability to render quality services efficiently and economically.

(d) Demonstrated ability to provide or arrange needed specialized services.

(e) Protection against fraud and abuse.

(f) Any other factor which would reduce costs, promote access, or enhance the quality of care.

(g) The capacity to provide a given tertiary service, such as specialized children's services, on a regional basis.

(h) Recognition of the variations in severity of illness and complexity of care.

(i) Existing labor-management collective bargaining agreements.

(j) The situation of county hospitals and university medical centers contracting with counties for provision of health care to indigent persons entitled to care under Section 17000, which are burdened to a greater extent than private hospitals with bad debts, indirect costs, medical education programs, and capital needs.

(k) The special circumstances of hospitals serving a disproportionate number of Medi-Cal beneficiaries and patients who are not covered by other third-party payers, including the costs associated with assuring an adequate supply of registered nurses.

(*l*) The costs of providing complex emergency services, including the costs of meeting and maintaining state and local requirements for trauma center designation.

(m) The hospital does any of the following:

(1) Provides additional obstetrical beds.

(2) Contracts with one or more comprehensive perinatal providers.

(3) Permits certified nurse midwives, subject to hospital rules, and consistent with existing laws and regulations, to admit patients to the health facility.

(4) Expands overall obstetrical services in the hospital.

(n) The special circumstances of hospitals whose Medi-Cal inpatient utilization rate exceeds the mean Medicaid inpatient utilization rate by at least one-half of one standard deviation.

(o) The ability and capacity of the contracting hospital in a closed health facility planning area to provide health care services to beneficiaries who are in life threatening or emergency situations, but

have been sufficiently stabilized at another noncontracting facility in order to facilitate transportation to the contracting hospital.

(p) The ability of the contracting hospital to provide a secure environment for the provision of health care services. In this regard, the negotiator shall consider additional security measures that the contracting hospital may have taken to provide a secure environment, including, but not limited to, the use of detection equipment or procedures to detect lethal weapons, the appropriate use of surveillance cameras, limiting access of unauthorized personnel to the emergency department, installation of bullet proof glass as appropriate in designated areas, the use of emergency "panic" buttons to alert local law enforcement agencies, and assigning full-time security personnel to the emergency department.

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 937

An act to amend Sections 19005, 19008, 19010, 19011, 19013, 19013.5, 19017, 19018, 19100, 19150, 19151, 19152, 19154, 19400, 19401, 19402, 19403, 19404, 19700.1, 19702, 19703, 19706, 19709, 19750, 19751, 19752, 19753, and 19801 of, to add Sections 19090, 19091, 19092, 19101, 19102, 19103, 19104, and 19104.5 to, to repeal and add Section 19000 of, to repeal Sections 19105 and 19707 of, to repeal Article 1.5 (commencing with Section 19450) of Chapter 5 of, and to repeal Chapter 4 (commencing with Section 19300) of, Division 10 of, the Welfare and Institutions Code, relating to disabled persons, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 8, 1993. Filed with Secretary of State October 8, 1993.]

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 bring California statutes into compliance with the federal Rehabilitation Act Amendments of 1992.

SEC. 2. Section 19000 of the Welfare and Institutions Code is repealed.

SEC. 2.5. Section 19000 is added to the Welfare and Institutions

Code, to read:

19000. (a) The Legislature finds and declares as follows:

(1) Work is a valuable and important activity, both for individuals and society, and fulfills the need of an individual to be productive, promotes independence, enhances self-esteem, and allows for participation in the mainstream of life.

(2) Disability is a natural part of human experience and in no way diminishes the capacity of individuals to live independently, enjoy self-determination, make choices, contribute to society, pursue meaningful careers, and enjoy inclusion and integration in the economic, political, social, cultural, and educational mainstream of society.

(3) As a group, individuals with disabilities experience staggering levels of unemployment and poverty.

(4) Increased employment of, and independent living for, individuals with disabilities can be achieved by providing individualized training, independent living services, educational and support services, and meaningful opportunities for employment in integrated work settings with reasonable accommodations.

(5) Individuals with disabilities, including individuals with the most severe disabilities, have demonstrated their ability to achieve gainful employment in integrated settings if appropriate services and supports are provided.

(6) The provision of vocational rehabilitation services can enable individuals with disabilities, including individuals with the most severe disabilities, to pursue meaningful careers by securing gainful employment commensurate with their abilities and capabilities.

(b) The purpose of this division is to assist the Department of Rehabilitation in operating comprehensive, coordinated, effective, efficient, and accountable programs of vocational rehabilitation and independent living that are designed to assess, plan, develop, and provide services for individuals with disabilities, particularly individuals with the most severe disabilities, consistent with their strengths, resources, priorities, concerns, abilities, and capabilities, so that these individuals may prepare for and engage in gainful employment and live more independently.

(c) The Department of Rehabilitation's vocational rehabilitation and independent living programs shall be consistent with the national policy toward people with disabilities articulated in the Americans with Disabilities Act of 1990 (Public Law 101-336) and the 1992 Amendments to the Rehabilitation Act of 1973 (Public Law 102-569).

(d) It shall be the goal of the Department of Rehabilitation to provide individuals with disabilities with the tools necessary do all of the following:

(1) Make informed choices and decisions.

(2) Maximize employment, independence, and economic and social self-sufficiency in the mainstream of society.

(3) Achieve equality of opportunity and inclusion and integration

into all aspects of society.

(e) The Department of Rehabilitation's vocational rehabilitation and independent living programs, projects, and activities shall be carried out in a manner consistent with the following principles:

(1) Respect for individual dignity, personal responsibility, self-determination, and pursuit of independent living and meaningful careers, based on informed choice of individuals with disabilities.

(2) Respect for the privacy, rights, and equal access of individuals with disabilities, including, but not limited to, the use of accessible formats.

(3) Individuals with disabilities, including individuals with the most severe disabilities, shall be generally presumed to be capable of engaging in gainful employment, and the provision of individualized vocational rehabilitation services can improve their ability to become gainfully employed.

(4) Promotion of independence, inclusion, integration, and full participation of individuals with disabilities.

(5) Individuals with disabilities shall be provided the opportunities to obtain competitive employment in integrated settings.

(6) Individuals with disabilities shall be active participants in their own rehabilitation programs, including, but not limited to, making meaningful and informed choices about the selection of their vocational goals and objectives and the vocational rehabilitation services they receive.

(7) Support for the involvement of a parent, a family member, a guardian, an advocate, or an authorized representative, if an individual with a disability requests, desires, or needs that support.

(8) Individuals with disabilities and their advocates are full partners in the vocational rehabilitation and independent living programs and shall be involved on a regular basis and in a meaningful manner with respect to policy development and implementation.

(9) Qualified vocational rehabilitation counselors, and other qualified personnel facilitate the accomplishment of the employment and independent living goals and objectives of an individual.

(10) Accountability measures must facilitate and not impede the accomplishment of the goals and objectives of the department's programs, including providing vocational rehabilitation and independent living services to, among others, individuals with the most severe disabilities.

SEC. 3. Section 19005 of the Welfare and Institutions Code is amended to read:

19005. The department is vested with all necessary powers and authority to cooperate with the government of the United States or any agency or agencies thereof in the administration of any act of Congress and rules and regulations lawfully adopted thereunder relating to individuals with disabilities or their vocational

rehabilitation and independent living.

SEC. 4. Section 19008 of the Welfare and Institutions Code is amended to read:

19008. To the extent resources are available, the department may utilize funds from appropriations by Congress, by gifts, grants, or reimbursements from private or public sources or by state appropriations, or both, or by transfer of funds from other state departments subject to usual budgetary controls for the purpose of establishing and operating rehabilitation programs, including an orientation center for the blind, or of providing vocational rehabilitation or independent living services including related administrative costs, or of cooperating with other public or private agencies for these purposes.

SEC. 5. Section 19010 of the Welfare and Institutions Code is amended to read:

19010. Pursuant to agreements the department shall cooperate with the federal government in carrying out the purposes of any federal statutes pertaining to the purposes of this division and may adopt the methods of administration found necessary by the federal government for the proper and efficient operation of the agreements or plans for vocational rehabilitation and independent living services and may comply with the conditions as may be necessary to secure the full benefits of such federal statutes.

SEC. 6. Section 19011 of the Welfare and Institutions Code is amended to read:

19011. The people of the state accept the provisions and benefits of the act of Congress entitled "The Rehabilitation Act Amendments of 1992," (29 U.S.C. 701, et seq.) and any subsequent amendments thereto.

SEC. 7. Section 19013 of the Welfare and Institutions Code is amended to read:

19013. (a) (1) The department may cooperate with other departments, agencies, and institutions, both public and private, in providing the services authorized by this division to individuals with disabilities, in studying the problems involved therein, and in establishing, developing, and providing, in conformity with the purposes of this division, such programs, facilities, and services as may be necessary or desirable.

(2) Cooperation may include contracts and cost-sharing agreements, to the extent permitted by the Rehabilitation Act of 1973 (P.L. 93-112), as amended, and the implementing federal regulations.

(3) Within the scope of the federal Rehabilitation Act, through cooperative agreements with other public agencies, the department shall maximize the resources of each agency to better mutually serve individuals with disabilities through enhanced services. To provide these services, within the provisions of federal law, the department and other agencies shall share facilities, utilize existing eligibility and assessment information, participate in cross-training for agencies

participating in cooperative programs, and engage in other cooperative activities to reduce duplication of services and to provide a new enhanced pattern of services for individuals with disabilities.

(b) The department may cooperate with the State Department of Education and with the state public postsecondary education system to provide instruction, individual counseling and guidance, and related rehabilitation services for eligible students with disabilities.

(c) The department may cooperate with school districts, with public secondary schools, and with the state public postsecondary education system to employ personnel to assist in the vocational orientation of students with disabilities.

SEC. 8. Section 19013.5 of the Welfare and Institutions Code is amended to read:

19013.5. (a) In performing any rehabilitative services or in contracting with other public or private agencies for rehabilitative services, the department shall take into consideration the needs of non-English-speaking individuals with disabilities and shall provide language assistance to those individuals participating in the department's public or private rehabilitation programs.

(b) To the extent funds are available, the department also shall take into consideration the needs of individuals with disabilities who rely on alternate modes of communication, such as manual communication, tactile, oral, and nonverbal communication devices, and shall provide communication assistance to those individuals participating in the department's programs.

SEC. 9. Section 19017 of the Welfare and Institutions Code is amended to read:

19017. The department may conduct research and compile statistics relating to the provision of services or the need of services by individuals with disabilities.

SEC. 10. Section 19018 of the Welfare and Institutions Code is amended to read:

19018. Financial need shall be considered in the furnishing or denial of services in accordance with the Federal Vocational Rehabilitation Act and regulations adopted thereunder.

SEC. 11. Section 19090 is added to the Welfare and Institutions Code, to read:

19090. (a) Pursuant to federal law, there is a State Rehabilitation Advisory Council, that shall advise and assist the director in carrying out the vocational rehabilitation provisions of this division.

(b) The membership of the council shall be appointed by the Governor and shall be composed of the representatives specified in Section 725 of Title 29 of the United States Code.

SEC. 12. Section 19091 is added to the Welfare and Institutions Code, to read:

19091. (a) Pursuant to federal law, there is a State Independent Living Advisory Council, that shall advise and assist the director in carrying out the independent living provisions of this division and

federal law.

(b) The membership of the council shall be appointed by the Governor and shall be composed of the representatives specified in Section 726d of Title 29 of the United States Code.

SEC. 13. Section 19092 is added to the Welfare and Institutions Code, to read:

19092. (a) The functions of the State Rehabilitation Advisory Council and the State Independent Living Advisory Council and terms of appointment of the members thereof shall be governed by Chapter 16 (commencing with Section 701) of Title 29 of the United States Code.

(b) Members of the councils described in subdivision (a) shall be reimbursed for the actual costs of reasonable and necessary expenses, including child care and personal assistance services, incurred when attending council meetings and or performing council duties. In addition, any member who is unemployed or who is required to forfeit wages from other employment shall be compensated one hundred dollars ($100) per day for each day the member is engaged in attending council meetings and or performing duties of the council.

(c) The director, in consultation with the councils, shall provide necessary staff support and assistance for the respective councils to carry out their functions.

SEC. 14. Section 19100 of the Welfare and Institutions Code is amended to read:

19100. (a) The department shall provide the services defined and authorized by this part to individuals with physical or mental disabilities who are found to be eligible therefor.

(b) To the maximum extent appropriate, and consistent with federal law, existing information available from other programs and providers, particularly information used by education officials and the United States Social Security Administration, and information that can be provided by the individual with a disability or the family of the individual, may be used for purposes of determining eligibility for vocational rehabilitation services and for choosing rehabilitation goals, objectives, and services.

SEC. 14.5. Section 19101 is added to the Welfare and Institutions Code, to read:

19101. Pursuant to federal law, the department may conduct an evaluation, when necessary, including, but not limited to, diagnostic and related services, necessary to determine eligibility for vocational rehabilitation services and for choosing rehabilitation goals, objectives, and services.

SEC. 15. Section 19102 is added to the Welfare and Institutions Code, to read:

19102. Pursuant to federal law, the department shall establish a priority order to be followed in selecting individuals to whom vocational rehabilitation services will be provided.

SEC. 16. Section 19103 is added to the Welfare and Institutions

Code, to read:

19103. (a) Any individual with a disability, as defined in Section 19151, who requires vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment, is eligible for services under this chapter.

(b) For the purposes of Section 19151, it shall be presumed that an individual can benefit in terms of an employment outcome from vocational rehabilitation services unless it can be demonstrated by clear and convincing evidence that the individual is incapable of doing so.

(c) Eligibility determinations for vocational rehabilitation services shall be completed within the timeframes specified in federal law and, to the extent possible, shall rely upon the information specified in Section 19100.

SEC. 17. Section 19104 is added to the Welfare and Institutions Code, to read:

19104. (a) Subject to the limitation of Section 19102 and to the extent federal funds are available, an individualized written rehabilitation program shall be developed for each individual determined to be eligible under this chapter.

(b) The individualized written rehabilitation program shall do all of the following:

(1) Be designed to achieve the employment objective of the individual, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individual, and, to the maximum extent appropriate, to include placement in integrated settings.

(2) Be jointly developed and agreed upon by the eligible individual, or when appropriate the individual's parent, family member, guardian, advocate, or authorized representative, and the department. In developing the program, the department shall inform the individual about and involve the individual in choosing among alternative goals, objectives, available services, entities providing the services, and the methods used to provide or procure the services.

(3) Contain all of the information required by federal law and regulations, including a statement of the specific vocational goods and services, as defined in Section 19150, to be provided and the terms and conditions under which available goods and services will be provided, to the extent federal funds are available, to the individual in the most integrated setting.

(4) To the extent possible, utilize the information specified in Section 19100.

SEC. 17.5. Section 19104.5 is added to the Welfare and Institutions Code, to read:

19104.5. (a) For the purpose of ensuring, consistent with federal law, that eligible individuals are given meaningful, informed, and increased choices in the rehabilitation process, identification of all of the following shall occur for each eligible individual with the full

participation of that individual:

(1) Possible alternative employment goals and outcomes that are consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individual.

(2) The service options that are available to achieve the employment goals and outcomes selected by the individual.

(3) For each service selected by the individual, the entities available to provide those services.

(b) Choices made by the eligible individual in accordance with subdivision (a) shall be incorporated into the individual written rehabilitation program.

SEC. 18. Section 19105 of the Welfare and Institutions Code is repealed.

SEC. 18.5. Section 19150 of the Welfare and Institutions Code is amended to read:

19150. (a) The term "vocational rehabilitation services" means the following services and goods:

(1) An assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including if appropriate, an assessment by personnel skilled in rehabilitation technology or an assessment for supported employment as an employment outcome.

(2) Counseling, guidance, and work-related placement services for persons with disabilities, including job search assistance, placement assistance, job retention services, personal assistance services, followup services, and specific postemployment services necessary to assist those individuals in maintaining, regaining, or advancing in their employment, both competitive and supported.

(3) Training services for persons with disabilities, which shall include personal and vocational adjustment, books, and other training materials.

(4) Auxiliary aide services, such as reader services for individuals who are blind and interpreter services for individuals who are deaf.

(5) Job coaching services that may include any of all of the following:

(A) On-the-job skill training.

(B) Observation or supervision at the worksite.

(C) Consultation or training, or both, of coworkers and supervisors.

(D) Assistance in integrating into the work environment.

(E) Destination training.

(F) Assistance with public support agencies.

(G) Family and residential provider consultation.

(H) Any other on- or off-the-job support services needed to reinforce and stabilize job placement.

(6) Recruitment and training services for persons with disabilities to provide them with new employment opportunities in the fields of rehabilitation, health, welfare, public safety, and law enforcement, and other appropriate service employment.

(7) Physical and mental restoration services, including, but not

limited to the following:

(A) Corrective surgery or therapeutic treatment necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive and constitutes an impediment to employment, but is of such a nature that the correction or modification may reasonably be expected to eliminate or substantially reduce the impediment to employment within a reasonable length of time.

(B) Necessary hospitalization in connection with surgery or treatment.

(C) Prosthetic and orthotic devices.

(D) Eyeglasses and visual services as prescribed by a physician skilled in the diseases of the eye or by an optometrist.

(8) Maintenance, not exceeding the additional costs incurred while participating in rehabilitation.

(9) Occupational licenses, tools, equipment, and initial stocks and supplies.

(10) Rehabilitation technology services, which shall include rehabilitation engineering and assistive technology services and devices.

(11) On-the-job or other related personal assistance services provided to an individual with a disability who is receiving other vocational rehabilitation services.

(12) Transition services to students, pursuant to cooperative agreements established under Section 19013, that promote or facilitate the accomplishment of long-term rehabilitation goals and intermediate rehabilitation objectives.

(13) Referral and other services designed to assist individuals with disabilities in securing needed services from other agencies through agreements developed pursuant to Section 19013.

(14) The provision of other programs and services when provided for the benefit of groups of individuals, including, but not limited to, any of the following:

(A) In the case of any type of small business operated by individuals with severe disabilities, the operation of which can be improved by management services and supervision provided by the department, the provision of those services and supervision, alone or together with the acquisition by the department of vending stands and other equipment and initial stocks and supplies.

(B) The establishment, development, or improvement of community rehabilitation programs that promise to contribute substantially to the rehabilitation of a group of individuals but that are not related directly to the rehabilitation plan of any one individual with a disability, providing the program is used to provide services that promote integration and competitive employment, including supported employment.

(C) Technical assistance and support services to businesses that are not subject to Subchapter 1 (commencing with Section 12111) of Chapter 126 of Title 42 of the United States Code and that are seeking

to employ individuals with disabilities.

(15) Transportation in connection with the rendering of any other vocational rehabilitation service.

(16) Any other goods and services necessary to render a person with disabilities employable.

(17) Services to the families of persons with disabilities when those services will contribute substantially to the rehabilitation of those individuals.

(b) For the purposes of subdivision (a), full consideration of eligibility for any comparable service or benefit shall be utilized to the extent permitted by federal law.

SEC. 19. Section 19151 of the Welfare and Institutions Code is amended to read:

19151. (a) The term "individual with a disability" means any individual who:

(1) Has a physical or mental impairment which constitutes or results in a substantial impediment to employment.

(2) Can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to this chapter.

(b) The term "Individual with a severe disability" shall have the same meaning as specified in the federal Rehabilitation Act and includes, but is not limited to, any individual who has a disability or is blind as determined pursuant to Subchapter 2 (commencing with Section 401) and Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code.

SEC. 20. Section 19152 of the Welfare and Institutions Code is amended to read:

19152. (a) "Community rehabilitation program" means a program which is operated for the primary purpose of providing directly or facilitating the provision of vocational rehabilitation services to persons with disabilities and which provides singly or in combination one or more of the following services to enable persons with disabilities to maximize opportunities for employment, including career advancement:

(1) Comprehensive rehabilitation services which shall include, under one management, medical, psychological, social, and vocational services.

(2) Testing, fitting, or training in the use of prosthetic and orthotic devices.

(3) Recreational therapy.

(4) Physical and occupational therapy.

(5) Speech, language, and hearing therapy.

(6) Psychiatric, psychological, and social services.

(7) Personal and work adjustment.

(8) Vocational training (in combination with other rehabilitation services).

(9) Evaluation or control of special disabilities.

(10) Assessment for determining eligibility and vocational needs, including evaluation for supported employment, development, and

placement in jobs.

(11) Development of, and placement in, jobs.

(12) Job coaching services to enable a person with disabilities to obtain or maintain supported or competitive employment.

(13) Extended employment for persons with severe disabilities who cannot be readily absorbed into the competitive labor market.

(14) Personal assistance services.

(15) To the extent provided under federal law, services similar to the services described in paragraphs (1) to (13), inclusive.

(b) All medical and related health services shall be prescribed by, or under the formal supervision of, persons licensed to practice medicine or surgery in the state.

SEC. 21. Section 19154 of the Welfare and Institutions Code is amended to read:

19154. Establishment of a community rehabilitation program means the acquisition, expansion, remodeling, or alteration of existing buildings necessary to adapt them to community rehabilitation program purposes or to increase their effectiveness for such purposes (subject, however, to such limitations as the federal government or the director may, by regulation, prescribe in order to prevent impairment of the objectives of, or duplication of, other laws providing assistance in the construction of such facilities for community rehabilitation programs), and may include additional equipment and staffing permitted by federal law or regulation.

SEC. 22. Chapter 4 (commencing with Section 19300) of Division 10 of the Welfare and Institutions Code is repealed.

SEC. 23. Section 19400 of the Welfare and Institutions Code is amended to read:

19400. It is the purpose of this chapter to extend the opportunities for individuals with disabilities for employment through encouragement of local communities to develop rehabilitation programs and to provide the state with information concerning their effectiveness in providing employment and rehabilitation services to individuals with disabilities.

SEC. 24. Section 19401 of the Welfare and Institutions Code is amended to read:

19401. The department may provide consultive services to organizations in the establishment and operation of community rehabilitation programs for individuals with disabilities. These consultive service shall include the bringing together of persons interested in the established community rehabilitation programs, surveying community needs, securing the cooperation of other community agencies, planning methods of financing, securing work contracts, establishing professional standards, and maintaining of appropriate records.

SEC. 25. Section 19402 of the Welfare and Institutions Code is amended to read:

19402. The department may contract with qualified persons or firms for consultation in such technical fields as accounting,

engineering and sales so that the directors and governing bodies of the community rehabilitation programs may be advised as to the desirability of any undertaking and the best methods of achieving their objectives.

SEC. 26. Section 19403 of the Welfare and Institutions Code is amended to read:

19403. It is the intent of the Legislature to encourage state organizations, cities, counties, districts, and other political subdivisions to purchase products manufactured by and services provided by public or private nonprofit California corporations operating workshops serving individuals with disabilities whenever it is feasible to do so and the proximity of the public or private nonprofit California corporations operating workshops serving individuals with disabilities makes the purchases reasonably convenient and to provide equality of competitive advantage for organizations operating workshops for individuals with disabilities and organizations operating workshops for individuals who are blind.

SEC. 27. Section 19404 of the Welfare and Institutions Code is amended to read:

19404. Any state agency, city or county, political subdivision, or district of this state may, without advertising or calling for bids, purchase materials and supplies manufactured and services provided by public or private nonprofit California corporations operating community rehabilitation programs serving persons with disabilities who have indicated an interest in supplying those goods and services and may, on an equitable basis apportion the business among the interested community rehabilitation programs, provided the goods or services meet the specifications and needs of the purchasing agency and are purchased at a fair market price, as determined by the appropriate state or local agency and provided that the public or private nonprofit California corporations comply with all of the following requirements:

(a) (1) Contract work obtained under this section shall be performed by a labor force which is comprised primarily of persons with disabilities, as measured by the percentage of person-hours of direct labor devoted to the contract work.

(2) For purposes of this paragraph, "primarily" means 75 percent or greater.

(3) Agree to make those elections permitted of any nonprofit corporation under the federal Insurance Contributions Act and the California Unemployment Insurance Code in order to provide social security and unemployment and disability benefits for its employees commencing with its first contract or purchase order under this section and continuing thereafter. In the event that the nonprofit corporation ceases to provide those benefits, any existing contract or purchase order under this section with the corporation is terminated and no further contracts or purchase orders shall be awarded to that corporation for the period of two years after the corporation ceases to provide the benefits. For the purposes of this subdivision, a person

with a disability shall be considered an employee when performing productive work.

(4) Provide in its articles of incorporation that at least two of the directors of its board of directors shall be comprised of persons with disabilities or the parents, guardians, or conservators of individuals with disabilities. Directors who are also employees of the nonprofit corporation shall not participate in or be present at discussions of the board of directors concerned with labor-management contract negotiations.

(5) Provide for disabled employees of the nonprofit corporation benefits and other employer-employee agreements substantially equal to those benefits and agreements entered into between each nonprofit corporation and the representatives designated by a majority of the employees.

(6) Not commit any unfair labor practices as defined in Section 8(a) of the National Labor Relations Act.

(7) Abide by the provisions of the Federal Fair Labor Standards Act, the Walsh-Healy Public Contract Act, the Wagner O'Day Act, and the regulations of the State Division of Industrial Welfare.

(b) For purposes of this section a "person with a disability" means any person, other than a person who is blind, who is so severely incapacitated by any physical or mental disability that he or she cannot currently engage in normal competitive employment because of the disability.

SEC. 28. Article 1.5 (commencing with Section 19450) of Chapter 5 of Division 10 of the Welfare and Institutions Code is repealed.

SEC. 29. Section 19700.1 of the Welfare and Institutions Code is amended to read:

19700.1. For the purposes of this chapter, the following definitions shall apply:

(a) "Appellant" means an applicant or client who has filed an oral or written request for an administrative review or a written request for a fair hearing.

(b) "Applicant" means any individual who has applied for vocational rehabilitation or independent living services which the department provides. The term also refers to individuals who apply for such services and are found ineligible.

(c) "Client" means any person receiving vocational rehabilitation or independent living services or support from the department.

SEC. 30. Section 19702 of the Welfare and Institutions Code is amended to read:

19702. (a) The members of the board shall meet whenever required to hear appeals that have been filed with the board. Special meetings shall be approved by the director and called by the chairperson, who shall notify the other members of the time and place of those meetings.

(b) The director, in consultation with the board, shall determine and provide necessary staff support and assistance for the board in conducting fair hearings and issuing decisions.

(c) Three members of the board shall constitute a quorum for the performance of any duty or the exercise of any power of the board.

SEC. 30.5. Section 19703 of the Welfare and Institutions Code is amended to read:

19703. (a) The provisions of this chapter relative to vocational rehabilitation or independent living services, or both, shall be administered fairly to the end that all persons who are eligible and apply for those services shall receive the services to which they are entitled under state and federal statutes and regulations promptly and with due consideration for their needs.

(b) Any applicant for services, or client of the department shall be informed as to the provisions of eligibility and his or her responsibility for reporting facts material to a correct determination of his or her eligibility for services.

(c) Any applicant for services, or client of the department who is denied vocational rehabilitation or independent living services, or both shall be notified in writing of the grounds on which the denial is based.

SEC. 31. Section 19706 of the Welfare and Institutions Code is amended to read:

19706. (a) In each appeal to the Rehabilitation Appeals Board, the written notification required by Section 19703, and, if applicable, the decision of the reviewer required pursuant to Section 19704, shall form part of the record.

(b) Three or more members of the board shall hear all relevant evidence and shall consider each case on the basis of the laws and regulations controlling the department and shall render a final decision that has been approved by a majority of the board members present at the hearing within 45 days.

(c) The board shall send its written decision by certified mail to the appellant, the appellant's authorized representative, and the department.

SEC. 31.5. Section 19707 of the Welfare and Institutions Code is repealed.

SEC. 32. Section 19709 of the Welfare and Institutions Code is amended to read:

19709. (a) The appellant, within six months after receiving notice of the board's final decision, may file a petition with the superior court, under Section 1094.5 of the Code of Civil Procedure, praying for a review of the entire proceedings in the matter, upon questions of law involved in the case. The review, if granted, shall be the exclusive remedy available to the appellant for review of the board's final decision. The department shall be the sole respondent in the proceedings.

(b) No filing fee shall be required for the filing of a petition pursuant to this section. Any of these petitions to the superior court shall be entitled to a preference in setting a date for hearing on the petition. No bond shall be required in the case of any petition for review, nor in any appeal therefrom. The appellant shall be entitled

to reasonable attorney's fees and costs, if he or she obtains a decision in his or her favor.

SEC. 32.5. Section 19750 of the Welfare and Institutions Code is amended to read:

19750. The purpose of this chapter is to establish program standards and authorize procedures utilized for subgranting funds, auditing records, and monitoring the delivery of services pursuant to the Independent Living Services Program created pursuant to this chapter.

SEC. 33. Section 19751 of the Welfare and Institutions Code is amended to read:

19751. The department shall administer the Independent Living Services Program. This program shall provide services to individuals with severe disabilities, in accordance with federal law. The department shall, in the administration of the program, subgrant its allocation of federal funds, and shall comply with all requirements set forth in the federal Rehabilitation Act of 1973 and any subsequent amendments thereto, and with all rules and regulations adopted thereunder.

SEC. 33.5. Section 19752 of the Welfare and Institutions Code is amended to read:

19752. Notwithstanding any other provision of law, expenditures shall be limited to providing only those services specified in Section 706 of Title 29 of the United States Code, when those services cannot be secured through any other source of funding. Services shall only be provided to the extent that federal funds designated for ILRS have been received by the department.

SEC. 34. Section 19753 of the Welfare and Institutions Code is amended to read:

19753. Financial need shall be considered in the furnishing or denial of independent living services in accordance with the federal Rehabilitation Act of 1973 and any subsequent amendments thereto, and regulations adopted thereunder.

SEC. 34.5. Section 19801 of the Welfare and Institutions Code is amended to read:

19801. An independent living center shall:

(a) Be a private, nonprofit organization controlled by a board of directors. A majority of the board shall be comprised of individuals with disabilities;

(b) Be staffed by persons trained to assist persons with disabilities in achieving social and economic independence. The staff shall include as large a proportion as is practicable of individuals with disabilities;

(c) Provide, but not be limited to, the following services to individuals with disabilities:

(1) Peer counseling,

(2) Advocacy,

(3) Attendant referral,

(4) Housing assistance and

(5) Information and referral.

(d) Provide other services and referrals as may be deemed necessary, such as transportation, job development, equipment maintenance and evaluation, training in independent living skills, mobility assistance, and communication assistance.

(e) Promote and practice the independent living philosophy of:

(1) Consumer control of the center regarding decisionmaking, service delivery, management, and establishment of the policy and direction of the center.

(2) Self-help and self-advocacy.

(3) Development of peer relationships and peer role models.

(4) Equal access of individuals with disabilities to society and to all services, programs activities, resources, and facilities, whether public or private and regardless of the funding source.

SEC. 35. Any regulations the department determines to be necessary to implement this chapter or Public Law 102-569 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. 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. Regulations adopted pursuant to this section shall remain in effect for no more than 120 days.

SEC. 36. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure compliance with federal law, and to make important changes in programs for services to individuals with disabilities at the earliest possible time, it is necessary that this act go into immediate effect.

CHAPTER 938

An act to amend Section 14093.05 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor October 8, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 14093.05 of the Welfare and Institutions Code is amended to read:

14093.05. (a) The director shall enter into contracts with managed care plans under this chapter and Chapter 8 (commencing with Section 14200), including, but not limited to, health maintenance organizations, prepaid health plans, and primary care

case management plans; counties, primary care providers, independent practice associations, private foundations, children's hospitals, community health centers, rural health centers, community clinics, and university medical center systems, or other entities for the provision of medical benefits to all persons who are eligible to receive medical benefits under publicly supported programs. The director may also amend existing Medi-Cal managed care contracts to include the provision of medical benefits to persons who are eligible to receive medical benefits under publicly supported programs. Contracts may be on an exclusive or nonexclusive basis.

(b) Contractors pursuant to this article and participating providers acting pursuant to subcontracts with those contractors, shall agree to hold harmless the beneficiaries of the publicly supported programs if the contract between the sponsoring government agency and the contractor does not ensure sufficient funding to cover program benefits.

(c) Any managed care contractor serving children with conditions eligible under the California Children's Services (CCS) program shall maintain and follow standards of care established by the program, including use of paneled providers and CCS-approved special care centers and shall follow treatment plans approved by the program, including specified services and providers of services. If there are insufficient paneled providers willing to enter into contracts with the managed care contractor, the program shall seek to establish new paneled providers willing to contract. If a paneled provider cannot be found, the managed care contractor shall seek program approval to use a specific nonpaneled provider with appropriate qualifications.

(d) (1) Any managed care contractor serving children with conditions eligible under the CCS program shall report expenditures and savings separately for CCS covered services and CCS eligible children.

(2) If the managed care contractor is paid according to a capitated or risk-based payment methodology, there shall be separate actuarially sound rates for CCS eligible children.

(3) Notwithstanding paragraph (2), a managed care pilot project may, if approval is obtained from the State CCS program director, utilize an alternative rate structure for CCS eligible children.

(e) This article is not intended to and shall not be interpreted to permit any reduction in benefits or eligibility levels under the CCS program. Any medically necessary service not available under the managed care contracts authorized under this article shall remain the responsibility of the state and county.

(f) To assure CCS benefits are provided to enrollees with a CCS eligible condition according to CCS program standards, there shall be oversight by the state and local CCS program agencies for both services covered and not covered by the managed care contract.

(g) Any managed care contract which will affect the delivery of

care to CCS eligible children shall be approved by the state CCS program director prior to execution. The state CCS program shall continue to be responsible for selection of CCS paneled providers and monitoring of contractors to see that CCS state standards are maintained.

CHAPTER 939

An act to amend Sections 56155.5, 56160, 56365, 56366, 56740, and 56775 of, to amend and renumber Section 56366.1 of, to add Sections 56034, 56035, 56042, 56366.1, 56366.3, 56366.4, 56366.6, 56366.7, and 56505.2 to, and to repeal and add Section 56168 of, the Education Code, and to add Section 7579.2 to the Government Code, relating to special education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 8, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 56034 is added to the Education Code, to read:

56034. "Nonpublic, nonsectarian school" means a private, nonsectarian school that enrolls individuals with exceptional needs pursuant to an individualized education program, employs at least one full-time teacher who holds an appropriate credential authorizing special education services, and is certified by the department. It does not include an organization or agency that operates as a public agency or offers public services, including, but not limited to, a state or local agency, an affiliate of a state or local agency, including a private, nonprofit corporation established or operated by a state or local agency, or a public university or college. A nonpublic, nonsectarian school also shall meet standards as prescribed by the superintendent and board.

SEC. 2. Section 56035 is added to the Education Code, to read:

56035. "Nonpublic, nonsectarian agency" means a private, nonsectarian establishment or individual that provides related services necessary for an individual with exceptional needs to benefit educationally from the pupils' educational program pursuant to an individualized education program and that is certified by the department. It does not include an organization or agency that operates as a public agency or offers public service, including, but not limited to, a state or local agency, an affiliate of a state or local agency, including a private, nonprofit corporation established or operated by a state or local agency, a public university or college, or a public hospital. The nonpublic, nonsectarian agency shall also meet standards as prescribed by the superintendent and board.

SEC. 3. Section 56042 is added to the Education Code, to read:

56042. Notwithstanding any other provision of law, an attorney or advocate for a parent of an individual with exceptional needs shall not recommend placement in a nonpublic, nonsectarian school or agency with which the attorney or advocate is employed or contracted, or otherwise has a conflict of interest or from which the attorney or advocate receives a benefit.

SEC. 4. Section 56155.5 of the Education Code is amended to read:

56155.5. (a) As used in this article, "licensed children's institution" means a residential facility which is licensed by the state, or other public agency which has delegated authority by contract with the state to license, to provide nonmedical care to children, including, but not limited to, individuals with exceptional needs. "Licensed children's institution" in addition, includes a group home as defined by subdivision (a) of Section 80001 of Title 22 of the California Code of Regulations. As used in this article and Article 8.5 (commencing with Section 56775) of Chapter 7, a "licensed children's institution" does not include any of the following:

(1) A juvenile court school, juvenile hall, juvenile home, day center, juvenile ranch, or juvenile camp administered pursuant to Article 2.5 (commencing with Section 48645) of Chapter 4 of Part 27.

(2) A county community school program provided pursuant to Section 1981.

(3) Any special education program provided pursuant to Section 56150.

(4) Any other public agency.

(b) As used in this article, "foster family home" means a family residence which is licensed by the state, or other public agency which has delegated authority by contract with the state to license, to provide 24-hour nonmedical care and supervision for not more than six foster children, including, but not limited to, individuals with exceptional needs. "Foster family home," in addition, includes a small family home as defined in paragraph (6) of subdivision (a) of Section 1502 of the Health and Safety Code.

SEC. 5. Section 56160 of the Education Code is amended to read:

56160. (a) The superintendent shall apportion, pursuant to Chapter 7 (commencing with Section 56700), funds directly to each district or county office operating programs under this article.

(b) Reimbursements for nonpublic, nonsectarian school or agency placements shall be made pursuant to Sections 56366, 56740, and 56775 to each district or county office that contracts for services under this article.

(c) For purposes of the revenue calculations required pursuant to subdivision (a) of Section 56712, the district in which the licensed children's institution or foster family home is located shall be considered the district of residence.

SEC. 6. Section 56168 of the Education Code is repealed.

SEC. 7. Section 56168 is added to the Education Code, to read:

56168. (a) A public hospital, state licensed children's hospital, psychiatric hospital, proprietary hospital, or a health facility for medical purposes located either within and outside of this state is ineligible for certification as a nonpublic, nonsectarian school pursuant to Section 56034 and Sections 56365 to 56366.5, inclusive, to provide special education to individuals with exceptional needs. Districts, special education local plan areas, or county offices shall have until September 1, 1994, to find an appropriate alternative placement for any children currently served in one of these programs.

(b) The district, special education local plan area, or county office in which the hospital or health facility is located has the educational responsibility for individuals with exceptional needs who reside in these facilities.

(c) A hospital or health facility is eligible for certification as a nonpublic, nonsectarian agency pursuant to Section 56035 and Sections 56365 to 56366.5, inclusive, to provide designated instruction and services to individuals with exceptional needs whether the child attends a public or nonpublic school or is enrolled in both a public and nonpublic school program as specified in Section 56361.5.

SEC. 8. Section 56365 of the Education Code is amended to read:

56365. (a) Nonpublic, nonsectarian school services, including services by nonpublic, nonsectarian agencies shall be available. These services shall be provided pursuant to Section 56366 under contract with the district, special education local plan area, or county office to provide the appropriate special educational facilities, special education, or designated instruction and services required by the individual with exceptional needs when no appropriate public education program is available.

(b) Pupils enrolled in nonpublic, nonsectarian schools and agencies under this section shall be deemed to be enrolled in public schools for all purposes of Chapter 4 (commencing with Section 41600) of Part 24 and Section 42238. The district, special education local plan area, or county office shall be eligible to receive allowances under Chapter 7 (commencing with Section 56700) for services that are provided to individuals with exceptional needs pursuant to the contract.

(c) If the state participates in the federal program of assistance for state operated or state supported programs for children with disabilities (P.L. 89-313, Sec. 6), pupils enrolled in nonpublic, nonsectarian schools shall be deemed to be enrolled in state supported institutions for all purposes of that program and shall be eligible to receive allowances under Chapter 7 (commencing with Section 56700) for supplemental services provided to individuals with exceptional needs pursuant to a contract with a district, special education local plan area, or county office of education. In order to participate in the federal program, the state must find that participation will not result in any additional expenditures from the General Fund.

(d) The district, special education local plan area, or county office shall pay to the nonpublic, nonsectarian school or agency the full amount of the tuition for individuals with exceptional needs that are enrolled in programs provided by the nonpublic, nonsectarian school pursuant to the contract.

(e) Before contracting with a nonpublic, nonsectarian school or agency outside of this state, efforts shall be documented by the district, special education local plan area, or county office to utilize public schools, or to locate an appropriate nonpublic, nonsectarian school or agency program, or both, within the state. If an appropriate public school program or nonpublic, nonsectarian school or agency placement is not available, the district, special education local plan area, or county office shall submit a waiver request pursuant to Section 56101. The waiver request shall include information about the special education and related services provided by the out-of-state program placement and the costs of the special education and related services provided as specified in subdivisions (a) and (b) of Section 56741 and shall indicate the efforts of the local educational agency to locate an appropriate public school or nonpublic, nonsectarian school or agency, or a combination thereof, within the state. The board shall approve or deny the waiver upon receipt of the waiver request from the local education agency at the next scheduled meeting of the board.

(f) All waivers shall be resubmitted to the board no later than March 30 each year for reapproval of the pupil's out-of-state placement for the following fiscal year. In addition to the information required as part of the initial waiver request, the district, special education local plan area, or county office shall indicate the anticipated date for the return of the pupil to a public or nonpublic, nonsectarian school or agency placement, or a combination thereof, located in the state and shall document efforts during the previous placement year to return the pupil.

(g) In addition to meeting the requirements of Section 56366.1, a nonpublic, nonsectarian school or agency that operates a program outside of this state shall be certified or licensed by that state to provide, respectively, special education and related services to pupils under the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

SEC. 9. Section 56366 of the Education Code is amended to read:

56366. It is the intent of the Legislature that the role of the nonpublic, nonsectarian school or agency shall be maintained and continued as an alternative special education service available to districts, special education local plan areas, county offices, and parents.

(a) The contract for nonpublic, nonsectarian school or agency services shall be developed in accordance with the following provisions:

(1) The contract shall specify the general administrative and financial agreements between the nonpublic, nonsectarian school or

agency and the district, special education local plan area, or county office to provide the special education and designated instruction and services, as well as transportation specified in the pupil's individualized education program on forms provided by the superintendent in January of each year for the following fiscal year. The administrative provisions of the contract also shall include procedures for recordkeeping and documentation, and the maintenance of school records by the contracting district, special education local plan area, or county office to ensure that appropriate high school graduation credit is received by the pupil. The contract may allow for partial or full-time attendance at the nonpublic, nonsectarian school.

(2) The contract shall include an individual services agreement on forms provided by the superintendent in January of each year for the following fiscal year for each pupil placed by a district, special education local plan area, or county office that will be negotiated for the length of time for which nonpublic, nonsectarian school or agency special education and designated instruction and services are specified in the pupil's individualized education program.

Changes in educational instruction, services, or placement provided under contract may only be made on the basis of revisions to the pupil's individualized education program.

At any time during the term of the contract or individual services agreement, the parent; nonpublic, nonsectarian school or agency; or district, special education local plan area, or county office may request a review of the pupil's individualized education program by the individualized education program team. Changes in the administrative or financial agreements of the contract that do not alter the individual services agreement that outlines each pupil's educational instruction, services, or placement may be made at any time during the term of the contract as mutually agreed by the nonpublic, nonsectarian school or agency and the district, special education local plan area, or county office.

(3) The contract or individual services agreement may be terminated for cause. The cause shall not be the availability of a public class initiated during the period of the contract unless the parent agrees to the transfer of the pupil to a public school program. To terminate the contract either party shall give 20 days' notice.

(4) The nonpublic, nonsectarian school or agency shall provide all services specified in the individualized education program, unless the nonpublic, nonsectarian school or agency and the district, special education local plan area, or county office agree otherwise in the contract.

(5) Related services provided pursuant to a nonpublic, nonsectarian agency contract shall only be provided during the period of the child's regular or extended school year program, or both, unless otherwise specified by the pupil's individualized education program.

(6) The nonpublic, nonsectarian school or agency shall report

attendance of pupils receiving special education and designated instruction and services as defined by Section 46307 for purposes of submitting a warrant for tuition to each contracting district, special education local plan area, or county office on forms developed by the superintendent.

(b) The contract or individual services agreement shall not include special education transportation provided through the use of services or equipment owned, leased, or contracted by a district, special education local plan area, or county office for pupils enrolled in the nonpublic, nonsectarian school or agency unless provided directly or subcontracted by that nonpublic, nonsectarian school or agency.

The superintendent shall withhold 20 percent of the amount apportioned to a school district or county office for costs related to the provision of nonpublic, nonsectarian school or agency placements if the superintendent finds that the local education agency is in noncompliance with this subdivision. This amount shall be withheld from the apportionments in the fiscal year following the superintendent's finding of noncompliance. The superintendent shall take other appropriate actions to prevent noncompliant practices from occurring and report to the Legislature on those actions.

(c) (1) If the pupil is enrolled in the nonpublic, nonsectarian school or agency with the approval of the district, special education local plan area, or county office prior to agreement to a contract or individual services agreement, the district, special education local plan area, or county office shall issue a warrant, upon submission of an attendance report and claim, for an amount equal to the number of creditable days of attendance at the per diem rate agreed upon prior to the enrollment of the pupil. This provision shall be allowed for 90 days during which time the contract shall be consummated.

(2) If after 60 days the contract or individual services agreement has not been finalized as prescribed in paragraph (1) of subdivision (a), either party may appeal to the county superintendent of schools, if the county superintendent is not participating in the local plan involved in the nonpublic, nonsectarian school or agency contract, or the superintendent, if the county superintendent is participating in the local plan involved in the contract, to negotiate the contract. Within 30 days of receipt of this appeal, the county superintendent or the superintendent, or his or her designee, shall mediate the formulation of a contract which shall be binding upon both parties.

(d) (1) No contract for special education and related services provided by a nonpublic, nonsectarian school or agency shall be authorized under this part unless the school or agency has been certified as meeting those standards relating to the required special education and specified related services and facilities for individuals with exceptional needs. The certification shall result in the school's or agency's receiving approval to educate pupils under this part. The procedures, methods, and areas of certification shall be established

by rules and regulations issued by the board that shall include, but not be limited to, procedures for conducting onsite reviews of the nonpublic, nonsectarian school or agency program and provisions specific to the provision of special education and related services to individuals with exceptional needs from birth to preschool. In addition to the standards adopted by the board, the school or agency shall meet all applicable standards relating to fire, health, sanitation, and building safety.

(e) The school or agency shall be charged a reasonable fee for certification. The superintendent may adjust the fee annually commensurate with the statewide average percentage inflation adjustment computed for revenue limits of unified school districts with greater than 1,500 units of average daily attendance if the percentage increase is reflected in the district revenue limit for inflation purposes. For purposes of this section, the base fee shall be the following:

(A) 1–5 pupils—$150.
(B) 6–10 pupils—$250.
(C) 11–24 pupils—$500.
(D) 25–75 pupils—$750.
(E) 76 pupils and over—$1,000.

The school or agency shall pay this fee when it applies for certification and when it updates its application for annual review by the superintendent. The superintendent shall use these fees to conduct onsite reviews, which may include field experts. No fee shall be refunded if the application is withdrawn or is denied by the superintendent.

(f) (1) Notwithstanding any other provision of law, only those nonpublic, nonsectarian schools and agencies that provide special education and designated instruction and services utilizing staff who hold, or are receiving training under the supervision of staff who hold, a current valid California credential or license in the service rendered shall be eligible to receive certification. Only those nonpublic, nonsectarian schools or agencies located outside of California that employ staff who hold a current valid credential or license to render special education and related services as required by that state shall be eligible to be certified.

(2) Nothing in this subdivision restricts student teachers, interns, or other staff who are enrolled in training programs that lead to a license or credential that authorize the holder to render services to special education pupils and who are under the direct supervision of a staff member who holds a current valid California credential, license, or certificate of registration.

(3) A nonpublic, nonsectarian school or agency that employs only persons who hold a valid California credential authorizing substitute teaching pursuant to Section 56060 shall not be certified. At least one full-time person with a current valid California credential, license, or certificate of registration in the area of service to be rendered, or a current valid credential, license, or certificate of registration for

appropriate special education and related services rendered that is required in another state, shall be required for purposes of certification under subdivision (d).

(4) A nonpublic, nonsectarian school or agency that employs persons holding a valid emergency credential shall document efforts of recruiting appropriately credentialed, licensed, or registered personnel for the special education and related services rendered as a condition renewing certification.

SEC. 10. Section 56366.1 of the Education Code is amended and renumbered to read:

56366.2. (a) A district, special education local plan area, county office, nonpublic, nonsectarian school, or nonpublic, nonsectarian agency may petition the superintendent to waive one or more of the requirements under Sections 56365, 56366, 56366.1, 56366.3, 56366.6, and 56366.7. The petition shall state the reasons for the waiver request, and shall include the following:

(1) Sufficient documentation to demonstrate that the waiver is necessary to the content and implementation of a specific pupil's individualized education program and the pupil's current placement.

(2) The period of time that the waiver will be effective during any one school year.

(3) Documentation and assurance that the waiver does not abrogate any right provided individuals with exceptional needs and their parents or guardians under state or federal law, and does not hinder the compliance of a district, special education local plan area, or county office with the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400, et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), and federal regulations relating thereto.

(b) No waiver shall be granted for reimbursement of those costs prohibited under Section 56740 or 56775 or certification pursuant to Section 56366.1 unless approved by the board pursuant to Section 56101.

(c) In submitting the annual report on waivers granted under Section 56101 and this section to the board, the superintendent shall specify information related to the provision of special education and related services to individuals with exceptional needs through contracts with nonpublic, nonsectarian schools and agencies located in the state, nonpublic, nonsectarian school and agency placements in facilities located out-of-state, and the specific section waived pursuant to this section.

SEC. 11. Section 56366.1 is added to the Education Code, to read:

56366.1. (a) A nonpublic, nonsectarian school or agency that seeks certification shall file an application with the superintendent on forms provided by the department and include the following information on the application:

(1) A description of the special education and designated instruction and services provided to individuals with exceptional needs if the application is for nonpublic, nonsectarian school

certification.

(2) A description of the designated instruction and services provided to individuals with exceptional needs if the application is for nonpublic, nonsectarian agency certification.

(3) A list of appropriately qualified staff, a description of the credential, license, or registration that qualifies each staff member to render special education or designated instruction and services, and copies of their credentials, licenses, or certificates of registration with the appropriate state or national organization that has established standards for the service rendered.

(4) An annual operating budget.

(5) Affidavits and assurances necessary to comply with all applicable federal, state, and local laws and regulations which include criminal record summaries required of all nonpublic school or agency personnel having contact with minor children under Section 44237.

(b) Unless the board grants a waiver pursuant to Section 56101, a nonpublic, nonsectarian school or agency shall file an application for certification between January 1 and March 1.

(c) If the applicant operates a facility or program on more than one site, each site shall be certified.

(d) If the applicant is part of a larger program or facility on the same site, the superintendent shall consider the effect of the total program on the applicant. A copy of the policies and standards for the nonpublic, nonsectarian school or agency and the larger program shall be available to the superintendent.

(e) Prior to certification, the superintendent shall conduct an onsite review of the facility and program for which the applicant seeks certification. The superintendent may be assisted by representatives of the special education local plan area in which the applicant is located and a nonpublic, nonsectarian school or agency representative who does not have a conflict of interest with the applicant. The superintendent shall conduct an additional onsite review of the facility and program within five years of the certification effective date unless the superintendent conditionally certifies the school or agency or unless the superintendent receives a formal complaint against the school or agency. In the latter two cases, the superintendent shall conduct an onsite review at least annually.

(f) The superintendent shall make a determination on an application within 120 days of receipt of the application and shall certify, conditionally certify, or deny certification to the applicant. If the superintendent fails to take one of these actions within 120 days, the applicant is automatically granted conditional certification for a period terminating on August 31, of the current school year. If certification is denied, the superintendent shall provide reasons for the denial. The superintendent may certify the school or agency for a period of not longer than five years.

(g) Certification becomes effective on the date the nonpublic,

nonsectarian school or agency meets all the application requirements and is approved by the superintendent. Certification may be retroactive if the school or agency met all the requirements of this section on the date the retroactive certification is effective. Certification expires on August 31, of the terminating year.

(h) The superintendent shall annually review the certification of each nonpublic, nonsectarian school and agency. For this purpose, a certified school or agency shall annually update its application between August 1 and October 31, unless the board grants a waiver pursuant to Section 56101. The superintendent may conduct an onsite review as part of the annual review.

(i) The superintendent may monitor a nonpublic, nonsectarian school or agency onsite at any time without prior notice when there is substantial reason to believe that there is an immediate danger to the health, safety, or welfare of a child. The superintendent shall document the concern and submit it to the nonpublic, nonsectarian school or agency at the time of the onsite monitoring. The superintendent shall require a written response to any noncompliance or deficiency found.

(j) (1) Notwithstanding any other provision of law, the superintendent may not certify a nonpublic, nonsectarian school or agency that proposes to initiate or expand services to pupils currently educated, or pupils who were educated in the immediate prior fiscal year, in a juvenile court program, community school pursuant to Section 56150, or other nonspecial education program, including independent study or adult school, or both, unless the nonpublic, nonsectarian school or agency notifies the county superintendent of schools and the special education local plan area in which the proposed new or expanded nonpublic, nonsectarian school or agency is located of its intent to seek certification. The notification shall occur no later than the last day of the second school year prior to the date on which the proposed or expanding school or agency intends to initiate services. The notice shall include the following:

(A) The specific date upon which the proposed nonpublic, nonsectarian school or agency is to be established.

(B) The location of the proposed program or facility.

(C) The number of pupils proposed for services, the number of pupils currently served in the juvenile court, community school, or other nonspecial education program, the current school services including special education and related services provided for these pupils, and the specific program of special education and related services to be provided under the proposed program.

(D) The reason for the proposed change in services.

(2) In addition to the requirements in subdivisions (a) through (e), inclusive, the superintendent shall require and consider the following in determining whether to certify a nonpublic, nonsectarian school or agency as described in this subdivision:

(A) A complete statement of the information required as part of

the notice under paragraph (1).

(B) Documentation of the steps taken in preparation for the conversion to a nonpublic, nonsectarian school or agency, including information related to changes in the population to be served and the services to be provided pursuant to each pupil's individualized education program.

(3) Before certifying the school or agency, the superintendent shall determine that certification of the new or expanding school or agency program is necessary for the provision of a free appropriate special education program to the affected pupils in the least restrictive environment.

(4) Notwithstanding any other provision of law, the certification becomes effective no earlier than the first day of the second school year beginning after the school or agency provided the notification required pursuant to paragraph (1).

SEC. 12. Section 56366.3 is added to the Education Code, to read:

56366.3. No contract for special education and related services provided by a nonpublic, nonsectarian school or agency shall be reimbursed by the state pursuant to Sections 56740 and 56775 if the contract covers special education, related services, administration, or supervision by an individual who was an employee of the district, special education local plan area, or county office within the last 365 days.

SEC. 13. Section 56366.4 is added to the Education Code, to read:

56366.4. (a) The superintendent may revoke or suspend the certification of a nonpublic, nonsectarian school or agency for any of the following reasons:

(1) Violation of any applicable state or federal rule or regulation, or aiding, abetting, or permitting the violation of any applicable state or federal rule or regulation.

(2) Falsification or intentional misrepresentation of any element of the application, pupil records, or program presented for certification purposes.

(3) Conduct in the operation or maintenance of the nonpublic, nonsectarian school or agency that is harmful to the health, welfare, or safety of an individual with exceptional needs.

(4) Failure to comply with any provision in the contract with the local education entity.

(5) Failure to notify the department in writing of any of the following within 60 days of the occurrence:

(A) Changes in credentialed, licensed, or registered staff who render special education and related services, ownership, management, or control of the nonpublic, nonsectarian school or agency.

(B) Major modification or relocation of facilities.

(C) Significant modification of the nonpublic, nonsectarian school or agency program.

(6) Failure to implement recommendations and compliance requirements following an onsite review of the school or agency.

(7) Failure to provide appropriate services, supplies, equipment, or facilities for a pupil as required in his or her individualized education program.

(8) Failure to notify the superintendent in writing within 10 days of the revocation or suspension of any license or permit including, but not limited to, any residential care license, business license, or other required license or permit.

(9) Failure to implement a pupil's individualized education program.

(10) Failure to notify the superintendent in writing within 10 days of the death of a pupil or any other individual of unnatural causes within the school or agency, including the circumstances surrounding the death and any appropriate preventative measures being taken or recommended.

(b) The superintendent shall notify contracting local education agencies and the special education local plan area in which the nonpublic, nonsectarian school or agency is located of the determination to suspend or revoke state certification.

SEC. 14. Section 56366.6 is added to the Education Code, to read:

56366.6. (a) Within 20 working days following the nonpublic, nonsectarian school's or agency's receipt of the notice of denial, revocation, or suspension of certification, the nonpublic, nonsectarian school or agency may file a written petition to request a review of the decision by the superintendent. The petition may include written arguments or a request to present an oral argument.

(b) Within 30 working days after the receipt of the written petition, the superintendent or a designee shall review the decision and the applicant's petition and render a written, reasoned decision that shall be the final administrative decision. The designee of the superintendent shall be impartial, unbiased, and shall not have participated in the department decision to deny, revoke, or suspend the nonpublic, nonsectarian school or agency certification.

(c) Any public education agency that contracts with a certified nonpublic, nonsectarian school or agency may request the superintendent to review the status of the nonpublic school or agency. The request shall be in writing and a copy sent to the nonpublic school or agency.

SEC. 14.5. Section 56366.7 is added to the Education Code, to read:

56366.7. As a condition of certification, a nonpublic, nonsectarian school or agency shall submit, on forms developed by the superintendent in consultation with statewide organizations representing providers of special education and designated instruction and services, a list of uniform tuition fees for providing special education and designated instruction and services to individuals with exceptional needs who are served through contracts with local education agencies.

SEC. 15. Section 56505.2 is added to the Education Code, to read:

56505.2. (a) A hearing officer may not render a decision that

results in the placement of an individual with exceptional needs in a nonpublic, nonsectarian school, or that results in a service for an individual with exceptional needs provided by a nonpublic agency, if the school or agency has not been certified pursuant to Section 56366.1.

(b) A hearing officer shall consider Sections 56365, 56365.5, 56366, and 56366.1 during a due process hearing concerning an issue of placement of an individual with exceptional needs in a nonpublic, nonsectarian school, or services for an individual with exceptional needs provided by a nonpublic, nonsectarian agency.

SEC. 16. Section 56740 of the Education Code is amended to read:

56740. (a) The superintendent shall apportion to each district and county office 70 percent of the cost of tuition in excess of the revenue limit and applicable federal funds for pupils enrolled in nonpublic, nonsectarian schools and agencies pursuant to Sections 56365 and 56366.

(b) The superintendent also may apportion to each nonpublic, nonsectarian school providing special education and designated instruction and services to individuals with exceptional needs an amount for pupils counted under the federal program of assistance for state operated or state supported programs for children with disabilities (P.L. 89-313, Sec. 6).

(c) The cost of contracts with nonpublic, nonsectarian schools and agencies that a district or county office of education reports under this section shall not include any of the following costs that a district, county office, or special education local plan area may incur:

(1) Administrative or indirect costs for the local education agency.

(2) Direct support costs for the local education agency.

(3) Transportation costs provided either directly, or through a nonpublic, nonsectarian school or agency contract for use of services or equipment owned, leased, or contracted, by a district, special education local plan area, or county office for any pupils enrolled in nonpublic, nonsectarian school or agencies, unless provided directly or subcontracted by that nonpublic, nonsectarian school or agency pursuant to subdivisions (a) and (b) of Section 56366.

(4) Costs for services routinely provided by the district or county office including the following, unless the board grants a waiver under Section 56101:

(A) School psychologist services other than those described in Sections 56324 and 56363 and included in a contract and individual services agreement under subdivision (a) of Section 56366.

(B) School nurse services other than those described in Sections 49423.5, 56324, and 56363 and included in a contract and individual services agreement under subdivision (a) of Section 56366.

(C) Language, speech, and hearing services other than those included in a contract and individual services agreement under subdivision (a) of Section 56366.

(D) Modified, specialized, or adapted physical education services

other than those included in a contract and individual services agreement under subdivision (a) of Section 56366.

(5) Costs for nonspecial education programs or settings, including those provided for individuals with exceptional needs between the ages of birth and five years, inclusive, pursuant to Sections 56431 and 56441.8.

(6) Costs for nonpublic, nonsectarian school or agency placements outside of the state unless the board has granted a waiver pursuant to subdivisions (e) and (f) of Section 56365.

(7) Costs for related nonpublic, nonsectarian school pupil assessments by a school psychologist or school nurse pursuant to Sections 56320 and 56324.

(8) Costs for services that the nonpublic, nonsectarian school or agency is not certified to provide.

(9) Costs for services provided by personnel who do not meet the requirements specified in subdivision (e) of Section 56366.

(d) A nonpublic, nonsectarian school or agency shall not claim and is not entitled to receive reimbursement for attendance unless the site where the pupil is receiving special education or designated instruction and services is certified.

SEC. 17. Section 56775 of the Education Code is amended to read:

56775. (a) For the 1980–81 fiscal year and each fiscal year thereafter, the superintendent shall apportion to each district and county superintendent providing programs pursuant to Article 5 (commencing with Section 56155) of Chapter 2 an amount equal to the difference, if any, between (1) the costs of contracts with nonpublic, nonsectarian schools to provide special education instruction, related services, or both, to pupils in licensed children's institutions, foster family homes, residential medical facilities, and other similar facilities funded under this chapter, and (2) the state and federal income received by the district or county superintendent for providing these programs. The sum of the excess cost, plus any state or federal income for these programs, shall not exceed the cost of contracts with nonpublic, nonsectarian schools to provide special education and related services for these pupils, as determined by the superintendent.

(b) The cost of contracts with nonpublic, nonsectarian schools and agencies that a district or county office of education reports under this section shall not include any of the following costs that a district, county office, or special education local plan area may incur:

(1) Administrative or indirect costs for the local education agency.

(2) Direct support costs for the local education agency.

(3) Transportation costs provided either directly, or through a nonpublic, nonsectarian school or agency contract for use of services or equipment owned, leased, or contracted, by a district, special education local plan area, or county office for any pupils enrolled in nonpublic, nonsectarian school or agencies, unless provided directly or subcontracted by that nonpublic, nonsectarian school or agency

pursuant to subdivisions (a) and (b) of Section 56366.

(4) Costs for services routinely provided by the district or county office including the following, unless the board grants a waiver under 56101:

(A) School psychologist services other than those described in Sections 56324 and 56363 and included in a contract and individual services agreement under subdivision (a) of Section 56366.

(B) School nurse services other than those described in Sections 49423.5, 56324, and 56363 and included in a contract and individual services agreement under subdivision (a) of Section 56366.

(C) Language, speech, and hearing services other than those included in a contract and individual services agreement under subdivision (a) of Section 56366.

(D) Modified, specialized, or adapted physical education services other than those included in a contract and individual services agreement under subdivision (a) of Section 56366.

(5) Costs for nonspecial education programs or settings, including those provided for individuals with exceptional needs between the ages of birth and five years, inclusive, pursuant to Sections 56431 and 56441.8.

(6) Costs for nonpublic, nonsectarian school or agency placements outside of the state unless the board has granted a waiver pursuant to subdivisions (e) and (f) of Section 56365.

(7) Costs for related nonpublic, nonsectarian school pupil assessments by a school psychologist or school nurse pursuant to Sections 56320 and 56324.

(8) Costs for services that the nonpublic, nonsectarian school or agency is not certified to provide.

(9) Costs for services provided by personnel who do not meet the requirements specified in subdivision (e) of Section 56366.

(d) A nonpublic, nonsectarian school or agency shall not claim and is not entitled to receive reimbursement for attendance unless the site where the pupil is receiving special education or designated instruction and services is certified.

SEC. 18. Section 7579.2 is added to the Government Code, to read:

7579.2. It is the intent of the Legislature that any disabled individual who has an active individualized education program and is being discharged from a state developmental center or state hospital be discharged to the community as close as possible to the home of the individual's parent, guardian, or conservator in keeping with the individual's right to receive special education and related services in the least restrictive environment.

SEC. 19. (a) The Superintendent of Public Instruction shall convene a 12-member nonpublic, nonsectarian school and agency work group comprised of statewide organizations that represent providers of special education and related services to individuals with exceptional needs including, but not limited to, the following:

(1) The California Association of Private Specialized Education

and Services.

(2) The California Association of Services for Children.

(3) The Special Education Local Plan Area Administrators.

(4) The Special Education Administrators of County Offices of Education.

(5) The Advisory Commission on Special Education.

(6) The Association of California School Administrators.

(7) The State Department of Education.

(8) The Commission on Teacher Credentialing.

(9) The office of the Governor.

(10) A representative of the Legislature

(11) Other individuals and organizations.

(b) The work group shall consider and collect data on the programmatic and funding issues that have resulted in increased costs for special education and related services provided by nonpublic, nonsectarian schools and agencies to pupils with exceptional needs and related annual deficiencies incurred by local education agencies.

(c) The work group shall gather necessary data utilizing, to the extent possible, existing data gathering systems and shall consult with appropriate groups and individuals involved in the provision of special education and related services to individuals with disabilities, including parents.

(d) The work group shall make findings and recommendations that include, but not be limited to, the following:

(1) Costs that should be considered in the development of the Budget Act of 1994.

(2) Certification standards that clarify the requirements for the provision of a free appropriate public education by nonpublic schools and agencies, including those that serve pupils residing in licensed children's institutions and those that provide early special education programs for individuals with disabilities from birth to the age of five years.

(3) Interagency responsibilities for providing related services to special education pupils and the programmatic and fiscal impact of these related services on the costs for nonpublic, nonsectarian schools and agencies.

(4) The programmatic and fiscal impact of licensed children's institutions on special education local plan areas as this impact relates to special education and related services provided by nonpublic, nonsectarian schools and agencies.

(5) Costs that should be included in tuition charged by nonpublic, nonsectarian schools and agencies and reimbursed to local education agencies by the state.

(6) The impact of decisions resulting from prehearing mediation conferences and due process hearings.

(7) Cost-sharing allocations between the state and contracting local education agencies pursuant to Sections 56740 and 56775 and any other portions of the special education funding system that relate

to these cost-sharing allocations.

(8) The impact of pupils placed in out-of-state facilities in order to receive appropriate special education, designated instruction, and related services as specified in their individualized education program.

(e) The work group shall submit its report of the data collected, findings, and recommendations in two phases. It shall submit a preliminary report by December 1, 1993, and a final report by March 1, 1994. The work group shall submit these reports to the appropriate legislative budget committees, the Legislative Analyst, the Director of Finance, the Superintendent of Public Instruction, the office of the Governor and the Secretary of Health and Welfare. The work group shall cease to exist after June 30, 1994.

(f) The sum of one hundred thousand dollars ($100,000) shall be transferred to Budget Item 6110-001-890 for the Superintendent of Public Instruction to use for purposes of this section from increases received in federal funds provided under Part B of the federal Individuals with Disabilities Education Act in the 1993-94 fiscal year contained in Item 6110-161-890 of Section 2.00 of the Budget Act of 1993.

SEC. 20. 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. 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 for pupils who are placed in nonpublic, nonsectarian schools and agencies through a contract with a local education agency to receive a free appropriate public education as required by the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) within limits imposed by the Budget Act of 1993, it is necessary that this act take effect immediately.

CHAPTER 940

An act to amend Sections 11302, 11311, 11313, 11320, 11321, 11323, 11324, 11325, 11340, 11350, 11351, 11360, 11400, 11404, 11405, 11406, 11408, 11421, and 11422 of, to add Sections 11326, 11343, and 11344 to, and to repeal Section 11313.5 of, the Business and Professions Code, relating to real estate appraisers.

[Approved by Governor October 8, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 11302 of the Business and Professions Code is amended to read:

11302. For the purpose of applying this part, the following terms, unless otherwise expressly indicated, shall mean and have the following definitions:

(a) "Agency" means the Business, Transportation and Housing Agency.

(b) "Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion in a federally related transaction as to the market value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

The term "appraisal" does not include an opinion given by a real estate licensee or engineer or land surveyor in the ordinary course of his or her business in connection with a function for which a license is required under Chapter 7 (commencing with Section 6700) or Chapter 15 (commencing with Section 8700) of Division 3, or Chapter 3 (commencing with Section 10130) or Chapter 7 (commencing with Section 10500) and the opinion shall not be referred to as an appraisal. This part does not apply to a probate referee acting pursuant to Sections 400 to 408, inclusive, of the Probate Code unless the appraised transaction is federally related.

(c) "Appraisal Foundation" means the Appraisal Foundation that was incorporated as an Illinois not-for-profit corporation on November 30, 1987.

(d) "Appraisal Subcommittee" means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(e) "Certificate" means a certificate issued by the office authorizing the person to whom it is issued to act within this state as a state certified real estate appraiser.

(f) "Certification" means the procedures and requirements a person shall comply with in order to qualify for issuance of a certificate and includes the issuance of the certificate.

(g) "Certified real estate appraisal report" means an appraisal report performed, given, or signed and certified as such by a state

certified real estate appraiser.

(h) "Committee" means the Real Estate Appraisers' Advisory Committee.

(i) "Director" means the Director of the Office of Real Estate Appraisers.

(j) "Federal financial institutions regulatory agency" means the Federal Reserve Board, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Office of Thrift Supervision, Federal Home Loan Bank System, National Credit Union Administration, the Resolution Trust Corporation, and any other agency determined by the director to have jurisdiction over transactions subject to this part.

(k) "Federally related real estate appraisal activity" means the act or process of making or performing an appraisal on real estate or real property in a federally related transaction and preparing either an appraisal or certified real estate appraisal as a result of that activity.

(*l*) "Federally related transaction" means any real estate-related financial transaction which a federal financial institution's regulatory agency engages in, contracts for or regulates and which requires the services of a state licensed real estate appraiser or state certified real estate appraiser regulated by this part. This term also includes any transaction identified as such by a federal financial institutions regulatory agency.

(m) "License" means a license issued by the office authorizing the person to whom it is issued to act within this state as a state licensed real estate appraiser.

(n) "Licensure" means the procedures and requirements a person shall comply with in order to qualify for issuance of a license and includes the issuance of the license.

(o) "Office" means the Office of Real Estate Appraisers.

(p) "Secretary" means the Secretary of the Business, Transportation and Housing Agency.

(q) "State certified real estate appraiser" is a person who holds a current valid certificate issued to him or her under this part to perform, make, or approve and sign a certified real estate appraisal. A state certified real estate appraiser may use the abbreviation SCREA in his or her real property appraisal business.

(r) "State licensed real estate appraiser" is a person who is issued and holds a current valid license under this part to perform, make, or approve and sign an appraisal. A state licensed real estate appraiser may use the abbreviation SLREA in his or her real property appraisal business.

SEC. 2. Section 11311 of the Business and Professions Code is amended to read:

11311. The secretary shall appoint the Real Estate Appraisers' Advisory Committee to assist the director in the administration of this part. The committee shall advise the director generally on matters relating to the appraisal of real property, on matters relating to ethics and standards requirements, courses of instruction,

equivalent education and experience, continuing education requirements, and discipline and enforcement procedures. Before promulgating any regulation pursuant to this part, the director shall consult with and seek advice thereon from the committee.

Each member of the committee shall serve at the pleasure of the secretary.

The committee shall consist of nine members, two of whom shall be primarily involved in residential real estate appraisal, two of whom shall be state certified real estate appraisers, and five of whom shall be members of the public.

Each initial appraiser member appointed to the committee shall be a person who satisfies all of the prerequisites to taking the examination for licensure or certification as prescribed in this part.

Public members shall include at least two real estate licensees and at least two members from federally insured institutions with experience in real estate secured lending.

SEC. 3. Section 11313 of the Business and Professions Code is amended to read:

11313. The office is under the supervision and control of the secretary. The duty of enforcing and administering this part is vested in the director and he or she is responsible to the secretary therefor. The director shall adopt and enforce rules and regulations as are determined reasonably necessary to carry out the purposes of this part. Those rules and regulations shall be adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Any emergency regulations filed with the Office of Administrative Law by December 31, 1993, shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, safety, and general welfare.

SEC. 4. Section 11313.5 of the Business and Professions Code is repealed.

SEC. 5. Section 11320 of the Business and Professions Code is amended to read:

11320. No person shall engage in federally related real estate appraisal activity governed by this part or assume or use the title of or any title designation or abbreviation as a licensed or certified real estate appraiser in this state without first becoming a state licensed real estate appraiser or state certified real estate appraiser as defined in Section 11302. Any person who willfully violates this provision is guilty of a public offense punishable by imprisonment in the state prison, or in a county jail for not more than one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both the imprisonment and fine. The possession of a license or certificate issued pursuant to this part does not preempt the application of other statutes including the requirement for specialized training or licensure pursuant to Article 3 (commencing with Section 750) of Chapter 2.5 of Division 1 of the Public Resources Code.

SEC. 6. Section 11321 of the Business and Professions Code is

amended to read:

11321. No person other than a state licensed real estate appraiser or state certified real estate appraiser may assume or use that title or any title, designation, or abbreviation likely to create the impression of state licensure or certification as a real estate appraiser in this state.

Only an individual who has qualified as a state licensed or state certified real estate appraiser is authorized to perform and sign a certified real estate appraisal report relating to real estate or real property in this state.

SEC. 7. Section 11323 of the Business and Professions Code is amended to read:

11323. No state licensed real estate appraiser or state certified real estate appraiser shall engage in any appraisal activity in connection with the purchase, sale, or transfer of real property if his or her compensation is affected by the sales commission generated by the transaction for which the appraisal was made.

SEC. 8. Section 11324 of the Business and Professions Code is amended to read:

11324. An individual who is not a state licensed real estate appraiser or state certified real estate appraiser may assist in the preparation of an appraisal under the following conditions:

(a) The assistance is under the direction of an individual who is a state licensed real estate appraiser or state certified real estate appraiser but the final conclusion as to value is made by a state licensed real estate appraiser or state certified real estate appraiser.

(b) The final appraisal document is approved and signed, with acceptance of full responsibility, by the supervising individual who is licensed or certified by the state pursuant to this part, identifies the assisting individual, and identifies the scope of work performed by the individual who assisted in preparation of the appraisal.

SEC. 9. Section 11325 of the Business and Professions Code is amended to read:

11325. (a) The director shall adopt regulations which determine the parameters of appraisal work which may be performed by licensed and certified appraisers.

(b) Regulations adopted by the director pursuant to this section shall, at a minimum, meet the standards established by federal financial institution regulatory agencies as required by Section 1112 of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Public Law 101-73.

SEC. 10. Section 11326 is added to the Business and Professions Code, to read:

11326. (a) The county assessor shall, upon request, disclose information, furnish abstracts, copies of maps, construction permits, notices of completion, sales confirmation, and permit access to all records in his or her office or branch offices, to the Office of Real Estate Appraisers when it is conducting an investigation related to professional conduct of appraisers.

(b) Whenever the assessor discloses information, furnishes abstracts, and all of the above and permits access to records to the Office of Real Estate Appraisers, the office shall reimburse the assessor for any reasonable cost incurred as a result thereof.

SEC. 11. Section 11340 of the Business and Professions Code is amended to read:

11340. The director shall adopt regulations governing the process and the procedure of applying for and renewing a real estate appraiser license and real estate appraiser certificate which shall include, but not be limited to, necessary experience or education, equivalency, and minimum requirements of the Appraisal Foundation, if any.

(a) For purposes of the educational background requirements established under this section, the director shall grant credits for any courses taken on real estate appraisal ethics or practices pursuant to subparagraph (C) of paragraph (2), and subparagraph (C) of paragraph (1), of subdivision (a) of Section 10153.2, or which are deemed by the director to meet standards established pursuant to this part and federal law.

(b) For the purpose of implementing and applying this section, the director shall, with the advice and assistance of the committee, prescribe by regulation "equivalent courses" and "equivalent experience." The experience of employees of an assessor's office or of the State Board of Equalization in setting forth opinions of value of real property for tax purposes shall be deemed equivalent to experience in federally related real estate appraisal activity.

(c) The director shall adopt regulations governing the process of applying for certification as a state certified real estate appraiser which shall meet, at a minimum, the requirements and standards established by the Appraisal Foundation, the Resolution Trust Corporation, and the federal financial institutions regulatory agencies acting pursuant to Section 1112 of the Financial Institutions Reform Recovery and Enforcement Act of 1989, Public Law 101-73 (FIRREA). The director shall, by regulation, require the application for a real estate appraiser license and real estate appraiser certificate to include the applicant's social security number.

SEC. 12. Section 11343 is added to the Business and Professions Code, to read:

11343. (a) Each applicant for licensure and certification as a real estate appraiser shall submit a completed fingerprint card.

(b) The fingerprint card shall be used for the purpose of a criminal record check.

SEC. 13. Section 11344 is added to the Business and Professions Code, to read:

11344. (a) Notwithstanding Sections 11341 and 11342, a temporary license or a temporary certification may be issued pending the outcome of the fingerprint check. A temporary license or temporary certification may be valid for up to 120 days. A temporary license or temporary certificate may be renewed once at

the discretion of the director.

(b) The director may issue a probationary license or certificate as follows:

(1) By term.

(2) By conditions to be observed in the exercise of the privileges granted.

SEC. 14. Section 11350 of the Business and Professions Code is amended to read:

11350. The director shall recognize on a temporary basis the certification or license of an appraiser issued by another state subject to the following:

(a) The property to be appraised is part of a federally related transaction.

(b) The appraiser's business is of a temporary nature.

(c) The appraiser registers with the state as provided by regulations of the director.

(d) The certification or licensing standards of the appraiser's state shall be comparable to the standards required by this part for the specific appraisal to be made.

(e) The appraiser pays the fee set by the director.

SEC. 15. Section 11351 of the Business and Professions Code is amended to read:

11351. Temporary practice is not required under this chapter if the appraiser from another state assists in the performance of the appraisal as provided by Section 11324.

SEC. 16. Section 11360 of the Business and Professions Code is amended to read:

11360. The director shall adopt regulations governing the process and procedures for renewal of a real estate appraiser license or real estate appraiser certificate which shall include, but not be limited to, continuing education requirements.

SEC. 17. Section 11400 of the Business and Professions Code is amended to read:

11400. (a) Initial application fees, including examination fees, shall be paid to the office at the time of application.

(b) All issuance-related fees shall be paid to the office at the time the issuance application is submitted to the office.

(c) All fees shall be paid by cashier's check, certified check, or money order. All fees shall be deemed earned by the office upon receipt and are refundable at the discretion of the director.

SEC. 18. Section 11404 of the Business and Professions Code is amended to read:

11404. The fee for an original or renewal real estate appraiser license shall not exceed six hundred dollars ($600).

SEC. 19. Section 11405 of the Business and Professions Code is amended to read:

11405. The fee for an original or renewal certification as a state certified real estate appraiser shall not exceed seven hundred dollars ($700).

SEC. 20. Section 11406 of the Business and Professions Code is amended to read:

11406. (a) The director shall by regulation establish fees for approval of basic education and continuing education courses or their equivalent, or for the evaluation of petitions of applicants based upon claims of equivalency pursuant to Section 11340. The fees established by regulation shall be sufficient to cover the costs incurred by the office in processing applications for course approvals and petitions for equivalency.

(b) The director shall by regulation establish fees for approval of courses of study required to be taken by applicants for the real estate appraiser license examination and the state certified real estate appraiser license examination. The fees established by regulation shall be sufficient to cover the costs incurred by the office in processing applications for course approvals and petitions for equivalency.

SEC. 21. Section 11408 of the Business and Professions Code is amended to read:

11408. (a) Application for issuance of a license or certificate must be submitted to the office within one year of the successful completion of the examination.

(b) Every state licensed real estate appraiser or state certified real estate appraiser shall pay federal registry fees and state registry processing fees to the state as part of issuance-related fees.

SEC. 22. Section 11421 of the Business and Professions Code is amended to read:

11421. On or before June 30, 1995, the office shall study the need for, and feasibility of, changes to this part in the following areas:

(a) Whether appraisal of some types of real estate-related personalty, such as heavy equipment or business fixtures, merits regulation in this part.

(b) Whether it is appropriate to impose additional supervised training or apprenticeship requirements for appraisers.

(c) The type and sources of information that are and should be available to appraisers.

(d) The appropriateness and potential cost of applying this part to other types of property.

SEC. 23. Section 11422 of the Business and Professions Code is amended to read:

11422. The office shall, on or before February 1, 1994, and at least annually thereafter, transmit to the appraisal subcommittee specified in subdivision (d) of Section 11302 a roster of persons licensed or certified pursuant to this part.

SEC. 24. 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 941

An act to amend Sections 11324 and 11340 of the Business and Professions Code, relating to real estate.

[Approved by Governor October 8, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 11324 of the Business and Professions Code is amended to read:

11324. An individual who is not a state licensed or certified appraiser may assist in the preparation of an appraisal under the following conditions:

(a) The assistance is under the direct supervision of an individual who is a licensed or certified appraiser and the final conclusion as to value is made by a licensed or certified appraiser.

(b) The final appraisal document is approved and signed, with acceptance of full responsibility, by the supervising individual who is licensed or certified by the state pursuant to this part, identifies the assisting individual, and identifies the scope of work performed by the individual who assisted in preparation of the appraisal.

SEC. 2. Section 11340 of the Business and Professions Code is amended to read:

11340. The director shall adopt regulations governing the process and the procedure of applying for a real estate appraiser license and real estate appraiser certificate which shall include, but not be limited to, necessary experience or education, equivalency, and minimum requirements of the Appraisal Foundation, if any.

(a) For purposes of the educational background requirements established under this section, the director shall grant credits for any courses taken on real estate appraisal ethics or practices pursuant to Section 10153.2, or which are deemed by the director to meet standards established pursuant to this part and federal law.

(b) For the purpose of implementing and applying this section, the director shall, with the advice and assistance of the committee, prescribe by regulation "equivalent courses" and "equivalent experience." The experience of employees of an assessor's office or of the State Board of Equalization in setting forth opinions of value of real property for tax purposes shall be deemed equivalent to experience in federally related real estate appraisal activity. Notwithstanding any other law, a holder of a valid real estate broker license shall be deemed to have completed appraisal license application experience requirements upon proof that he or she has accumulated 1,000 hours of experience in the valuation of real property.

(c) The director shall adopt regulations governing the process of applying for certification as a state certified real estate appraiser which shall meet, at a minimum, the requirements and standards established by the Appraisal Foundation, the Resolution Trust Corporation, and the federal financial institutions regulatory agencies acting pursuant to Section 1112 of the Financial Institutions Reform Recovery and Enforcement Act of 1989, Public Law 101-73 (FIRREA). The director shall, by regulation, require the application for a real estate appraiser license and real estate appraiser certificate to include the applicant's social security number.

(d) In evaluating the experience of any applicant for licensure, regardless of the number of hours required of that applicant, the director shall apply the same standards to the experience of all applicants.

CHAPTER 942

An act to amend Sections 42238 and 84751 of the Education Code, and to amend Sections 33030, 33031, 33080.1, 33080.4, 33320.1, 33328.5, 33333.2, 33333.3, 33334.2, 33334.12, 33344.5, 33352, 33353.2, 33354.6, 33367, 33401, 33433, 33445, 33486, 33641, 33675, 33676, and 33678 of, to amend, repeal, and add Section 33413 of, to add Sections 33333.6, 33426.5, 33444.5, 33444.6, 33607.5, and 33607.7 to, to add Article 16.5 (commencing with Section 33490) to Chapter 4 of Part 1 of Division 24 of, and to repeal Sections 33012, 33032, 33338.1, 33348.5, 33353, 33353.1, 33353.3, 33353.4, 33353.5, 33353.6, 33353.7, and 33354.4 of, the Health and Safety Code, and to repeal Sections 7200.1 and 7202.6 of the Revenue and Taxation Code, relating to redevelopment.

[Approved by Governor October 8, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. This act shall be known, and may be cited, as the Community Redevelopment Law Reform Act of 1993.

SEC. 1.3. Section 42238 of the Education Code is amended to read:

42238. (a) For the 1984–85 fiscal year and each fiscal year thereafter, the county superintendent of schools shall determine a revenue limit for each school district in the county pursuant to this section.

(b) The base revenue limit for the current fiscal year shall be determined by adding to the base revenue limit for the prior fiscal year the following amounts:

(1) The inflation adjustment specified in Section 42238.1.

(2) For the 1985–86 and 1986–87 fiscal years only, the equalization adjustment specified in Section 42238.4.

(3) For the 1985–86 fiscal year, the amount received per unit of average daily attendance in the 1984–85 fiscal year pursuant to Section 42238.7.

(4) For the 1985–86, 1986–87, and 1987–88 fiscal years, the amount per unit of average daily attendance received in the prior fiscal year pursuant to Section 42238.8.

(c) Except for districts subject to subdivision (d), the base revenue limit computed pursuant to subdivision (b) shall be multiplied by the district average daily attendance computed pursuant to Section 42238.5.

(d) For districts for which the number of units of average daily attendance determined pursuant to Section 42238.5 is greater for the current fiscal year than for the 1982–83 fiscal year, compute the following amount, in lieu of the amount computed pursuant to subdivision (c):

(1) Multiply the base revenue limit computed pursuant to subdivision (c) by the average daily attendance computed pursuant to Section 42238.5 for the 1982–83 fiscal year.

(2) Multiply the lesser of the amount in subdivision (c) or 1.05 times the statewide average base revenue limit per unit of average daily attendance for districts of similar type for the current fiscal year by the difference between the average daily attendance computed pursuant to Section 42238.5 for the current and 1982–83 fiscal years.

(3) Add the amounts in paragraphs (1) and (2).

(e) The base revenue limit per unit of average daily attendance shall be the lesser of the following amounts:

(1) The amount determined in subdivision (b).

(2) The amount computed pursuant to Section 42238 for the prior fiscal year divided by the prior fiscal year revenue limit average daily attendance times the sum of 1.0 and twice the percentage increase in revenue limits computed pursuant to Section 42238.1 for the current fiscal year.

(f) For districts electing to compute units of average daily attendance pursuant to subdivision (a) of Section 42238.5, the amount computed pursuant to Article 4 (commencing with Section 42280) shall be added to the amount computed in subdivision (c) or (d), as appropriate.

(g) For the 1984–85 fiscal year only, the county superintendent shall reduce the total revenue limit computed in this section by the amount of the decreased employer contributions to the Public Employees' Retirement System resulting from enactment of Chapter 330 of the Statutes of 1982, offset by any increase in those contributions, as of the 1983–84 fiscal year, resulting from subsequent changes in employer contribution rates.

The reduction shall be calculated as follows:

(1) Determine the amount of employer contributions that would have been made in the 1983–84 fiscal year if the applicable Public Employees' Retirement System employer contribution rate in effect immediately prior to the enactment of Chapter 330 of the Statutes of 1982 were in effect during the 1983–84 fiscal year.

(2) Subtract from the amount determined in paragraph (1) the greater of subparagraph (A) or (B):

(A) The amount of employer contributions that would have been made in the 1983–84 fiscal year if the applicable Public Employees' Retirement System employer contribution rate in effect immediately after the enactment of Chapter 330 of the Statutes of 1982 were in effect during the 1983–84 fiscal year.

(B) The actual amount of employer contributions made to the Public Employees' Retirement System in the 1983–84 fiscal year.

(3) For purposes of this subdivision, employer contributions to the Public Employees' Retirement System for any of the following shall be excluded from the calculation specified above:

(A) Positions supported totally by federal funds that were subject to supplanting restrictions.

(B) Positions supported by funds received pursuant to Section 42243.6.

(C) Positions supported, to the extent of employer contributions not exceeding twenty-five thousand dollars ($25,000) by any single educational agency, from a revenue source determined on the basis of equity to be properly excludable from the provisions of this subdivision by the Superintendent of Public Instruction with the approval of the Director of Finance.

(4) For accounting purposes, the reduction made by this subdivision may be reflected as an expenditure from appropriate sources of revenue as directed by the Superintendent of Public Instruction.

(h) The Superintendent of Public Instruction shall apportion to each school district the amount determined in this section less the sum of:

(1) The district's property tax revenue received pursuant to Chapter 3 (commencing with Section 75) and Chapter 6 (commencing with Section 95) of, Part 0.5 of Division 1 of the Revenue and Taxation Code.

(2) The amount, if any, received pursuant to Part 18.5 (commencing with Section 38101) of Division 2 of the Revenue and Taxation Code.

(3) The amount, if any, received pursuant to Chapter 3 (commencing with Section 16140) of Part 1 of Division 4 of Title 2 of the Government Code.

(4) Prior years taxes and taxes on the unsecured roll.

(5) Fifty percent of the amount received pursuant to Section 41603.

(6) The amount of motor vehicle license fees distributed pursuant to Section 11003.4 of the Revenue and Taxation Code.

(7) The amount, if any, received pursuant to any provision of the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code), except for any amount received pursuant to Section 33401 or 33676 of the Health and Safety Code that is used for land acquisition, facility construction, reconstruction, or remodeling, or deferred maintenance, and except for any amount received pursuant to Section 33492.15, 33607.5, or 33607.7 of the Health and Safety Code that is allocated exclusively for educational facilities.

(i) This section shall become operative July 1, 1984.

SEC. 1.5. Section 84751 of the Education Code, as added by Chapter 66 of the Statutes of 1993, is amended to read:

84751. In calculating each community college district's revenue level for each fiscal year pursuant to subdivision (a) of Section 84750, the chancellor shall subtract, from the total revenues owed, all of the following:

(a) The local property tax revenue specified by law for general operating support, exclusive of bond interest and redemption.

(b) Ninety-eight percent of the fee revenues collected pursuant to Section 76300 and moneys received for fees defrayed pursuant to subdivisions (g) and (h) of that section.

(c) Motor vehicle license fees received pursuant to Section 11003.4 of the Revenue and Taxation Code.

(d) Timber yield tax revenue received pursuant to Section 38905 of the Revenue and Taxation Code.

(e) Any amounts received pursuant to Section 33492.15, 33607.5, or 33607.7 of the Health and Safety Code that are allocated exclusively for educational facilities.

SEC. 2. Section 33012 of the Health and Safety Code is repealed.

SEC. 3. Section 33030 of the Health and Safety Code is amended to read:

33030. (a) It is found and declared that there exist in many communities blighted areas which constitute physical and economic liabilities, requiring redevelopment in the interest of the health, safety, and general welfare of the people of these communities and of the state.

(b) A blighted area is one that contains both of the following:

(1) An area that is predominantly urbanized, as that term is defined in Section 33320.1, and is an area in which the combination of conditions set forth in Section 33031 is so prevalent and so substantial that it causes a reduction of, or lack of, proper utilization

of the area to such an extent that it constitutes a serious physical and economic burden on the community which cannot reasonably be expected to be reversed or alleviated by private enterprise or governmental action, or both, without redevelopment.

(2) An area that is characterized by either of the following:

(A) One or more conditions set forth in any paragraph of subdivision (a) of Section 33031 and one or more conditions set forth in any paragraph of subdivision (b) of Section 33031.

(B) The condition described in paragraph (4) of subdivision (a) of Section 33031.

(c) A blighted area also may be one that contains the conditions described in subdivision (b) and is, in addition, characterized by the existence of inadequate public improvements, parking facilities, or utilities.

SEC. 4. Section 33031 of the Health and Safety Code is amended to read:

33031. (a) This subdivision describes physical conditions that cause blight:

(1) Buildings in which it is unsafe or unhealthy for persons to live or work. These conditions can be caused by serious building code violations, dilapidation and deterioration, defective design or physical construction, faulty or inadequate utilities, or other similar factors.

(2) Factors that prevent or substantially hinder the economically viable use or capacity of buildings or lots. This condition can be caused by a substandard design, inadequate size given present standards and market conditions, lack of parking, or other similar factors.

(3) Adjacent or nearby uses that are incompatible with each other and which prevent the economic development of those parcels or other portions of the project area.

(4) The existence of subdivided lots of irregular form and shape and inadequate size for proper usefulness and development that are in multiple ownership.

(b) This subdivision describes economic conditions that cause blight:

(1) Depreciated or stagnant property values or impaired investments, including, but not necessarily limited to, those properties containing hazardous wastes that require the use of agency authority as specified in Article 12.5 (commencing with Section 33459).

(2) Abnormally high business vacancies, abnormally low lease rates, high turnover rates, abandoned buildings, or excessive vacant lots within an area developed for urban use and served by utilities.

(3) A lack of necessary commercial facilities that are normally found in neighborhoods, including grocery stores, drug stores, and banks and other lending institutions.

(4) Residential overcrowding or an excess of bars, liquor stores, or other businesses that cater exclusively to adults, that has led to

problems of public safety and welfare.

(5) A high crime rate that constitutes a serious threat to the public safety and welfare.

SEC. 5. Section 33032 of the Health and Safety Code is repealed.

SEC. 6. Section 33080.1 of the Health and Safety Code is amended to read:

33080.1. Every redevelopment agency shall present an annual report to its legislative body within six months of the end of the agency's fiscal year. The annual report shall contain all of the following:

(a) (1) An independent financial audit report for the previous fiscal year. "Audit report" means an examination of, and opinion on, the financial statements of the agency which present the results of the operations and financial position of the agency, including all financial activities with moneys required to be held in a separate Low and Moderate Income Housing Fund pursuant to Section 33334.3, and including an opinion with respect to the accuracy of the statement of the information contained in the resolution adopted pursuant to Section 33682 and the existence of other funds to make the payments required by Section 33681. This audit shall be conducted in accordance with generally accepted auditing standards and the rules governing audit reports promulgated by the State Board of Accountancy. The audit report shall also include an opinion of the agency's compliance with laws, regulations, and administrative requirements governing activities of the agency.

(2) However, the legislative body may elect to omit from inclusion in the audit report any distinct activity of the agency that is funded exclusively by the federal government and that is subject to audit by the federal government.

(b) A fiscal statement for the previous fiscal year that contains the information required pursuant to Section 33080.5.

(c) A description of the agency's activities affecting housing and displacement which contains the information required by Sections 33080.4 and 33080.7.

(d) Any other information which the agency believes useful to explain its programs, including, but not limited to, the number of jobs created as a result of its activities.

SEC. 7. Section 33080.4 of the Health and Safety Code is amended to read:

33080.4. (a) For the purposes of compliance with subdivision (c) of Section 33080.1, the description of the agency's activities shall contain the following information regardless of whether each activity is funded exclusively by the state or federal government, for each project area and for the agency overall:

(1) Pursuant to Section 33413, the total number of nonelderly and elderly households, including separate subtotals of the numbers of very low income households, other lower income households, and persons and families of moderate income, that were displaced or moved from their dwelling units as part of a redevelopment project

of the agency during the previous fiscal year.

(2) Pursuant to Section 33413.5, the total number of nonelderly and elderly households, including separate subtotals of the numbers of very low income households, other lower income households, and persons and families of moderate income, that the agency estimates will be displaced or will move from their dwellings as part of a redevelopment project of the agency during the present fiscal year and the date of adoption of a replacement housing plan for each project area subject to Section 33413.5.

(3) The total number of dwelling units housing very low income households, other lower income households, and persons and families of moderate income, respectively, which have been destroyed or removed from the low- or moderate-income housing market during the previous fiscal year as part of a redevelopment project of the agency, specifying the number of those units which are not subject to Section 33413.

(4) The total numbers of agency-assisted dwelling units which were constructed, rehabilitated, acquired, or subsidized during the previous fiscal year for occupancy at an affordable housing cost by elderly persons and families, but only if the units are restricted by agreement or ordinance for occupancy by the elderly, and by very low income households, other lower income households, and persons and families of moderate income, respectively, specifying those units which are not currently so occupied, those units which have replaced units destroyed or removed pursuant to subdivision (a) of Section 33413, and the length of time any agency-assisted units are required to remain available at affordable costs.

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

(6) The status and use of the Low and Moderate Income Housing Fund created pursuant to Section 33334.3, including information on the use of this fund for very low income households, other lower income households, and persons and families of moderate income, respectively. If the Low and Moderate Income Housing Fund is used to subsidize the cost of onsite or offsite improvements, then the description of the agency's activities shall include the number of housing units affordable to persons and families of low or moderate income which have been directly benefited by the onsite or offsite improvements.

(7) A compilation of the annual reports obtained by the agency under Section 33418 including identification of the number of units occupied by persons and families of moderate income, other lower

income households, and very low income households, respectively, and identification of projects in violation of this part or any agreements in relation to affordable units.

(8) The total amount of funds expended for planning and general administrative costs as defined in subdivisions (d) and (e) of Section 33334.3.

(9) Any other information which the agency believes useful to explain its housing programs, including, but not limited to, housing for persons and families of other than low and moderate income.

(10) The total number of dwelling units for very low income households, other lower income households, and persons and families of moderate income to be constructed under the terms of an executed agreement or contract and the name and execution date of the agreement or contract. These units may only be reported for a period of two years from the execution date of the agreement or contract.

(11) The date and amount of all deposits and withdrawals of moneys deposited to and withdrawn from the Low and Moderate Income Housing Fund.

(b) As used in this section:

(1) "Elderly," has the same meaning as specified in Section 50067.

(2) "Persons and families of moderate income," has the same meaning as specified in subdivision (b) of Section 50093.

(3) "Other lower income households," has the same meaning as "lower income households" as specified in Section 50079.5, exclusive of very low income households.

(4) "Persons and families of low or moderate income," has the same meaning as specified in Section 50093.

(5) "Very low income households," has the same meaning as specified in Section 50105.

(c) Costs associated with preparing the report required by this section may be paid with moneys from the Low and Moderate Income Housing Fund.

SEC. 7.5. Section 33320.1 of the Health and Safety Code is amended to read:

33320.1. (a) "Project area" means, except as provided in Section 33320.2, 33320.3, or 33320.4, a predominantly urbanized area of a community which is a blighted area, the redevelopment of which is necessary to effectuate the public purposes declared in this part, and which is selected by the planning commission pursuant to Section 33322.

(b) As used in this section, "predominantly urbanized" means that not less than 80 percent of the land in the project area :

(1) Has been or is developed for urban uses.

(2) Is characterized by the conditions described in paragraph (4) of subdivision (a) of Section 33031.

(3) Is an integral part of one or more areas developed for urban uses which are surrounded or substantially surrounded by parcels which have been or are developed for urban uses. Parcels separated

by only an improved right-of-way shall be deemed adjacent for the purpose of this subdivision.

(c) For the purposes of this section, a parcel of property as shown on the official maps of the county assessor is developed if that parcel is developed in a manner which is either consistent with zoning or is otherwise permitted under law.

(d) The requirement that a project be predominantly urbanized shall apply only to a project area for which a final redevelopment plan is adopted on or after January 1, 1984, or to an area which is added to a project area by an amendment to a redevelopment plan, which amendment is adopted on or after January 1, 1984.

SEC. 7.7. Section 33328.5 of the Health and Safety Code is amended to read:

33328.5. (a) If a redevelopment agency proposes to use the equalized assessment roll for the year following the equalized assessment roll which the redevelopment agency advised it would use pursuant to Section 33328, the redevelopment agency shall, prior to the adoption of the redevelopment plan using that different equalized assessment roll, either notify the county officials, taxing agencies, and the State Board of Equalization of the change in the equalized assessment roll that it proposes to use for the allocation of taxes pursuant to Section 33670 or prepare a report containing the information specified in subdivisions (a), (b), (c), (d), (e), and (f) of Section 33328.

(b) Upon receipt of a notice pursuant to subdivision (a), the county officials charged with the responsibility of allocating taxes under Section 33670 and 33670.5 shall prepare and deliver to the redevelopment agency a report containing the information specified in subdivisions (a), (b), (c), (d), (e), and (f) of Section 33328. The report shall be prepared and delivered within the time periods specified in Section 33328 for reports prepared pursuant to that section. If a redevelopment agency gives the notice specified in subdivision (a), the redevelopment plan specified in the notice shall not be adopted until the time period for delivery of the report has expired.

(c) At least 14 days prior to the public hearing on the redevelopment plan for which the redevelopment agency proposes to use a different equalized assessment roll, the redevelopment agency shall prepare and deliver to each taxing agency a supplementary report analyzing the effect of the use of the different equalized assessment roll which shall include those subjects required by subdivisions (b), (c), and (m) of Section 33352. In lieu of a supplementary report, a redevelopment agency may include in the report required to be prepared pursuant to Section 33352, the information required to be included in the supplementary report.

(d) A redevelopment agency shall not be required to prepare a subsequent preliminary report specified in Section 33344.5, unless the report prepared pursuant to subdivision (b) states that the total assessed value in the project area is less than the total assessed value

in the project area contained in the original report prepared pursuant to Section 33328, in which case a new preliminary report shall be prepared.

(e) The use of a different assessment roll pursuant to this section shall meet the requirements of Section 16 of Article XVI of the California Constitution.

(f) This section shall only apply to redevelopment plans adopted on or after January 1, 1993. The Legislature finds and declares that the enactment of this section shall not be deemed to invalidate or limit the adoption of redevelopment plans pursuant to a different procedure prior to January 1, 1993.

SEC. 8. Section 33333.2 of the Health and Safety Code is amended to read:

33333.2. (a) A redevelopment plan containing the provisions set forth in Section 33670 shall contain all of the following limitations. A redevelopment plan that does not contain the provisions set forth in Section 33670 shall contain the limitations in paragraph (5):

(1) (A) A time limit on the establishing of loans, advances, and indebtedness to be paid with the proceeds of property taxes received pursuant to Section 33670 to finance in whole or in part the redevelopment project, which may not exceed 20 years from the adoption of the redevelopment plan, except by amendment of the redevelopment plan as authorized by subparagraph (B). This limit, however, shall not prevent agencies from incurring debt to be paid from the Low and Moderate Income Housing Fund or establishing more debt in order to fulfill the agency's housing obligations under Section 33413. The loans, advances, or indebtedness may be repaid over a period of time longer than this time limit as provided in this section. No loans, advances, or indebtedness to be repaid from the allocation of taxes shall be established or incurred by the agency beyond this time limitation.

(B) The time limitation established by subparagraph (A) may be extended only by amendment of the redevelopment plan after the agency finds, based on substantial evidence, that (i) significant blight remains within the project area; and (ii) this blight cannot be eliminated without the establishment of additional debt. However, this amended time limitation may not exceed 30 years from the effective date of the ordinance adopting the redevelopment plan.

(2) A time limit, not to exceed 30 years from the adoption of the redevelopment plan, on the effectiveness of the redevelopment plan. After the time limit on the effectiveness of the redevelopment plan, the agency shall have no authority to act pursuant to the redevelopment plan except to pay previously incurred indebtedness and to enforce existing covenants or contracts, unless the agency has not completed its housing obligations pursuant to Section 33413, in which case the agency shall retain its authority to implement requirements under Section 33413, including its ability to incur and pay indebtedness for this purpose, and shall use this authority to complete these housing obligations as soon as is reasonably possible.

(3) A time limit, not to exceed 45 years from the adoption of the redevelopment plan, to repay indebtedness with the proceeds of property taxes received pursuant to Section 33670. After the time limit established pursuant to this paragraph, an agency may not receive property taxes pursuant to Section 33670.

(4) A time limit, not to exceed 12 years from the adoption of the redevelopment plan, for commencement of eminent domain proceedings to acquire property within the project area. This time limitation may be extended only by amendment of the redevelopment plan.

(b) This section shall apply only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) of this chapter on or after January 1, 1994.

SEC. 8.5. Section 33333.3 of the Health and Safety Code is amended to read:

33333.3. The redevelopment agency shall send a notice of preparation and a copy of a draft environmental impact report to each affected taxing entity, as defined in Section 33353.2, prepared in accordance with the provisions of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and regulations adopted pursuant thereto.

SEC. 9. Section 33333.6 is added to the Health and Safety Code, to read:

33333.6. The limitations of this section shall apply to every redevelopment plan adopted on or before December 31, 1993.

(a) (1) The time limit on the establishing of loans, advances, and indebtedness adopted pursuant to paragraph (2) of subdivision (a) of Section 33333.2 or paragraph (2) of subdivision (a) of Section 33333.4 shall not exceed 20 years from the adoption of the redevelopment plan or January 1, 2004, whichever is later. This limit, however, shall not prevent agencies from incurring debt to be paid from the Low and Moderate Income Housing Fund or establishing more debt in order to fulfill the agency's housing obligations under Section 33413.

(2) The time limitation established by this subdivision may be extended, only by amendment of the redevelopment plan, after the agency finds, based on substantial evidence that: (A) significant blight remains within the project area; and (B) this blight cannot be eliminated without the establishment of additional debt. However, this amended time limitation may not exceed 10 years from the time limit established pursuant to this subdivision or the time limit on the effectiveness of the plan established pursuant to subdivision (b), whichever is earlier.

(b) The effectiveness of every redevelopment plan to which this section applies shall terminate at a date which shall not exceed 40 years from the adoption of the redevelopment plan or January 1, 2009, whichever is later. After the time limit on the effectiveness of the redevelopment plan, the agency shall have no authority to act

pursuant to the redevelopment plan except to pay previously incurred indebtedness and to enforce existing covenants, contracts, or other obligations.

(c) Except as provided in subdivisions (g) and (h), a redevelopment agency shall not pay indebtedness or receive property taxes pursuant to Section 33670 after 10 years from the termination of the effectiveness of the redevelopment plan pursuant to subdivision (b).

(d) (1) If plans which had different dates of adoption were merged on or before December 31, 1993, the time limitations required by this section shall be counted individually for each merged plan from the date of the adoption of each plan. If an amendment to a redevelopment plan added territory to the project area on or before December 31, 1993, the time limitations required by this section shall commence, with respect to the redevelopment plan, from the date of the adoption of the redevelopment plan, and, with respect to the added territory, from the date of the adoption of the amendment.

(2) If plans that had different dates of adoption are merged on or after January 1, 1994, the time limitations required by this section shall be counted individually for each merged plan from the date of the adoption of each plan.

(e) (1) Unless a redevelopment plan adopted prior to January 1, 1994, contains all of the limitations required by this section and each of these limitations does not exceed the applicable time limits established by this section, the legislative body, acting by ordinance on or before December 31, 1994, shall amend every redevelopment plan adopted prior to January 1, 1994, either to amend an existing time limit that exceeds the applicable time limit established by this section or to establish time limits that do not exceed the provisions of subdivision (a), (b), or (c).

(2) The limitations established in the ordinance adopted pursuant to this section shall apply to the redevelopment plan as if the redevelopment plan had been amended to include those limitations. However, in adopting the ordinance required by this section, neither the legislative body nor the agency is required to comply with Article 12 (commencing with Section 33450) or any other provision of this part relating to the amendment of redevelopment plans.

(f) (1) If a redevelopment plan adopted prior to January 1, 1994, contains one or more limitations required by this section, and the limitation does not exceed the applicable time limit required by this section, this section shall not be construed to require an amendment of this limitation.

(2) A redevelopment plan adopted prior to January 1, 1994, that has a limitation shorter than the terms provided in this section may be amended to extend the limitation, within the applicable time limit established by this section, pursuant to Section 33354.6.

(g) The limitations established in the ordinance adopted pursuant to this section shall not be applied to limit allocation of taxes to an

agency to the extent required to eliminate project deficits created under subdivision (e) of Section 33320.5, subdivision (g) of Section 33334.6, or subdivision (d) of Section 33487, in accordance with the plan adopted pursuant thereto for the purpose of eliminating the deficits or to implement a replacement housing program pursuant to Section 33413. In the event of a conflict between these limitations and the obligations under Section 33334.6 or to implement a replacement housing program pursuant to Section 33413, the legislative body shall amend the ordinance adopted pursuant to this section to modify the limitations to the extent necessary to permit compliance with the plan adopted pursuant to subdivision (g) of Section 33334.6 and to allow full expenditure of moneys in the agency's Low and Moderate Income Housing Fund in accordance with Section 33334.3 or to permit implementation of the replacement housing program pursuant to Section 33413. The procedure for amending the ordinance pursuant to this subdivision shall be the same as for adopting the ordinance under subdivision (e).

(h) This section shall not be construed to affect the validity of any bond, indebtedness, or other obligation, including any mitigation agreement entered into pursuant to Section 33401, authorized by the legislative body, or the agency pursuant to this part, prior to January 1, 1994. Nor shall this section be construed to affect the right of an agency to receive property taxes, pursuant to Section 33670, to pay the indebtedness or other obligation.

(i) A redevelopment agency shall not pay indebtedness or receive property taxes pursuant to Section 33670, with respect to a redevelopment plan adopted prior to January 1, 1994, after the date identified in subdivision (c) or the date identified in the redevelopment plan, whichever is earlier, except as provided in paragraph (2) of subdivision (f) or in subdivision (h).

(j) The Legislature finds and declares that the amendments made to this section by the act that adds this subdivision are intended to add limitations to the law on and after January 1, 1994, and are not intended to change or express legislative intent with respect to the law prior to that date. It is not the intent of the Legislature to affect the merits of any litigation regarding the ability of a redevelopment agency to sell bonds for a term that exceeds the limit of a redevelopment plan pursuant to law that existed prior to January 1, 1994.

SEC. 10. Section 33334.2 of the Health and Safety Code is amended to read:

33334.2. (a) Not less than 20 percent of all taxes which are allocated to the agency pursuant to Section 33670 shall be used by the agency for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing cost, as defined by Section 50052.5, to persons and families of low or moderate income, as defined in Section 50093, and very low income households, as defined in Section 50105, unless one of the following findings is made annually by resolution:

(1) (A) That no need exists in the community to improve, increase, or preserve the supply of low- and moderate-income housing, including housing for very low income households in a manner which would benefit the project area and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, including its share of the regional housing needs of very low income households and persons and families of low or moderate income.

(B) This finding shall only be made if the housing element of the community's general plan demonstrates that the community does not have a need to improve, increase, or preserve the supply of low- and moderate-income housing available at affordable housing cost to persons and families of low or moderate income and to very low income households. This finding shall only be made if it is consistent with the planning agency's annual report to the legislative body on implementation of the housing element required by subdivision (b) of Section 65400 of the Government Code. No agency of a charter city shall make this finding unless the planning agency submits the report pursuant to subdivision (b) of Section 65400 of the Government Code. This finding shall not take effect until the agency has complied with subdivision (b) of this section.

(2) (A) That some stated percentage less than 20 percent of the taxes which are allocated to the agency pursuant to Section 33670 is sufficient to meet the housing needs of the community, including its share of the regional housing needs of persons and families of low or moderate income and very low income households, and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(B) This finding shall only be made if the housing element of the community's general plan demonstrates that a percentage of less than 20 percent will be sufficient to meet the community's need to improve, increase, or preserve the supply of low- and moderate-income housing available at affordable housing cost to persons and families of low or moderate income and to very low income households. This finding shall only be made if it is consistent with the planning agency's annual report to the legislative body on implementation of the housing element required by subdivision (b) of Section 65400 of the Government Code. No agency of a charter city shall make this finding unless the planning agency submits the report pursuant to subdivision (b) of Section 65400 of the Government Code. This finding shall not take effect until the agency has complied with subdivision (b) of this section.

(C) For purposes of making the findings specified in this paragraph and paragraph (1), the housing element of the general plan of a city or county shall be current, shall have been submitted to the Department of Housing and Community Development within the applicable time period, and shall be in compliance with Article

10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(3) (A) That the community is making a substantial effort to meet its existing and projected housing needs, including its share of the regional housing needs, with respect to persons and families of low and moderate income, particularly very low income households, as identified in the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, and that this effort, consisting of direct financial contributions of local funds used to increase and improve the supply of housing affordable to persons and families of low or moderate income and very low income households, is equivalent in impact to the funds otherwise required to be set aside pursuant to this section. In addition to any other local funds, these direct financial contributions may include federal or state grants paid directly to a community and which the community has the discretion of using for the purposes for which moneys in the Low and Moderate Income Housing Fund may be used. The legislative body shall consider the need which can be reasonably foreseen because of displacement of persons and families of low or moderate income or very low income households from within, or adjacent to, the project area, because of increased employment opportunities, or because of any other direct or indirect result of implementation of the redevelopment plan. No finding under this subdivision may be made until the community has provided or ensured the availability of replacement dwelling units as defined in Section 33411.2 and until it has complied with the provisions of Article 9 (commencing with Section 33410).

(B) In making the determination that other financial contributions are equivalent in impact pursuant to this subdivision, the agency shall include only those financial contributions which are directly related to programs or activities authorized under subdivision (e) of this section.

(C) The authority for making the finding specified in this paragraph shall expire on June 30, 1993, except that the expiration shall not be deemed to impair contractual obligations to bondholders or private entities incurred prior to May 1, 1991, and made in reliance on the provisions of this paragraph. Agencies which make this finding after June 30, 1993, shall show evidence that the agency entered into the specific contractual obligation with the specific intention of making a finding under this paragraph in order to provide sufficient revenues to pay off the indebtedness.

(b) Within 10 days following the making of a finding under either paragraph (1) or (2) of subdivision (a), the agency shall send the Department of Housing and Community Development a copy of the finding, including the factual information supporting the finding and other factual information in the housing element that demonstrates that either (1) the community does not need to increase, improve, or preserve the supply of housing for low- and moderate-income

households, including very low income households, or (2) a percentage less than 20 percent will be sufficient to meet the community's need to improve, increase, and preserve the supply of housing for low- and moderate-income households, including very low income households. Within 10 days following the making of a finding under paragraph (3) of subdivision (a), the agency shall send the Department of Housing and Community Development a copy of the finding, including the factual information supporting the finding that the community is making a substantial effort to meet its existing and projected housing needs. Agencies which make this finding after June 30, 1993, shall also submit evidence to the department of its contractual obligations with bondholders or private entities incurred prior to May 1, 1991, and made in reliance on this finding.

(c) In any litigation to challenge or attack a finding made under paragraph (1), (2), or (3) of subdivision (a), the burden shall be upon the agency to establish that the finding is supported by substantial evidence in light of the entire record before the agency. If an agency is determined by a court to have knowingly misrepresented any material facts regarding the community's share of its regional housing need for low- and moderate-income housing, including very low income households, or the community's production record in meeting its share of the regional housing need pursuant to the report required by subdivision (b) of Section 65400 of the Government Code, the agency shall be liable for all court costs and plaintiff's attorney's fees, and shall be required to allocate not less than 25 percent of the agency's tax increment revenues to its Low and Moderate Income Housing Fund in each year thereafter.

(d) Nothing in this section shall be construed as relieving any other public entity or entity with the power of eminent domain of any legal obligations for replacement or relocation housing arising out of its activities.

(e) In carrying out the purposes of this section, the agency may exercise any or all of its powers, including the following:

(1) Acquire real property or building sites subject to Section 33334.16.

(2) Improve real property or building sites with onsite or offsite improvements, but only if either (A) the improvements are made as part of a program which results in the new construction or rehabilitation of affordable housing units for low- or moderate-income persons that are directly benefited by the improvements or (B) the agency finds that the improvements are necessary to eliminate a specific condition that jeopardizes the health or safety of existing low- or moderate-income residents.

(3) Donate real property to private or public persons or entities.

(4) Finance insurance premiums pursuant to Section 33136.

(5) Construct buildings or structures.

(6) Acquire buildings or structures.

(7) Rehabilitate buildings or structures.

(8) Provide subsidies to, or for the benefit of, very low income

households, as defined by Section 50105, lower income households, as defined by Section 50079.5, or persons and families of low or moderate income, as defined by Section 50093, to the extent those households cannot obtain housing at affordable costs on the open market. Housing units available on the open market are those units developed without direct government subsidies.

(9) Develop plans, pay principal and interest on bonds, loans, advances, or other indebtedness, or pay financing or carrying charges.

(10) Maintain the community's supply of mobilehomes.

(11) Preserve the availability to lower income households of affordable housing units in housing developments which are assisted or subsidized by public entities and which are threatened with imminent conversion to market rates.

(f) The agency may use these funds to meet, in whole or in part, the replacement housing provisions in Section 33413. However, nothing in this section shall be construed as limiting in any way the requirements of that section.

(g) The agency may use these funds inside or outside the project area. The agency may only use these funds outside the project area upon a resolution of the agency and the legislative body that the use will be of benefit to the project. The determination by the agency and the legislative body shall be final and conclusive as to the issue of benefit to the project area. The Legislature finds and declares that the provision of replacement housing pursuant to Section 33413 is always of benefit to a project. Unless the legislative body finds, before the redevelopment plan is adopted, that the provision of low- and moderate-income housing outside the project area will be of benefit to the project, the project area shall include property suitable for low- and moderate-income housing.

(h) The Legislature finds and declares that expenditures or obligations incurred by the agency pursuant to this section shall constitute an indebtedness of the project.

(i) The requirements of this section shall only apply to taxes allocated to a redevelopment agency for which a final redevelopment plan is adopted on or after January 1, 1977, or for any area which is added to a project by an amendment to a redevelopment plan, which amendment is adopted on or after the effective date of this section. An agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project for which a redevelopment plan was adopted prior to January 1, 1977, subject to any indebtedness incurred prior to the election.

SEC. 11. Section 33334.12 of the Health and Safety Code is amended to read:

33334.12. (a) (1) Upon failure of the agency to expend or encumber excess surplus in the Low and Moderate Income Housing Fund within one year from the date the moneys become excess surplus, as defined in paragraph (1) of subdivision (g), the agency

shall do either of the following:

(A) Disburse voluntarily its excess surplus to the county housing authority or to another public agency exercising housing development powers within the territorial jurisdiction of the agency in accordance with subdivision (b).

(B) Expend or encumber its excess surplus within two additional years.

(2) If an agency, after three years has elapsed from the date that the moneys become excess surplus, has not expended or encumbered its excess surplus, the agency shall be subject to sanctions pursuant to subdivision (e), until the agency has expended or encumbered its excess surplus plus an additional amount, equal to 50 percent of the amount of the excess surplus. The additional expenditure shall not be from the agency's Low and Moderate Income Housing Fund, but shall be used in a manner that meets all requirements for expenditures from that fund.

(b) The housing authority or other public agency to which the money is transferred shall utilize the moneys for the purposes of, and subject to the same restrictions that are applicable to, the redevelopment agency under this part, and for that purpose may exercise all of the powers of a housing authority under Part 2 (commencing with Section 34200) to an extent not inconsistent with these limitations.

(c) Notwithstanding Section 34209 or any other provision of law, for the purpose of accepting a transfer of, and using, moneys pursuant to this section, the housing authority of a county or other public agency may exercise its powers within the territorial jurisdiction of a city redevelopment agency located in that county.

(d) The amount of excess surplus that shall be transferred to the housing authority or other public agency because of a failure of the redevelopment agency to expend or encumber excess surplus within one year shall be the amount of the excess surplus that is not so expended or encumbered. The housing authority or other public agency to which the moneys are transferred shall expend or encumber these moneys for authorized purposes not later than three years after the date these moneys were transferred from the Low and Moderate Income Housing Fund.

(e) Until a time when the agency has expended or encumbered excess surplus moneys pursuant to subdivision (a), the agency shall be prohibited from encumbering any funds or expending any moneys derived from any source, except that the agency may encumber funds and expend moneys to pay the following obligations, if any, that were incurred by the agency prior to three years from the date the moneys became excess surplus:

(A) Bonds, notes, interim certificates, debentures, or other obligations issued by an agency, whether funded, refunded, assumed, or otherwise, pursuant to Article 5 (commencing with Section 33640).

(B) Loans or moneys advanced to the agency, including, but not

limited to, loans from federal, state, or local agencies, or a private entity.

(C) Contractual obligations which, if breached, could subject the agency to damages or other liabilities or remedies.

(D) Obligations incurred pursuant to Section 33445.

(E) Indebtedness incurred pursuant to Section 33334.2 or 33334.6.

(F) Obligations incurred pursuant to Section 33401.

(G) An amount, to be expended for the operation and administration of the agency, that may not exceed 75 percent of the amount spent for those purposes in the preceding fiscal year.

(f) Nothing in this section shall be construed to limit any authority a redevelopment agency may have under other provisions of this part to contract with a housing authority for increasing or improving the community's supply of low- and moderate-income housing.

(g) For purposes of this section:

(1) "Excess surplus" means any unexpended and unencumbered amount in an agency's Low and Moderate Income Housing Fund that exceeds the greater of one million dollars ($1,000,000) or the aggregate amount deposited into the Low and Moderate Income Housing Fund pursuant to Sections 33334.2 and 33334.6 during the agency's preceding four fiscal years. The first fiscal year to be included in this computation is the 1989–90 fiscal year, and the first date on which an excess surplus may exist is July 1, 1994.

(2) Moneys shall be deemed encumbered if committed pursuant to a legally enforceable contract or agreement for expenditure for purposes specified in Section 33334.2 or 33334.3.

(3) (A) For purposes of determining whether an excess surplus exists, it is the intent of the Legislature to give credit to agencies which convey land for less than fair market value, on which low- and moderate-income housing is built or is to be built if at least 49 percent of the units developed on the land are available at affordable housing cost to lower income households for at least the time specified in subdivision (e) of Section 33334.3, and otherwise comply with all of the provisions of this division applicable to expenditures of moneys from a low- and moderate-income housing fund established pursuant to Section 33334.3. Therefore, for the sole purpose of determining the amount, if any, of an excess surplus, an agency may make the following calculation: if an agency sells, leases, or grants land acquired with moneys from the Low and Moderate Income Housing Fund, established pursuant to Section 33334.3, for an amount which is below fair market value, and if at least 49 percent of the units constructed or rehabilitated on the land are affordable to lower income households, as defined in Section 50079.5, the difference between the fair market value of the land and the amount the agency receives may be subtracted from the amount of moneys in an agency's Low and Moderate Income Housing Fund.

(B) If taxes that otherwise would have been required to be deposited in the Low and Moderate Income Housing Fund are used as security for bonds or other indebtedness, the proceeds of the

bonds or other indebtedness shall not be counted in determining whether an excess surplus exists. Instead, the calculation made pursuant to paragraph (1) shall be made as if the bonds or other indebtedness had not been sold or incurred, and the agency had deposited the taxes in the Low and Moderate Income Housing Fund in accordance with Section 33334.3.

(C) Nothing in this subdivision shall be construed to restrict the authority of an agency provided in any other provision of this part to expend funds from the Low and Moderate Income Housing Fund.

(h) Communities in which an agency has disbursed excess surplus funds pursuant to this section shall not disapprove a low- or moderate-income housing project funded in whole or in part by the excess surplus funds if the project is consistent with applicable building codes and the land use designation specified in any element of the general plan as it existed on the date the application was deemed complete. A local agency may require compliance with local development standards and policies appropriate to and consistent with meeting the quantified objectives relative to the development of housing, as required in housing elements of the community pursuant to subdivision (b) of Section 65583 of the Government Code.

(i) Notwithstanding subdivision (a), any agency that has funds that become excess surplus on July 1, 1994, shall have, pursuant to subdivision (a), until January 1, 1995, to decide to transfer the funds to a housing authority or other public agency, or until January 1, 1997, to expend or encumber those funds, or face sanctions pursuant to subdivision (e).

SEC. 11.3. Section 33338.1 of the Health and Safety Code is repealed.

SEC. 11.5. Section 33344.5 of the Health and Safety Code is amended to read:

33344.5. After receiving the report prepared pursuant to Section 33328, or after the time period for preparation of that report has passed, a redevelopment agency, which includes a provision for the division of taxes pursuant to Section 33670 in the redevelopment plan, shall prepare and send to each affected taxing entity, as defined in Section 33353.2, a preliminary report which shall contain all of the following:

(a) The reasons for the selection of the project area.

(b) A description of the physical and economic conditions existing in the project area.

(c) A description of the project area which is sufficiently detailed for a determination as to whether the project area is predominantly urbanized. The description shall include at least the following information, which shall be based upon the terms described and defined in Section 33320.1:

(1) The total number of acres within the project area.

(2) The total number of acres that is characterized by the conditions described in subdivision (a), (b), or (e) of Section 33032.

(3) The total number of acres that is an integral part of an area developed for urban uses.

(4) The percent of property within the project area that is predominantly urbanized.

(5) A map of the project area that identifies the property described in paragraphs (2) and (3) and the property not developed for an urban use.

(d) A preliminary assessment of the proposed method of financing the redevelopment of the project area, including an assessment of the economic feasibility of the project and the reasons for including a provision for the division of taxes pursuant to Section 33670 in the redevelopment plan.

(e) A description of the specific project or projects then proposed by the agency.

(f) A description of how the project or projects to be pursued by the agency in the project area will improve or alleviate the conditions described in subdivision (b).

SEC. 11.7. Section 33348.5 of the Health and Safety Code is repealed.

SEC. 12. Section 33352 of the Health and Safety Code is amended to read:

33352. Every redevelopment plan submitted by the agency to the legislative body shall be accompanied by a report containing all of the following:

(a) The reasons for the selection of the project area, a description of the specific projects then proposed by the agency, a description of how these projects will improve or alleviate the conditions described in subdivision (b).

(b) A description of the physical and economic conditions specified in Section 33031 that exist in the area that cause the project area to be blighted. The description shall include a list of the conditions described in Section 33031 that exist within the project area and a map showing where in the project the conditions exist.

(c) An implementation plan that describes specific goals and objectives of the agency, specific projects then proposed by the agency, including a program of actions and expenditures proposed to be made within the first five years of the plan, and a description of how these projects will improve or alleviate the conditions described in Section 33031.

(d) An explanation of why the elimination of blight and the redevelopment of the project area cannot reasonably be expected to be accomplished by private enterprise acting alone or by the legislative body's use of financing alternatives other than tax increment financing.

(e) The proposed method of financing the redevelopment of the project area in sufficient detail so that the legislative body may determine the economic feasibility of the plan.

(f) A method or plan for the relocation of families and persons to be temporarily or permanently displaced from housing facilities in

the project area, which method or plan shall include the provision required by Section 33411.1 that no persons or families of low and moderate income shall be displaced unless and until there is a suitable housing unit available and ready for occupancy by the displaced person or family at rents comparable to those at the time of their displacement.

(g) An analysis of the preliminary plan.

(h) The report and recommendations of the planning commission.

(i) The summary referred to in Section 33387.

(j) The report required by Section 65402 of the Government Code.

(k) The report required by Section 21151 of the Public Resources Code.

(*l*) The report of the county fiscal officer as required by Section 33328.

(m) If the project area contains low- or moderate-income housing, a neighborhood impact report which describes in detail the impact of the project upon the residents of the project area and the surrounding areas, in terms of relocation, traffic circulation, environmental quality, availability of community facilities and services, effect on school population and quality of education, property assessments and taxes, and other matters affecting the physical and social quality of the neighborhood. The neighborhood impact report shall also include all of the following:

(1) The number of dwelling units housing persons and families of low or moderate income expected to be destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project.

(2) The number of persons and families of low or moderate income expected to be displaced by the project.

(3) The general location of housing to be rehabilitated, developed, or constructed pursuant to Section 33413.

(4) The number of dwelling units housing persons and families of low or moderate income planned for construction or rehabilitation, other than replacement housing.

(5) The projected means of financing the proposed dwelling units for housing persons and families of low and moderate income planned for construction or rehabilitation.

(6) A projected timetable for meeting the plan's relocation, rehabilitation, and replacement housing objectives.

(n) (1) An analysis by the agency of the report submitted by the county as required by Section 33328, which shall include a summary of the consultation of the agency, or attempts to consult by the agency, with each of the affected taxing entities as required by Section 33328. If any of the affected taxing entities have expressed written objections or concerns with the proposed project area as part of these consultations, the agency shall include a response to these concerns, additional information, if any, and, at the discretion of the

agency, proposed or adopted mitigation measures.

(2) As used in this subdivision:

(A) "Mitigation measures" may include the amendment of the redevelopment plan with respect to the size or location of the project area, time duration, total amount of tax increment to be received by the agency, or the proposed use, size, density, or location of development to be assisted by the agency.

(B) "Mitigation measures" shall not include obligations to make payments to any affected taxing entity.

SEC. 13. Section 33353 of the Health and Safety Code is repealed.

SEC. 14. Section 33353.1 of the Health and Safety Code is repealed.

SEC. 14.5. Section 33353.2 of the Health and Safety Code is amended to read:

33353.2. "Affected taxing entity" means any governmental taxing agency, other than the community that proposes to adopt or has adopted the redevelopment project, which levied a property tax on all or any portion of the property located in the proposed project area in the fiscal year prior to the fiscal year in which the report prepared pursuant to Section 33328 is issued.

SEC. 15. Section 33353.3 of the Health and Safety Code is repealed.

SEC. 16. Section 33353.4 of the Health and Safety Code is repealed.

SEC. 17. Section 33353.5 of the Health and Safety Code is repealed.

SEC. 18. Section 33353.6 of the Health and Safety Code is repealed.

SEC. 19. Section 33353.7 of the Health and Safety Code is repealed.

SEC. 20. Section 33354.4 of the Health and Safety Code is repealed.

SEC. 21. Section 33354.6 of the Health and Safety Code is amended to read:

33354.6. (a) When an agency proposes to amend a redevelopment plan which utilizes tax increment financing 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 subdivision (a) of Section 33333.2 or pursuant to paragraphs (1) and (2) of subdivision (a) of Section 33333.4, 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 follow the same procedure, and the legislative body is subject to the same restrictions as provided for in this article for the adoption of a plan.

(b) When an agency proposes to increase the limitation on the number of dollars to be allocated to the redevelopment agency, it

shall describe and identify, in the report required by Section 33352, the remaining blight within the project area, identify the portion, if any, that is no longer blighted, the projects that are required to be completed to eradicate the remaining blight and the relationship between the costs of those projects and the amount of increase in the limitation on the number of dollars to be allocated to the agency. The ordinance adopting the amendment shall contain findings that both (1) significant blight remains with the project area and (2) the blight cannot be eliminated without the establishment of additional debt and the increase in the limitation on the number of dollars to be allocated to the redevelopment agency.

SEC. 22. Section 33367 of the Health and Safety Code is amended to read:

33367. The ordinance shall contain all of the following:

(a) The purposes and intent of the legislative body with respect to the project area.

(b) The plan incorporated by reference.

(c) A designation of the approved plan as the official redevelopment plan of the project area.

(d) The findings and determinations of the legislative body that:

(1) The project area is a blighted area, the redevelopment of which is necessary to effectuate the public purposes declared in this part.

(2) The redevelopment plan would redevelop the area in conformity with this part and in the interests of the public peace, health, safety, and welfare.

(3) The adoption and carrying out of the redevelopment plan is economically sound and feasible.

(4) The redevelopment plan conforms to the general plan of the community, including, but not limited to, the community's housing element, which substantially complies with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(5) The carrying out of the redevelopment plan would promote the public peace, health, safety, and welfare of the community and would effectuate the purposes and policy of this part.

(6) The condemnation of real property, if provided for in the redevelopment plan, is necessary to the execution of the redevelopment plan and adequate provisions have been made for payment for property to be acquired as provided by law.

(7) The agency has a feasible method or plan for the relocation of families and persons displaced from the project area, if the redevelopment plan may result in the temporary or permanent displacement of any occupants of housing facilities in the project area.

(8) (A) There are, or shall be provided, in the project area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and persons displaced from the

project area, decent, safe, and sanitary dwellings equal in number to the number of and available to the displaced families and persons and reasonably accessible to their places of employment.

(B) Families and persons shall not be displaced prior to the adoption of a relocation plan pursuant to Sections 33411 and 33411.1. Dwelling units housing persons and families of low or moderate income shall not be removed or destroyed prior to the adoption of a replacement housing plan pursuant to Sections 33334.5, 33413, and 33413.5.

(9) All noncontiguous areas of a project area are either blighted or necessary for effective redevelopment and are not included for the purpose of obtaining the allocation of taxes from the area pursuant to Section 33670 without other substantial justification for their inclusion.

(10) Inclusion of any lands, buildings, or improvements which are not detrimental to the public health, safety, or welfare is necessary for the effective redevelopment of the area of which they are a part; that any area included is necessary for effective redevelopment and is not included for the purpose of obtaining the allocation of tax increment revenues from the area pursuant to Section 33670 without other substantial justification for its inclusion.

(11) The elimination of blight and the redevelopment of the project area could not be reasonably expected to be accomplished by private enterprise acting alone without the aid and assistance of the agency.

(12) The project area is predominantly urbanized, as defined by subdivision (b) of Section 33320.1.

(13) The time limitation and, if applicable, the limitation on the number of dollars to be allocated to the agency that are contained in the plan are reasonably related to the proposed projects to be implemented in the project area and to the ability of the agency to eliminate blight within the project area.

(e) A statement that the legislative body is satisfied that permanent housing facilities will be available within three years from the time occupants of the project area are displaced and that, pending the development of the facilities, there will be available to the displaced occupants adequate temporary housing facilities at rents comparable to those in the community at the time of their displacement.

SEC. 23. Section 33401 of the Health and Safety Code is amended to read:

33401. The agency may in any year during which it owns property in a redevelopment project that is tax exempt pay directly to any city, county, city and county, district, including, but not limited to, a school district, or other public corporation for whose benefit a tax would have been levied upon the property had it not been exempt, an amount of money in lieu of taxes that may not exceed the amount of money the public entity would have received if the property had not been tax exempt.

SEC. 24. Section 33413 of the Health and Safety Code is amended to read:

33413. (a) Whenever dwelling units housing persons and families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project which is subject to a written agreement with the agency or where financial assistance has been provided by the agency, the agency shall, within four years of the destruction or removal, rehabilitate, develop, or construct, or cause to be rehabilitated, developed, or constructed, for rental or sale to persons and families of low or moderate income, an equal number of replacement dwelling units which have an equal or greater number of bedrooms as those destroyed or removed units at affordable housing costs within the territorial jurisdiction of the agency. When dwelling units are destroyed or removed after September 1, 1989, 75 percent of the replacement dwelling units shall replace dwelling units available at affordable housing cost in the same income level of very low income households, lower income households, and persons and families of low and moderate income, as the persons displaced from those destroyed or removed units.

(b) (1) At least 30 percent of all new and substantially rehabilitated dwelling units developed by an agency shall be available at affordable housing cost to persons and families of low or moderate income. Not less than 50 percent of the dwelling units required to be available at affordable housing cost to persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(2) (A) (i) At least 15 percent of all new and substantially rehabilitated dwelling units developed within a project area under the jurisdiction of an agency by public or private entities or persons other than the agency shall be available at affordable housing cost to persons and families of low or moderate income. Not less than 40 percent of the dwelling units required to be available at affordable housing cost to persons and families of low or moderate income shall be available at affordable housing cost to very low income households.

(ii) To satisfy the provisions of this paragraph, in whole or in part, the agency may cause, by regulation or agreement, to be available, at affordable housing costs, to persons and families of low or moderate income or to very low income households, as applicable, two units outside a project area for each unit that otherwise would have had to be available inside a project area.

(iii) As used in this paragraph and in paragraph (1), "substantially rehabilitated dwelling units" means substantially rehabilitated multifamily rented dwelling units with three or more units or substantially rehabilitated, with agency assistance, single-family dwelling units with one or two units.

(iv) As used in this paragraph and in paragraph (1), "substantial rehabilitation" means rehabilitation, the value of which constitutes

25 percent of the after rehabilitation value of the dwelling, inclusive of the land value.

(v) To satisfy the provisions of this paragraph, the agency may aggregate new or substantially rehabilitated dwelling units in one or more project areas, provided that the agency finds, based on substantial evidence, after a public hearing, that the aggregation will not cause or exacerbate racial, ethnic, or economic segregation.

(B) To satisfy the requirements of paragraph (1) and subparagraph (A), the agency may purchase, or otherwise acquire or cause by regulation or agreement the purchase or other acquisition of, long-term affordability covenants on multifamily units that restrict the cost of renting or purchasing those units that either: (i) are not presently available at affordable housing cost to persons and families of low or very low income households, as applicable; or (ii) are units that are presently available at affordable cost to this same group of persons or families, but are units that the agency finds, based upon substantial evidence, after a public hearing, cannot reasonably be expected to remain affordable to this same group of persons or families.

(C) To satisfy the requirements of paragraph (1) and subparagraph (A), the long-term affordability covenants purchased or otherwise acquired pursuant to subparagraph (B) shall be required to be maintained on dwelling units at affordable housing costs for not less than 30 years. At least 50 percent of the units shall be made available to very low income households pursuant to paragraph (1) and subparagraph (A) through the purchase or acquisition of long-term affordability covenants pursuant to this paragraph.

(3) The requirements of this subdivision shall apply independently of the requirements of subdivision (a). The requirements of this subdivision shall apply, in the aggregate to housing made available pursuant to paragraphs (1) and (2), respectively, and not to each individual case of rehabilitation, development, or construction of dwelling units, unless an agency determines otherwise.

(4) (A) Each redevelopment agency, as part of the implementation plan required by Section 33490, shall adopt a plan to comply with the requirements of this subdivision for each project area. The plan shall be consistent with, and may be included within, the community's housing element. The plan shall be reviewed and, if necessary, amended at least every five years in conjunction with the housing element cycle. The plan shall ensure that the requirements of this subdivision are met every 10 years.

(B) The plan adopted pursuant to this paragraph shall include estimates of the number of new or rehabilitated residential units to be developed within one or more project areas pursuant to paragraph (2) and the number of units for very low income households and low- and moderate-income households which will be developed in order to meet the requirements of paragraph (2). The

plan shall also include estimates of the number of agency developed residential units which will be developed during the next five years if any, and the number of units for very low income households and, low- and moderate-income households which will be developed during the same period of time to meet the requirements of paragraph (1). If the requirements of this subdivision are not met by the end of each 10-year period, the agency shall meet these goals on an annual basis until the requirements for the 10-year period are met. If the agency has exceeded the requirements within the 10-year period, the agency may count the units that exceed the requirement in order to meet the requirements during the next 10-year period.

(c) The agency shall require that the aggregate number of replacement dwelling units and other dwelling units rehabilitated, developed, constructed, or price-restricted pursuant to subdivision (a) or (b) remain available at affordable housing cost to persons and families of low income, moderate income, and very low income households, respectively, for the longest feasible time, as determined by the agency, but for not less than the period of the land use controls established in the redevelopment plan, except for the following:

(1) A longer period of time may be required by other provisions of law:

(2) (A) The agency may permit sales of owner-occupied units prior to the expiration of the period of the land use controls established by the agency for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program which protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program that establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds, based on the length of occupancy. The remainder of the excess proceeds of the sale shall be allocated to the agency, and deposited into the Low and Moderate Income Housing Fund. The agency shall, within three years from the date of sale of units under this subparagraph, expend funds to make affordable an equal number of units at the same income level as units sold under this subparagraph.

(B) If land on which those dwelling units are located is deleted from the project area, the agency shall continue to require that those units remain affordable as specified in this subdivision. The requirements of this subdivision shall be made enforceable in the same manner as provided in subdivision (f) of Section 33334.3.

(d) (1) This section applies only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) on or after January 1, 1976, and to areas which are added to a project area by amendment to a final redevelopment plan adopted on or after January 1, 1976. In addition, subdivision (a) shall apply to any other redevelopment project with respect to dwelling units destroyed or removed from the low- and moderate-income housing market on or after January 1, 1996,

irrespective of the date of adoption of a final redevelopment plan or an amendment to a final redevelopment plan adding areas to a project area. Additionally, any agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project of the agency for which the final redevelopment plan was adopted prior to January 1, 1976.

(2) An agency may, by resolution, elect to require that whenever dwelling units housing persons or families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project, the agency shall replace each dwelling unit with up to three replacement dwelling units pursuant to subdivision (a).

(e) Except as otherwise authorized by law, this section does not authorize an agency to operate a rental housing development beyond the period reasonably necessary to sell or lease the housing development.

(f) Notwithstanding subdivision (a), the agency may replace destroyed or removed dwelling units with a fewer number of replacement dwelling units if the replacement dwelling units meet both of the following criteria:

(1) The total number of bedrooms in the replacement dwelling units equal or exceed the number of bedrooms in the destroyed or removed units. Destroyed or removed units having one or no bedroom are deemed for this purpose to have one bedroom.

(2) The replacement units are affordable to the same income level of households as the destroyed or removed units.

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

(h) 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. 24.5. Section 33413 is added to the Health and Safety Code, to read:

33413. (a) Whenever dwelling units housing persons and families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project which is subject to a written agreement with the agency or where financial assistance has been provided by the agency, the agency shall, within four years of the destruction or removal, rehabilitate, develop, or construct, or cause to be rehabilitated, developed, or constructed, for rental or sale to persons and families of low or moderate income, an equal number of replacement dwelling units which have an equal or greater number of bedrooms as those destroyed or removed units at affordable housing costs within the territorial jurisdiction of the agency. When dwelling units are destroyed or removed after September 1, 1989, 75 percent of the replacement dwelling units shall replace dwelling units available at affordable housing cost in the same income level of very low income households, lower income households, and persons

and families of low and moderate income, as the persons displaced from those destroyed or removed units.

(b) (1) At least 30 percent of all new or rehabilitated dwelling units developed by an agency shall be available at affordable housing cost to persons and families of low or moderate income. Not less than 50 percent of the dwelling units required to be available at affordable housing cost to persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(2) At least 15 percent of all new or rehabilitated dwelling units developed within the project area by public or private entities or persons other than the agency shall be available at affordable housing cost to persons and families of low or moderate income. Not less than 40 percent of the dwelling units required to be available at affordable housing cost to persons and families of low or moderate income shall be available at affordable housing cost to very low income households.

(3) The requirements of this subdivision shall apply independently of the requirements of subdivision (a) and in the aggregate to housing made available pursuant to paragraphs (1) and (2), respectively, and not to each individual case of rehabilitation, development, or construction of dwelling units.

(4) (A) Each redevelopment agency shall adopt a plan to comply with the requirements of this subdivision for each project area. The plan shall be consistent with, and may be included within, the community's housing element. The plan shall be reviewed and, if necessary, amended at least every five years in conjunction with the housing element cycle. The plan shall ensure that the requirements of this subdivision are met every 10 years.

(B) The plan shall include estimates of the number of new or rehabilitated residential units to be developed within the project area and the number of units for very low income households and low- and moderate-income households which will be developed in order to meet the requirements of paragraph (2). The plan shall also include estimates of the number of agency developed residential units which will be developed during the next five years if any, and the number of units for very low income households and, low- and moderate-income households which will be developed during the same period of time to meet the requirements of paragraph (1). If the requirements of this subdivision are not met by the end of each 10-year period, the agency shall meet these goals on an annual basis until the requirements for the 10-year period are met. If the agency has exceeded the requirements within the 10-year period, the agency may count the units that exceed the requirement in order to meet the requirements during the next 10-year period.

(c) The agency shall require that the aggregate number of replacement dwelling units and other dwelling units rehabilitated, developed, or constructed pursuant to subdivision (a) or (b) remain available at affordable housing cost to persons and families of low

income, moderate income, and very low income households, respectively, for the longest feasible time, as determined by the agency, but for not less than the period of the land use controls established in the redevelopment plan, except to the extent a longer period of time may be required by other provisions of law. If land on which those dwelling units are located is deleted from the project area, the agency shall continue to require that those units remain affordable as specified in the previous sentence. These requirements shall be made enforceable in the same manner as provided in subdivision (e) of Section 33334.3.

(d) (1) This section applies only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) on or after January 1, 1976, and to areas which are added to a project area by amendment to a final redevelopment plan adopted on or after January 1, 1976. In addition, subdivision (a) shall apply to any other redevelopment project with respect to dwelling units destroyed or removed from the low- and moderate-income housing market on or after January 1, 1996, irrespective of the date of adoption of a final redevelopment plan or an amendment to a final redevelopment plan adding areas to a project area. Additionally, any agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project of the agency for which the final redevelopment plan was adopted prior to January 1, 1976.

(2) An agency may, by resolution, elect to require that whenever dwelling units housing persons or families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project, the agency shall replace each dwelling unit with up to three replacement dwelling units pursuant to subdivision (a).

(e) Except as otherwise authorized by law, this section does not authorize an agency to operate a rental housing development beyond the period reasonably necessary to sell or lease the housing development.

(f) Notwithstanding subdivision (a), the agency may replace destroyed or removed dwelling units with a fewer number of replacement dwelling units if the replacement dwelling units meet both of the following criteria:

(1) The total number of bedrooms in the replacement dwelling units equal or exceed the number of bedrooms in the destroyed or removed units. Destroyed or removed units having one or no bedroom are deemed for this purpose to have one bedroom.

(2) The replacement units are affordable to the same income level of households as the destroyed or removed units.

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

(h) This section shall become operative on January 1, 1997.

SEC. 25. Section 33426.5 is added to the Health and Safety Code, to read:

33426.5. Notwithstanding the provisions of Sections 33391, 33430, 33433, and 33445, or any other provision of this part, an agency shall not provide any form of direct assistance to:

(a) An automobile dealership which will be or is on a parcel of land which has not previously been developed for urban use, unless, prior to the effective date of the act that adds this section, the agency either owns the land or has entered into an enforceable agreement, for the purchase of the land or of an interest in the land, including, but not limited to, a lease or an agreement containing covenants affecting real property, that requires the land to be developed and used as an automobile dealership.

(b) (1) A development that will be or is on a parcel of land of five acres or more which has not previously been developed for urban use and that will, when developed, generate sales or use tax pursuant to Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code, unless the principal permitted use of the development is office, hotel, manufacturing, or industrial, or unless, prior to the effective date of the act that adds this section, the agency either owns the land or has entered into an enforceable agreement, for the purchase of the land or of an interest in the land, including, but not limited to, a lease or an agreement containing covenants affecting real property, that requires the land to be developed.

(2) For the purposes of this subdivision, a parcel shall include land on an adjacent or nearby parcel on which a use exists that is necessary for the legal development of the parcel.

(c) This section shall not be construed to apply to agency assistance in the construction of public improvements that serve all or a portion of a project area and that are not required to be constructed as a condition of approval of a development described in subdivision (a) or (b), or to prohibit assistance in the construction of public improvements that are being constructed for a development that is not described in subdivision (a) or (b).

SEC. 26. Section 33433 of the Health and Safety Code is amended to read:

33433. (a) (1) Except as provided in subdivision (c), before any property of the agency acquired in whole or in part, directly or indirectly, with tax increment moneys is sold or leased for development pursuant to the redevelopment plan, the sale or lease shall first be approved by the legislative body by resolution after public hearing. Notice of the time and place of the hearing shall be published in a newspaper of general circulation in the community at least once per week for at least two successive weeks, as specified in Section 6066 of the Government Code, prior to the hearing.

(2) The agency shall make available, for public inspection and copying at a cost not to exceed the cost of duplication, a report no later than the time of publication of the first notice of the hearing mandated by this section. This report shall contain both of the following:

(A) A copy of the proposed sale or lease.

(B) A summary which describes and specifies all of the following:

(i) The cost of the agreement to the agency, including land acquisition costs, clearance costs, relocation costs, the costs of any improvements to be provided by the agency, plus the expected interest on any loans or bonds to finance the agreements.

(ii) The estimated value of the interest to be conveyed or leased, determined at the highest and best uses permitted under the plan.

(iii) The estimated value of the interest to be conveyed or leased, determined at the use and with the conditions, covenants, and development costs required by the sale or lease. The purchase price or sum of the lease payments which the lessor will be required to make during the term of the lease. If the sale price or total rental amount is less than the fair market value of the interest to be conveyed or leased, determined at the highest and best use consistent with the redevelopment plan, then the agency shall provide as part of the summary an explanation of the reasons for the difference.

(iv) An explanation of why the sale or lease of the property will assist in the elimination of blight, with reference to all supporting facts and materials relied upon in making this explanation.

(v) The report shall be made available to the public no later than the time of publication of the first notice of the hearing mandated by this section.

(b) The resolution approving the lease or sale shall be adopted by a majority vote unless the legislative body has provided by ordinance for a two-thirds vote for that purpose and shall contain findings to the effect that the sale or lease of the property will assist in the elimination of blight and shall also contain one of the following findings:

(1) The consideration is not less than the fair market value at its highest and best use in accordance with the plan.

(2) The consideration is not less than the fair reuse value at the use and with the covenants and conditions and development costs authorized by the sale or lease.

(c) (1) At the election of the legislative body, subdivisions (a) and (b) shall not apply to the sale or lease of a small housing project, as defined by Section 33013. If the legislative body so elects, the agency shall, instead, hold a public hearing in conformity with the requirements of subdivision (a) and shall also report the sale or lease to the legislative body on or before 30 days after the end of the agency's fiscal year during which the sale or lease occurred. The report shall disclose the name of the buyer, the legal description or street address of the property, the date of the sale or lease, the consideration for which the property was sold or leased by the agency to the buyer or lessee, and the date on which the agency held its public hearing for the sale or lease pursuant to Section 33431.

(2) As used in this subdivision and Section 33413, "persons and families of low or moderate income" has the same meaning as

defined by Section 50093.

SEC. 27. Section 33444.5 is added to the Health and Safety Code, to read:

33444.5. An agency may establish a program under which it loans funds to owners or tenants for the purpose of rehabilitating commercial buildings or structures within the project area.

SEC. 28. Section 33444.6 is added to the Health and Safety Code, to read:

33444.6. (a) Within a project area and as part of an agreement that provides for the development or rehabilitation of property that will be used for industrial or manufacturing purposes, an agency may assist with the financing of facilities or capital equipment, including, but not necessarily limited to, pollution control devices.

(b) Prior to entering into an agreement for a development that will be assisted pursuant to this section, the agency shall find, after a public hearing, that the assistance is necessary for the economic feasibility of the development and that the assistance cannot be obtained on economically feasible terms in the private market.

SEC. 29. Section 33445 of the Health and Safety Code is amended to read:

33445. (a) Notwithstanding Section 33440, an agency may, with the consent of the legislative body, pay all or a part of the value of the land for and the cost of the installation and construction of any building, facility, structure, or other improvement which is publicly owned either within or without the project area, if the legislative body determines both of the following:

(1) That the buildings, facilities, structures, or other improvements are of benefit to the project area or the immediate neighborhood in which the project is located, regardless of whether the improvement is within another project area, or in the case of a project area in which substantially all of the land is publicly owned that the improvement is of benefit to an adjacent project area of the agency.

(2) That no other reasonable means of financing the buildings, facilities, structures, or other improvements, are available to the community.

(3) That the payment of funds for the acquisition of land or the cost of buildings, facilities, structures, or other improvements will assist in the elimination of one or more blighting conditions inside the project area.

(b) The determinations by the agency and the local legislative body pursuant to subdivision (a) shall be final and conclusive. For redevelopment plans, and amendments to those plans which add territory to a project, adopted after October 1, 1976, acquisition of property and installation or construction of each facility shall be provided for in the redevelopment plan. A redevelopment agency shall not pay for the normal maintenance or operations of buildings, facilities, structures, or other improvements which are publicly owned. Normal maintenance or operations do not include the

construction, expansion, addition to, or reconstruction of, buildings, facilities, structures, or other improvements which are publicly owned otherwise undertaken pursuant to this section.

(c) When the value of the land or the cost of the installation and construction of the building, facility, structure, or other improvement, or both, has been, or will be, paid or provided for initially by the community or other public corporation, the agency may enter into a contract with the community or other public corporation under which it agrees to reimburse the community or other public corporation for all or part of the value of the land or all or part of the cost of the building, facility, structure, or other improvement, or both, by periodic payments over a period of years.

(d) The obligation of the agency under the contract shall constitute an indebtedness of the agency for the purpose of carrying out the redevelopment project for the project area, which indebtedness may be made payable out of taxes levied in the project area and allocated to the agency under subdivision (b) of Section 33670, or out of any other available funds.

(e) In a case where the land has been or will be acquired by, or the cost of the installation and construction of the building, facility, structure or other improvement has been paid by, a parking authority, joint powers entity, or other public corporation to provide a building, facility, structure, or other improvement which has been or will be leased to the community, the contract may be made with, and the reimbursement may be made payable to, the community.

(f) With respect to the financing, acquisition, or construction of a transportation, collection, and distribution system and related peripheral parking facilities, in a county with a population of 4,000,000 persons or more, the agency shall, in order to exercise the powers granted by this section, enter into an agreement with the rapid transit district which includes the county, or a portion thereof, in which agreement the rapid transit district shall be given all of the following responsibilities:

(1) To participate with the other parties to the agreement to design, determine the location and extent of the necessary rights-of-way for, and construct, the transportation, collection, and distribution systems and related peripheral parking structures and facilities.

(2) To operate and maintain the transportation, collection, and distribution systems and related peripheral parking structures and facilities in accordance with the rapid transit district's outstanding agreements and the agreement required by this paragraph.

(g) (1) Notwithstanding any other authority granted in this section, an agency shall not pay for, either directly or indirectly, with tax increment funds the construction or rehabilitation of a building that is, or that will be used as, a city hall or county administration building.

(2) This subdivision shall not preclude an agency from making payments to construct, rehabilitate, or replace a city hall if an agency

does any of the following:

(A) Allocates tax increment funds for this purpose during the 1988–89 fiscal year and each fiscal year thereafter in order to comply with federal and state seismic safety and accessibility standards.

(B) Uses tax increment funds for the purpose of rehabilitating or replacing a city hall that was seriously damaged during an earthquake that was declared by the President of the United States to be a natural disaster.

(C) Uses the proceeds of bonds, notes, certificates of participation, or other indebtedness that was issued prior to January 1, 1994, for the purpose of constructing or rehabilitating a city hall, as evidenced by documents approved at the time of the issuance of the indebtedness.

SEC. 29.5. Section 33486 of the Health and Safety Code is amended to read:

33486. (a) For the purpose of allocating taxes pursuant to Section 33670 and subject to the provisions of this article, redevelopment project areas under the jurisdiction of a redevelopment agency for which redevelopment plans have been adopted pursuant to Article 5 (commencing with Section 33360), may be merged, without regard to contiguity of the areas, by the amendment of each affected redevelopment plan as provided in Article 12 (commencing with Section 33450). Except as provided in subdivision (b) of this section, taxes attributable to each project area merged pursuant to this section which are allocated to the redevelopment agency pursuant to Section 33670 may be allocated, as provided in subdivision (b) to the entire merged project area for the purpose of paying the principal of, and interest on, indebtedness incurred by the redevelopment agency to finance or refinance, in whole or in part, the merged redevelopment project.

(b) If the redevelopment agency has, prior to merger of redevelopment project areas pursuant to subdivision (a), incurred any indebtedness on account of a constituent project area so merged, taxes attributable to that area which are allocated to the agency pursuant to Section 33670 shall be first used to comply with the terms of any bond resolution or other agreement pledging the taxes from the constituent project area.

(c) After merger of redevelopment projects pursuant to subdivision (a), the clerk of the legislative body shall transmit a copy of the ordinance amending the plans for projects to be merged to the governing body of each of the taxing agencies which levies taxes upon any property in the project.

SEC. 30. Article 16.5 (commencing with Section 33490) is added to Chapter 4 of Part 1 of Division 24 of the Health and Safety Code, to read:

Article 16.5. Adoption of Implementation Plans

33490. (a) (1) On or before December 31, 1994, and each five years thereafter, each agency that has adopted a redevelopment plan prior to December 31, 1993, shall adopt, after a public hearing, an implementation plan that shall contain the specific goals and objectives of the agency for the project area, the specific projects and expenditures proposed to be made during the next five years, and an explanation of how the goals and objectives, projects, and expenditures will eliminate blight within the project area and implement the requirements of Sections 33334.2, 33334.4, 33334.6, and 33413.

(2) The parts of the implementation plan that address Sections 33334.2, 33334.4, 33334.6, and 33413 shall contain, for each of the five years, an annual housing program with sufficient detail to measure performance pursuant to the implementation plan. The implementation plan shall include the number of housing units developed, rehabilitated, price-restricted, otherwise assisted, or destroyed. The implementation plan shall describe the agency's plans for using annual deposits in the Low and Moderate Income Housing Fund, including making the funds available annually, transfer of the funds to a housing authority or other public entity, or the accrual of funds for specific projects.

(3) If the implementation plan contains a project that will result in the destruction or removal of dwelling units that will have to be replaced pursuant to subdivision (a) of Section 33413, the implementation plan shall identify proposed locations suitable for those replacement dwelling units.

(b) For a project area for which a redevelopment plan is adopted on or after January 1, 1994, the implementation plan prepared pursuant to subdivision (c) of Section 33352 shall constitute the initial implementation plan and thereafter the agency after a public hearing shall adopt an implementation plan every five years commencing with the fifth year after the plan has been adopted. Agencies may adopt implementation plans that include more than one project area.

(c) Every agency, at least once within the five-year term of the plan, shall conduct a public hearing and hear testimony of all interested parties for the purpose of reviewing the redevelopment plan and the corresponding implementation plan for each redevelopment project within the jurisdiction and evaluating the progress of the redevelopment project. The hearing required by this subdivision shall take place no earlier than two years and no later than three years after the adoption of the implementation plan. An agency may hold one hearing for two or more project areas if those project areas are included within the same implementation plan.

(d) Notice of public hearings conducted pursuant to this section shall be published pursuant to Section 6063 of the Government Code and posted in at least four permanent places within the project area

for a period of three weeks. Publication and posting shall be completed not less than 10 days prior to the date set for hearing.

SEC. 31. Section 33607.5 is added to the Health and Safety Code, to read:

33607.5. (a) (1) This section shall apply to each redevelopment project area that, pursuant to a redevelopment plan which contains the provisions required by Section 33670 is either: (A) adopted on or after January 1, 1994, including later amendments to these redevelopment plans; or (B) adopted prior to January 1, 1994, but amended, after January 1, 1994, to include new territory. For plans amended after January 1, 1994, only the tax increments from territory added by the amendment shall be subject to this section. All the amounts calculated pursuant to this section shall be calculated after the amount required to be deposited in the Low and Moderate Income Housing Fund pursuant to Sections 33334.2, 33334.3, and 33334.6 has been deducted from the total amount of tax increment funds received by the agency in the applicable fiscal year.

(2) The payments made pursuant to this section shall be in addition to any amounts the affected taxing entities receive pursuant to subdivision (a) of Section 33670. The payments made pursuant to this section to the affected taxing entities shall be allocated among the affected taxing entities in proportion to the percentage share of property taxes each affected taxing entity receives during the fiscal year the funds are allocated. The agency shall reduce its payments pursuant to this section to an affected taxing entity by any amount the agency has paid, directly or indirectly, pursuant to Section 33445, 33445.5, 33446, or any other provision of law other than this section for, or in connection with, a public facility owned or leased by that affected taxing agency, except: (A) any amounts the agency has paid directly or indirectly pursuant to an agreement with a taxing entity adopted prior to January 1, 1994; or (B) any amounts that are unrelated to the specific project area or amendment governed by this section.

(3) (A) Of the total amount paid each year pursuant to this section to school districts, 43.9 percent shall be considered to be property taxes for the purposes of paragraph (1) of subdivision (h) of Section 42238 of the Education Code, and 56.1 percent shall not be considered to be property taxes for the purposes of that section and shall be available to be used for educational facilities.

(B) Of the total amount paid each year pursuant to this section to community college districts, 47.5 percent shall be considered to be property taxes for the purposes of Section 84750 of the Education Code, and 52.5 percent shall not be considered to be property taxes for the purposes of that section and shall be available to be used for educational facilities.

(C) Of the total amount paid each year pursuant to this section to county offices of education, 19.0 percent shall be considered to be property taxes for the purposes of paragraph (1) of subdivision (h) of Section 42238 of the Education Code, and 81.0 percent shall not be

considered to be property taxes for the purposes of that section and shall be available to be used for educational facilities.

(D) Of the total amount paid each year pursuant to this section for special education, 19.0 percent shall be considered to be property taxes for the purposes of paragraph (1) of subdivision (h) of Section 42238 of the Education Code, and 81.0 percent shall not be considered to be property taxes for the purposes of that section and shall be available to be used as education facilities.

(4) Local education agencies that use funds received pursuant to this section for educational facilities shall spend these funds at schools that are: (A) within the project area, (B) attended by students from the project area, (C) attended by students generated by projects that are assisted directly by the redevelopment agency, or (D) determined by a local education agency to be of benefit to the project area.

(b) Commencing with the first fiscal year in which the agency receives tax increments and continuing through the last fiscal year in which the agency receives tax increments, a redevelopment agency shall pay to the affected taxing entities an amount equal to 25 percent of the tax increments received by the agency after the amount required to be deposited in the Low and Moderate Income Housing Fund has been deducted.

(c) Commencing with the 11th fiscal year in which the agency receives tax increments and continuing through the last fiscal year in which the agency receives tax increments, a redevelopment agency shall pay to the affected taxing entities, in addition to the amounts paid pursuant to subdivision (b) and after deducting the amount allocated to the Low and Moderate Income Housing Fund, an amount equal to 21 percent of the portion of tax increments received by the agency, which shall be calculated by applying the tax rate against the amount of assessed value by which the current year assessed value exceeds the first adjusted base year assessed value. The first adjusted base year assessed value is the assessed value of the project area in the 10th fiscal year in which the agency receives tax increment.

(d) Commencing with the 31st fiscal year in which the agency receives tax increments and continuing through the last fiscal year in which the agency receives tax increments, a redevelopment agency shall pay to the affected taxing entities, in addition to the amounts paid pursuant to subdivisions (b) and (c) and after deducting the amount allocated to the Low and Moderate Income Housing Fund, an amount equal to 14 percent of the portion of tax increments received by the agency, which shall be calculated by applying the tax rate against the amount of assessed value by which the current year assessed value exceeds the second adjusted base year assessed value. The second adjusted base year assessed value is the assessed value of the project area in the 30th fiscal year in which the agency receives tax increments.

(e) (1) Prior to incurring any loans, bonds, or other indebtedness,

except loans or advances from the community, the agency may subordinate to the loans, bonds or other indebtedness the amount required to be paid to an affected taxing entity by this section, provided that the affected taxing entity has approved these subordinations pursuant to this subdivision.

(2) At the time the agency requests an affected taxing entity to subordinate the amount to be paid to it, the agency shall provide the affected taxing entity with substantial evidence that sufficient funds will be available to pay both the debt service and the payments required by this section, when due.

(3) Within 45 days after receipt of the agency's request, the affected taxing entity shall approve or disapprove the request for subordination. An affected taxing entity may disapprove a request for subordination only if it finds, based upon substantial evidence, that the agency will not be able to pay the debt payments and the amount required to be paid to the affected taxing entity. If the affected taxing entity does not act within 45 days after receipt of the agency's request, the request to subordinate shall be deemed approved and shall be final and conclusive.

(f) In any fiscal year, the community that has adopted the redevelopment project area may elect to receive, and the agency shall pay to it, an amount equal to the amount the community would have received pursuant to subdivision (b) if it were an affected entity.

(g) (1) The Legislature finds and declares both of the following:

(A) The payments made pursuant to this section are necessary in order to alleviate the financial burden and detriment that affected taxing entities may incur as a result of the adoption of a redevelopment plan, and payments made pursuant to this section will benefit redevelopment project areas.

(B) The payments made pursuant to this section are the exclusive payments that are required to be made by a redevelopment agency to affected taxing entities during the term of a redevelopment plan.

(2) Notwithstanding any other provision of law, a redevelopment agency shall not be required, either directly or indirectly, as a measure to mitigate a significant environmental effect or as part of any settlement agreement or judgment brought in any action to contest the validity of a redevelopment plan pursuant to Section 33501, to make any other payments to affected taxing entities, or to pay for public facilities that will be owned or leased to an affected taxing entity.

(h) As used in this section, a "local education agency" includes a school district, a community college district, or a county office of education.

SEC. 31.5. Section 33607.7 is added to the Health and Safety Code, to read:

33607.7. (a) This section shall apply to a redevelopment plan amendment for any redevelopment plans adopted prior to January 1, 1994, that increases 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 subdivision (a) of Section 33333.2, or that lengthens the period during which the redevelopment plan is effective if the redevelopment plan being amended contains the provisions required by subdivision (b) of Section 33670. However, this section shall not apply to those redevelopment plans that add new territory.

(b) If a redevelopment agency adopts an amendment that is governed by the provisions of this section, it shall pay to each affected taxing entity either of the following:

(1) If an agreement exists that requires payments to the taxing entity, the amount required to be paid by an agreement between the agency and an affected taxing entity entered into prior to January 1, 1994.

(2) If an agreement does not exist, the amounts required pursuant to subdivisions (b), (c), (d), and (e) of Section 33607.5, until termination of the redevelopment plan, calculated against the amount of assessed value by which the current year assessed value exceeds an adjusted base year assessed value. The amounts shall be allocated between property taxes and educational facilities according to the appropriate formula in paragraph (3) of subdivision (a) of Section 33607.5. In determining the applicable amount under Section 33607.5, the first fiscal year shall be the first fiscal year following the fiscal year in which the adjusted base year value is determined.

(c) The adjusted base year assessed value shall be the assessed valued of the project area in the year in which the limitation being amended would have taken effect without the amendment or, if more than one limitation is being amended, the first year in which one of more of the limitations would have taken effect without the amendment. The agency shall commence making these payments pursuant to the terms of the agreement, if applicable, or, if an agreement does not exist, in the first fiscal year following the fiscal year in which the adjusted base year value is determined.

SEC. 32. Section 33641 of the Health and Safety Code is amended to read:

33641. An agency may issue any types of bonds which it may determine, including bonds on which the principal and interest are payable:

(a) Exclusively from the income and revenues of the redevelopment projects financed with the proceeds of the bonds, or with the proceeds together with financial assistance from the state or federal government in aid of the projects.

(b) Exclusively from the income and revenues of certain designated redevelopment projects whether or not they were financed in whole or in part with the proceeds of the bonds.

(c) In whole or in part from taxes allocated to, and paid into a special fund of, the agency pursuant to the provisions of Article 6

(commencing with Section 33670).

(d) In whole or in part from taxes imposed pursuant to Section 7280.5 of the Revenue and Taxation Code which are pledged therefor.

(e) From its revenues generally.

(f) From any contributions or other financial assistance from the state or federal government.

(g) By any combination of these methods.

SEC. 33. Section 33675 of the Health and Safety Code is amended to read:

33675. (a) The portion of taxes required to be allocated pursuant to subdivision (b) of Section 33670 shall be allocated and paid to the agency by the county auditor or officer responsible for the payment of taxes into the funds of the respective taxing agencies pursuant to the procedure contained in this section.

(b) Not later than October 1 of each year, for each redevelopment project for which the redevelopment plan provides for the division of taxes pursuant to Section 33670, the agency shall file, with the county auditor or officer described in subdivision (a), a statement of indebtedness and a reconciliation statement certified by the chief financial officer of the agency.

(c) (1) For each redevelopment project for which a statement of indebtedness is required to be filed, the statement of indebtedness shall contain all of the following:

(A) For each loan, advance, or indebtedness incurred or entered into, all of the following information:

(i) The date the loan, advance, or indebtedness was incurred or entered into.

(ii) The principal amount, term, purpose, interest rate, and total interest of each loan, advance, or indebtedness.

(iii) The principal amount and interest due in the fiscal year in which the statement of indebtedness is filed for each loan, advance, or indebtedness.

(iv) The total amount of principal and interest remaining to be paid for each loan, advance, or indebtedness.

(B) The sum of the amounts determined under clause (iii) of subparagraph (A).

(C) The sum of the amounts determined under clause (iv) of subparagraph (A).

(D) The available revenues as of the end of the previous year, as determined pursuant to paragraph (10) of subdivision (d).

(2) The agency may estimate the amount of principal or interest, the interest rate, or term of any loan, advance, or indebtedness if the nature of the loan, advance, or indebtedness is such that the amount of principal or interest, the interest rate or term cannot be precisely determined. The agency may list on a statement of indebtedness any loan, advance, or indebtedness incurred or entered into on or before the date the statement is filed.

(d) For each redevelopment project for which a reconciliation

statement is required to be filed, the reconciliation statement shall contain all of the following:

(1) A list of all loans, advances, and indebtedness listed on the previous year's statement of indebtedness.

(2) A list of all loans, advances, and indebtedness, not listed on the previous year's statement of indebtedness, but incurred or entered into in the previous year and paid in whole or in part from revenue received by the agency pursuant to Section 33670. This listing may aggregate loans, advances, and indebtedness incurred or entered into in the previous year for a particular purpose (such as relocation expenses, administrative expenses, consultant expenses, or property management expenses) into a single item in the listing.

(3) For each loan, advance, or indebtedness described in paragraph (1) or (2), all of the following information:

(A) The total amount of principal and interest remaining to be paid as of the later of the beginning of the previous year or the date the loan, advance, or indebtedness was incurred or entered into.

(B) Any increases or additions to the loan, advance, or indebtedness occurring during the previous year.

(C) The amount paid on the loan, advance, or indebtedness in the previous year from revenue received by the agency pursuant to Section 33670.

(D) The amount paid on the loan, advance, or indebtedness in the previous year from revenue other than revenue received by the agency pursuant to Section 33670.

(E) The total amount of principal and interest remaining to be paid as of the end of the previous fiscal year.

(4) The available revenues of the agency as of the beginning of the previous fiscal year.

(5) The amount of revenue received by the agency in the previous fiscal year pursuant to Section 33670.

(6) The amount of available revenue received by the agency in the previous fiscal year other than pursuant to Section 33670.

(7) The sum of the amounts specified in subparagraph (D) of paragraph (3), to the extent that the amounts are not included as available revenues pursuant to paragraph (6).

(8) The sum of the amounts specified in paragraphs (4), (5), (6), and (7).

(9) The sum of the amounts specified in subparagraphs (C) and (D) of paragraph (3).

(10) The amount determined by subtracting the amount determined under paragraph (9) from the amount determined under paragraph (8). The amount determined pursuant to this paragraph shall be the available revenues as of the end of the previous fiscal year.

(e) For the purposes of this section, available revenues shall include all cash or cash equivalents held by the agency that were received by the agency pursuant to Section 33670 and all cash or cash equivalents held by the agency that are irrevocably pledged or

restricted to payment of a loan, advance, or indebtedness that the agency has listed on a statement of indebtedness. In no event shall available revenues include funds in the agency's Low and Moderate Income Housing Fund established pursuant to Section 33334.3. For the purposes of determining available revenues as of the end of the 1992–93 fiscal year, an agency shall conduct an examination or audit of its books and records for the 1990–91, 1991–92, and 1992–93 fiscal years to determine the available revenues as of the end of the 1992–93 fiscal year.

(f) For the purposes of this section, the amount an agency will deposit in its Low and Moderate Income Housing Fund established pursuant to Section 33334.3 shall constitute an indebtedness of the agency. For the purposes of this section, no loan, advance, or indebtedness that an agency intends to pay from its Low and Moderate Income Housing Fund established pursuant to Section 33334.3 shall be listed on a statement of indebtedness or reconciliation statement as a loan, advance, or indebtedness of the agency. For the purposes of this section, any statutorily authorized deficit in or borrowing from an agency's Low and Moderate Income Housing Fund established pursuant to Section 33334.3 shall constitute an indebtedness of the agency.

(g) The county auditor or officer shall, at the same time or times as the payment of taxes into the funds of the respective taxing agencies of the county, allocate and pay the portion of taxes provided by subdivision (b) of Section 33670 to each agency. The amount allocated and paid shall not exceed the amount determined pursuant to subparagraph (C) of paragraph (1) of subdivision (c) minus the amount determined pursuant to subparagraph (D) of paragraph (1) of subdivision (c).

(h) (1) The statement of indebtedness constitutes prima facie evidence of the loans, advances, or indebtedness of the agency.

(2) (A) If the county auditor or other officer disputes the amount of loans, advances, or indebtedness as shown on the statement of indebtedness, the county auditor or other officer shall, within 30 days after receipt of the statement, give written notice to the agency thereof.

(B) The agency shall, within 30 days after receipt of notice pursuant to subparagraph (A), submit any further information it deems appropriate to substantiate the amount of any loans, advances, or indebtedness which has been disputed. If the county auditor or other officer still disputes the amount of loans, advances, or indebtedness, final written notice of that dispute shall be given to the agency, and the amount disputed may be withheld from allocation and payment to the agency as otherwise required by subdivision (g). In that event, the auditor or other officer shall bring an action in the superior court in declaratory relief to determine the matter not later than 90 days after the date of the final notice.

(3) In any court action brought pursuant to this section, the issue shall involve only the amount of loans, advances, or indebtedness,

and not the validity of any contract or debt instrument or any expenditures pursuant thereto. Payments to a trustee under a bond resolution or indenture of any kind or payments to a public agency in connection with payments by that public agency pursuant to a lease or bond issue shall not be disputed in any action under this section. The matter shall be set for trial at the earliest possible date and shall take precedence over all other cases except older matters of the same character. Unless an action is brought within the time provided for herein, the auditor or other officer shall allocate and pay the amount shown on the statement of indebtedness as provided in subdivision (g).

(i) Nothing in this section shall be construed to permit a challenge to or attack on matters precluded from challenge or attack by reason of Sections 33500 and 33501. However, nothing in this section shall be construed to deny a remedy against the agency otherwise provided by law.

(j) The Controller shall prescribe a uniform form of statement of indebtedness and reconciliation statement. These forms shall be consistent with this section. In preparing these forms, the Controller shall obtain the input of county auditors, redevelopment agencies, and organizations of county auditors and redevelopment agencies.

(k) For the purposes of this section, a fiscal year shall be a year that begins on July 1 and ends the following June 30.

SEC. 34. Section 33676 of the Health and Safety Code is amended to read:

33676. (a) Prior to the adoption by the legislative body of a redevelopment plan providing for tax-increment financing pursuant to Section 33670, any affected taxing agency may elect to be allocated, and every school district and community college district shall be allocated, in addition to the portion of taxes allocated to the affected taxing agency pursuant to subdivision (a) of Section 33670, all or any portion of the tax revenues allocated to the agency pursuant to subdivision (b) of Section 33670 attributable to one or more of the following:

(1) Increases in the rate of tax imposed for the benefit of the taxing agency which levy occurs after the tax year in which the ordinance adopting the redevelopment plan becomes effective.

(2) If an agency pursuant to Section 33354.5 amends a redevelopment plan which does not utilize tax increment financing to add tax increment financing, and pursuant to subdivision (a) of Section 33670 uses the assessment roll last equalized prior to the effective date of the ordinance originally adopting the redevelopment plan, an affected taxing agency may elect to be allocated all or any portion of the tax revenues allocated to the agency pursuant to subdivision (b) of Section 33670 which the affected taxing agency would receive if the agency were to use the assessment roll last equalized prior to the effective date of the ordinance amending the redevelopment plan to add tax increment financing.

(b) (1) Any local education agency that is a basic aid district or office at the time the ordinance adopting a redevelopment plan is adopted and that receives no state funding, other than that provided pursuant to Section 6 of Article IX of the California Constitution, pursuant to Section 2558, 42238, or 84750, as appropriate, of the Education Code, shall receive annually its percentage share of the property taxes from the project area allocated among all of the affected taxing entities during the fiscal year the funds are allocated, increased by an amount equal to the lesser of the following:

(A) The percentage growth in assessed value that occurs throughout the district, excluding the portion of the district within the redevelopment project area.

(B) Eighty percent of the growth in assessed value that occurs within the portion of the district within the redevelopment project area.

(2) Subparagraphs (A) and (B) of paragraph (1) shall not apply to a redevelopment plan adopted by the legislative body of a community if both of the following occur:

(A) The median household income in the community in which the redevelopment project area is located is less than 80 percent of the median household income in the county in which the redevelopment project area is located.

(B) The preliminary plan for the redevelopment plan was adopted on or before September 1, 1993, and the redevelopment plan was adopted on or before August 1, 1994.

(3) Any local education agency that is a basic aid district or office at the time the ordinance amending a redevelopment plan is adopted pursuant to Section 33607.7 and that receives no state funding, other than that provided pursuant to Section 6 of Article IX of the California Constitution, pursuant to Section 2558, 42238, or 84750, as appropriate, of the Education Code, shall receive either of the following:

(A) If an agreement exists that requires payments to the basic aid district, the amount required to be paid by an agreement between the agency and the basic aid district entered into prior to January 1, 1994.

(B) If an agreement does not exist, the percentage share of the increase in property taxes from the project area allocated among of all of the affected taxing entities during the fiscal year the funds in the project area are allocated, derived from 80 percent of the growth in assessed value that occurs within the portion of the district within the redevelopment project area from the year in which the amendment takes effect pursuant to subdivision (c) of Section 33607.7.

(4) The redevelopment agency shall subtract from any payments made pursuant to this section the amount that a basic aid district receives pursuant to Section 33607.5 for the purposes of either paragraph (1) of subdivision (h) of Section 42238 of the Education Code or Section 84750 of the Education Code.

(c) The governing body of any affected taxing agency, other than a school district and a community college district, electing to receive allocation of taxes pursuant to this section in addition to taxes allocated to it pursuant to subdivision (a) of Section 33670 shall adopt a resolution to that effect and transmit the same, prior to the adoption of the redevelopment plan, to (1) the legislative body, (2) the agency, and (3) the official or officials performing the functions of levying and collecting taxes for the affected taxing agency. Upon receipt by the official or officials of the resolution, allocation of taxes pursuant to this section to the affected taxing agency which has elected to receive the allocation pursuant to this section by the adoption of the resolution and allocation of taxes pursuant to this section to every school district and community college district shall be made at the time or times allocations are made pursuant to subdivision (a) of Section 33670.

(d) An affected taxing agency, at any time after the adoption of the resolution, may elect not to receive all or any portion of the additional allocation of taxes pursuant to this section by rescinding the resolution or by amending the same, as the case may be, and giving notice thereof to the legislative body, the agency, and the official or officials performing the functions of levying and collecting taxes for the affected taxing agency. After receipt of a notice by the official or officials that an affected taxing agency has elected not to receive all or a portion of the additional allocation of taxes by rescission or amendment of the resolution, any allocation of taxes to the affected taxing agency required to be made pursuant to this section shall not thereafter be made but shall be allocated to the agency and the affected taxing agency shall thereafter be allocated only the portion of taxes provided for in subdivision (a) of Section 33670. After receipt of a notice by the official or officials that an affected taxing agency has elected to receive additional tax revenues attributable to only a portion of the increases in the rate of tax, only that portion of the tax revenues shall thereafter be allocated to the affected taxing agency in addition to the portion of taxes allocated pursuant to subdivision (a) of Section 33670, and the remaining portion thereof shall be allocated to the agency.

(e) As used in this section, "affected taxing agency" means and includes every public agency for the benefit of which a tax is levied upon property in the project area, whether levied by the public agency or on its behalf by another public agency.

(f) This section shall apply only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) of Chapter 4 on or after January 1, 1977.

SEC. 35. Section 33678 of the Health and Safety Code is amended to read:

33678. (a) This section implements and fulfills the intent of this article and of Article XIII B and Section 16 of Article XVI of the California Constitution. The allocation and payment to an agency of

the portion of taxes specified in subdivision (b) of Section 33670 for the purpose of paying principal of, or interest on, loans, advances, or indebtedness incurred for redevelopment activity, as defined in subdivision (b) of this section, shall not be deemed the receipt by an agency of proceeds of taxes levied by or on behalf of the agency within the meaning or for the purposes of Article XIII B of the California Constitution, nor shall such portion of taxes be deemed receipt of proceeds of taxes by, or an appropriation subject to limitation of, any other public body within the meaning or for purposes of Article XIII B of the California Constitution or any statutory provision enacted in implementation of Article XIII B. The allocation and payment to an agency of this portion of taxes shall not be deemed the appropriation by a redevelopment agency of proceeds of taxes levied by or on behalf of a redevelopment agency within the meaning or for purposes of Article XIII B of the California Constitution.

(b) As used in this section, "redevelopment activity" means either of the following:

(1) Redevelopment meeting all of the following criteria:

(A) Is redevelopment as prescribed in Sections 33020 and 33021.

(B) Primarily benefits the project area.

(C) None of the funds are used for the purpose of paying for employee or contractual services of any local governmental agency unless these services are directly related to the purpose of Sections 33020 and 33021 and the powers established in this part.

(2) Payments authorized by Section 33607.5.

(c) Should any law hereafter enacted, without a vote of the electorate, confer taxing power upon an agency, the exercise of that power by the agency in any fiscal year shall be deemed a transfer of financial responsibility from the community to the agency for that fiscal year within the meaning of subdivision (a) of Section 3 of Article XIII B of the California Constitution.

SEC. 36. Section 7200.1 of the Revenue and Taxation Code is repealed.

SEC. 37. Section 7202.6 of the Revenue and Taxation Code is repealed.

SEC. 38. (a) The Legislature finds and declares that the amendment of Section 33641 of the Health and Safety Code, and the repeal of Section 7202.6 of the Revenue and Taxation Code, as provided for in this act, shall not be deemed or construed to invalidate, impair, or otherwise affect the following:

(1) An ordinance adopted by a redevelopment agency, prior to January 1, 1994, pursuant to either of the above code sections.

(2) The receipt of revenues by a redevelopment agency, after January 1, 1994, under an ordinance adopted prior to that date, pursuant to either of the above code sections.

(3) The pledge of revenues described in paragraph (2) by a redevelopment agency, pursuant to an agreement entered into prior to January 1, 1994.

(4) The refunding of bonds issued pursuant to Section 33641 of the Health and Safety Code.

(5) The issuance of bonds on which the principal and interest are payable from taxes imposed by an ordinance adopted by a redevelopment agency pursuant to Section 7202.6 of the Revenue and Taxation Code prior to January 1, 1994, whether those bonds are issued prior to or after January 1, 1994, provided that the issuance of those bonds are pursuant to an enforceable agreement, effective prior to January 1, 1994, that contains a pledge of sales taxes or provisions for the use of sales taxes for project financing purposes.

(b) The Legislature further finds and declares that the amendment of Sections 33401 and 33676 of the Health and Safety Code, as provided for in this act, shall not be deemed or construed to invalidate, impair, or otherwise affect an agreement between a redevelopment agency and an affected taxing entity, entered into pursuant to either of those sections prior to January 1, 1994.

(c) The Legislature further finds and declares that the amendments to Section 33031 of the Health and Safety Code, and specifically the addition of paragraph (5) to subdivision (b) of that section, as made by this measure, are not intended to, and do not, expand the activities a community redevelopment agency may finance pursuant to the Community Redevelopment Law, Part 24 (commencing with Section 33000) of the Health and Safety Code.

SEC. 39. Notwithstanding Section 33354.6 of the Health and Safety Code, or any other provision that is amended or added by this act, a redevelopment agency that is amending one or more redevelopment plans to merge three areas and that has approved and sent to the affected taxing entities the preliminary report required by Section 33344.5 of the Health and Safety Code prior to September 1, 1993, shall not be required to comply with this act in the adoption of an amendment that is adopted prior to March 31, 1994. In that event, the redevelopment agency shall comply with the provisions of law that governed the adoption of plan amendments as these provisions existed prior to January 1, 1994.

SEC. 40. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed 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 943

An act to amend Sections 42238 and 84751 of the Education Code, and to amend Sections 33320.1 and 33670 of, and to add Chapter 4.5 (commencing with Section 33492) to Part 1 of Division 24 of, the Health and Safety Code, relating to redevelopment.

[Approved by Governor October 8, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 42238 of the Education Code is amended to read:

42238. (a) For the 1984–85 fiscal year and each fiscal year thereafter, the county superintendent of schools shall determine a revenue limit for each school district in the county pursuant to this section.

(b) The base revenue limit for the current fiscal year shall be determined by adding to the base revenue limit for the prior fiscal year the following amounts:

(1) The inflation adjustment specified in Section 42238.1.

(2) For the 1985–86 and 1986–87 fiscal years only, the equalization adjustment specified in Section 42238.4.

(3) For the 1985–86 fiscal year, the amount received per unit of average daily attendance in the 1984–85 fiscal year pursuant to Section 42238.7.

(4) For the 1985–86, 1986–87, and 1987–88 fiscal years, the amount per unit of average daily attendance received in the prior fiscal year pursuant to Section 42238.8.

(c) Except for districts subject to subdivision (d), the base revenue limit computed pursuant to subdivision (b) shall be multiplied by the district average daily attendance computed pursuant to Section 42238.5.

(d) For districts for which the number of units of average daily attendance determined pursuant to Section 42238.5 is greater for the current fiscal year than for the 1982–83 fiscal year, compute the following amount, in lieu of the amount computed pursuant to subdivision (c):

(1) Multiply the base revenue limit computed pursuant to subdivision (c) by the average daily attendance computed pursuant to Section 42238.5 for the 1982–83 fiscal year.

(2) Multiply the lesser of the amount in subdivision (c) or 1.05 times the statewide average base revenue limit per unit of average daily attendance for districts of similar type for the current fiscal year by the difference between the average daily attendance computed pursuant to Section 42238.5 for the current and 1982–83 fiscal years.

(3) Add the amounts in paragraphs (1) and (2).

(e) The base revenue limit per unit of average daily attendance

shall be the lesser of the following amounts:

(1) The amount determined in subdivision (b).

(2) The amount computed pursuant to Section 42238 for the prior fiscal year divided by the prior fiscal year revenue limit average daily attendance times the sum of 1.0 and twice the percentage increase in revenue limits computed pursuant to Section 42238.1 for the current fiscal year.

(f) For districts electing to compute units of average daily attendance pursuant to subdivision (a) of Section 42238.5, the amount computed pursuant to Article 4 (commencing with Section 42280) shall be added to the amount computed in subdivision (c) or (d), as appropriate.

(g) For the 1984–85 fiscal year only, the county superintendent shall reduce the total revenue limit computed in this section by the amount of the decreased employer contributions to the Public Employees' Retirement System resulting from enactment of Chapter 330 of the Statutes of 1982, offset by any increase in those contributions, as of the 1983–84 fiscal year, resulting from subsequent changes in employer contribution rates.

The reduction shall be calculated as follows:

(1) Determine the amount of employer contributions that would have been made in the 1983–84 fiscal year if the applicable Public Employees' Retirement System employer contribution rate in effect immediately prior to the enactment of Chapter 330 of the Statutes of 1982 were in effect during the 1983–84 fiscal year.

(2) Subtract from the amount determined in paragraph (1) the greater of subparagraph (A) or (B):

(A) The amount of employer contributions that would have been made in the 1983–84 fiscal year if the applicable Public Employees' Retirement System employer contribution rate in effect immediately after the enactment of Chapter 330 of the Statutes of 1982 were in effect during the 1983–84 fiscal year.

(B) The actual amount of employer contributions made to the Public Employees' Retirement System in the 1983–84 fiscal year.

(3) For purposes of this subdivision, employer contributions to the Public Employees' Retirement System for any of the following shall be excluded from the calculation specified above:

(A) Positions supported totally by federal funds that were subject to supplanting restrictions.

(B) Positions supported by funds received pursuant to Section 42243.6.

(C) Positions supported, to the extent of employer contributions not exceeding twenty-five thousand dollars ($25,000) by any single educational agency, from a revenue source determined on the basis of equity to be properly excludable from the provisions of this subdivision by the Superintendent of Public Instruction with the approval of the Director of Finance.

(4) For accounting purposes, the reduction made by this subdivision may be reflected as an expenditure from appropriate

sources of revenue as directed by the Superintendent of Public Instruction.

(h) The Superintendent of Public Instruction shall apportion to each school district the amount determined in this section less the sum of:

(1) The district's property tax revenue received pursuant to Chapter 3 (commencing with Section 75) and Chapter 6 (commencing with Section 95) of, Part 0.5 of Division 1 of the Revenue and Taxation Code.

(2) The amount, if any, received pursuant to Part 18.5 (commencing with Section 38101) of Division 2 of the Revenue and Taxation Code.

(3) The amount, if any, received pursuant to Chapter 3 (commencing with Section 16140) of Part 1 of Division 4 of Title 2 of the Government Code.

(4) Prior years taxes and taxes on the unsecured roll.

(5) Fifty percent of the amount received pursuant to Section 41603.

(6) The amount of motor vehicle license fees distributed pursuant to Section 11003.4 of the Revenue and Taxation Code.

(7) The amount, if any, received pursuant to any provision of the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code), except for any amount received pursuant to Section 33401 or 33676 of the Health and Safety Code that is used for land acquisition, facility construction, reconstruction, or remodeling, or deferred maintenance, except for any amount received pursuant to Section 33492.15, 33607.5, or 33607.7 of the Health and Safety Code that is allocated exclusively for educational facilities.

(i) This section shall become operative July 1, 1984.

SEC. 1.5. Section 42238 of the Education Code is amended to read:

42238. (a) For the 1984–85 fiscal year and each fiscal year thereafter, the county superintendent of schools shall determine a revenue limit for each school district in the county pursuant to this section.

(b) The base revenue limit for the current fiscal year shall be determined by adding to the base revenue limit for the prior fiscal year the following amounts:

(1) The inflation adjustment specified in Section 42238.1.

(2) For the 1985–86 and 1986–87 fiscal years only, the equalization adjustment specified in Section 42238.4.

(3) For the 1985–86 fiscal year, the amount received per unit of average daily attendance in the 1984–85 fiscal year pursuant to Section 42238.7.

(4) For the 1985–86, 1986–87, and 1987–88 fiscal years, the amount per unit of average daily attendance received in the prior fiscal year pursuant to Section 42238.8.

(c) Except for districts subject to subdivision (d), the base

revenue limit computed pursuant to subdivision (b) shall be multiplied by the district average daily attendance computed pursuant to Section 42238.5.

(d) For districts for which the number of units of average daily attendance determined pursuant to Section 42238.5 is greater for the current fiscal year than for the 1982–83 fiscal year, compute the following amount, in lieu of the amount computed pursuant to subdivision (c):

(1) Multiply the base revenue limit computed pursuant to subdivision (c) by the average daily attendance computed pursuant to Section 42238.5 for the 1982–83 fiscal year.

(2) Multiply the lesser of the amount in subdivision (c) or 1.05 times the statewide average base revenue limit per unit of average daily attendance for districts of similar type for the current fiscal year by the difference between the average daily attendance computed pursuant to Section 42238.5 for the current and 1982–83 fiscal years.

(3) Add the amounts in paragraphs (1) and (2).

(e) The base revenue limit per unit of average daily attendance shall be the lesser of the following amounts:

(1) The amount determined in subdivision (b).

(2) The amount computed pursuant to Section 42238 for the prior fiscal year divided by the prior fiscal year revenue limit average daily attendance times the sum of 1.0 and twice the percentage increase in revenue limits computed pursuant to Section 42238.1 for the current fiscal year.

(f) For districts electing to compute units of average daily attendance pursuant to subdivision (a) of Section 42238.5, the amount computed pursuant to Article 4 (commencing with Section 42280) shall be added to the amount computed in subdivision (c) or (d), as appropriate.

(g) For the 1984–85 fiscal year only, the county superintendent shall reduce the total revenue limit computed in this section by the amount of the decreased employer contributions to the Public Employees' Retirement System resulting from enactment of Chapter 330 of the Statutes of 1982, offset by any increase in those contributions, as of the 1983–84 fiscal year, resulting from subsequent changes in employer contribution rates.

The reduction shall be calculated as follows:

(1) Determine the amount of employer contributions that would have been made in the 1983–84 fiscal year if the applicable Public Employees' Retirement System employer contribution rate in effect immediately prior to the enactment of Chapter 330 of the Statutes of 1982 were in effect during the 1983–84 fiscal year.

(2) Subtract from the amount determined in paragraph (1) the greater of subparagraph (A) or (B):

(A) The amount of employer contributions that would have been made in the 1983–84 fiscal year if the applicable Public Employees' Retirement System employer contribution rate in effect immediately after the enactment of Chapter 330 of the Statutes of

1982 were in effect during the 1983–84 fiscal year.

(B) The actual amount of employer contributions made to the Public Employees' Retirement System in the 1983–84 fiscal year.

(3) For purposes of this subdivision, employer contributions to the Public Employees' Retirement System for any of the following shall be excluded from the calculation specified above:

(A) Positions supported totally by federal funds that were subject to supplanting restrictions.

(B) Positions supported by funds received pursuant to Section 42243.6.

(C) Positions supported, to the extent of employer contributions not exceeding twenty-five thousand dollars ($25,000) by any single educational agency, from a revenue source determined on the basis of equity to be properly excludable from the provisions of this subdivision by the Superintendent of Public Instruction with the approval of the Director of Finance.

(4) For accounting purposes, the reduction made by this subdivision may be reflected as an expenditure from appropriate sources of revenue as directed by the Superintendent of Public Instruction.

(h) The Superintendent of Public Instruction shall apportion to each school district the amount determined in this section less the sum of:

(1) The district's property tax revenue received pursuant to Chapter 3 (commencing with Section 75) and Chapter 6 (commencing with Section 95) of, Part 0.5 of Division 1 of the Revenue and Taxation Code.

(2) The amount, if any, received pursuant to Part 18.5 (commencing with Section 38101) of Division 2 of the Revenue and Taxation Code.

(3) The amount, if any, received pursuant to Chapter 3 (commencing with Section 16140) of Part 1 of Division 4 of Title 2 of the Government Code.

(4) Prior years taxes and taxes on the unsecured roll.

(5) Fifty percent of the amount received pursuant to Section 41603.

(6) The amount of motor vehicle license fees distributed pursuant to Section 11003.4 of the Revenue and Taxation Code.

(7) The amount, if any, received pursuant to any provision of the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code), except for any amount received pursuant to Section 33401 or 33676 of the Health and Safety Code that is used for land acquisition, facility construction, reconstruction, or remodeling, or deferred maintenance, except for any amount received pursuant to Section 33492.15 of the Health and Safety Code that is allocated exclusively for educational facilities.

(i) This section shall become operative July 1, 1984.

SEC. 2. Section 84751 of the Education Code, as added by

Chapter 66 of the Statutes of 1993, is amended to read:

84751. In calculating each community college district's revenue level for each fiscal year pursuant to subdivision (a) of Section 84750, the chancellor shall subtract, from the total revenues owed, all of the following:

(a) The local property tax revenue specified by law for general operating support, exclusive of bond interest and redemption.

(b) Ninety-eight percent of the fee revenues collected pursuant to Section 76300 and moneys received for fees defrayed pursuant to subdivisions (g) and (h) of that section.

(c) Motor vehicle license fees received pursuant to Section 11003.4 of the Revenue and Taxation Code.

(d) Timber yield tax revenue received pursuant to Section 38905 of the Revenue and Taxation Code.

(e) Any amounts received pursuant to Section 33492.15, 33607.5, or 33607.7 of the Health and Safety Code that are allocated exclusively for educational facilities.

SEC. 2.5. Section 84751 of the Education Code as added by Chapter 66 of the Statutes of 1993, is amended to read:

84751. In calculating each community college district's revenue level for each fiscal year pursuant to subdivision (a) of Section 84750, the chancellor shall subtract, from the total revenues owed, all of the following:

(a) The local property tax revenue specified by law for general operating support, exclusive of bond interest and redemption.

(b) Ninety-eight percent of the fee revenues collected pursuant to Section 76300 and moneys received for fees defrayed pursuant to subdivisions (g) and (h) of that section.

(c) Motor vehicle license fees received pursuant to Section 11003.4 of the Revenue and Taxation Code.

(d) Timber yield tax revenue received pursuant to Section 38905 of the Revenue and Taxation Code.

(e) Any amounts received pursuant to Section 33492.15 of the Health and Safety Code that are allocated exclusively for educational facilities.

SEC. 3. Section 33320.1 of the Health and Safety Code is amended to read:

33320.1. (a) "Project area" means, except as provided in Section 33320.2, 33320.3, 33320.4, or 33492.3, a predominantly urbanized area of a community which is a blighted area, the redevelopment of which is necessary to effectuate the public purposes declared in this part, and which is selected by the planning commission pursuant to Section 33322.

(b) As used in this section, "predominantly urbanized" means that not less than 80 percent of the land in the project area:

(1) Has been or is developed for urban uses; or

(2) Is characterized by the conditions described in subdivision (a), (b), or (e) of Section 33032; or

(3) Is an integral part of one or more areas developed for urban

uses which are surrounded or substantially surrounded by parcels which have been or are developed for urban uses. Parcels separated by only an improved right-of-way shall be deemed adjacent for the purpose of this subdivision.

(c) For the purposes of this section, a parcel of property as shown on the official maps of the county assessor is developed if that parcel is developed in a manner which is either consistent with zoning or is otherwise permitted under law.

(d) The requirement that a project be predominantly urbanized shall apply only to a project area for which a final redevelopment plan is adopted on or after January 1, 1984, or to an area which is added to a project area by an amendment to a redevelopment plan, which amendment is adopted on or after January 1, 1984.

SEC. 4. Chapter 4.5 (commencing with Section 33492) is added to Part 1 of Division 24 of the Health and Safety Code, to read:

CHAPTER 4.5. MILITARY BASE CLOSURE REDEVELOPMENT AGENCIES

Article 1. General Provisions

33492. With enactment of this chapter, it is the intent of the Legislature to provide a means of mitigating the economic and social degradation that is faced by communities the jurisdictions of which include military bases that have been ordered to be closed by the federal Base Closure Commission.

33492.1. The Legislature finds and declares that extraordinary measures must be taken to mitigate the effects of the federal government's efforts to reduce the number of military bases throughout the country.

33492.3. For any redevelopment project area formed pursuant to this chapter, the project area may include all, or any portion of, property within a military base that the federal Base Closure Commission has voted to close when that action has been sustained by the President and Congress of the United States, regardless of the percentage of urbanized land, as defined in Section 33320.1, within the military base. The project area may include territory outside the military base if inclusion of that territory is authorized by this chapter.

33492.5. (a) In any community in which a military base is located, the Base Closure Commission has voted to close that military base, and the action of the Base Closure Commission has been sustained by the President and Congress of the United States, a project area may be adopted pursuant to the following requirements:

(1) If the project area is located entirely within the boundaries of a city, then the city redevelopment agency may adopt the redevelopment project area pursuant to this part as modified by this chapter.

(2) If the project area is located entirely within the

unincorporated area of a single county, then the county redevelopment agency may adopt the redevelopment project area pursuant to this part as modified by this chapter.

(3) If the project area includes property within the jurisdictions of two or more cities, or two or more counties, or a city and a county, or any combination of the foregoing, then all of the cities and counties the jurisdictions of which include property within the boundaries of the military base and any other territory to be included within the redevelopment project area may enter into a joint powers agreement, an agreement entered into pursuant to Section 33210, or other appropriate agreement for the purpose of creating a redevelopment agency and adopting a project area pursuant to this part as modified by this chapter.

(b) A redevelopment agency to which this chapter is applicable may adopt a project area either pursuant to this chapter or pursuant to other relevant provisions of this part.

33492.7. (a) Paragraph (11) of subdivision (d) of Section 33367 shall not apply to the territory within the military base for any redevelopment project area adopted pursuant to this chapter.

(b) For any project area adopted pursuant to this chapter, Section 33492.11 may be used in lieu of Section 33031.

33492.9. Notwithstanding any other provision of law, in each county in which a redevelopment agency is formed, or a redevelopment plan is adopted, pursuant to this chapter, the county auditor shall certify to the Director of Finance the date of the final day of the first fiscal year in which one hundred thousand dollars ($100,000) or more of tax increment funds from the redevelopment project area adopted pursuant to this chapter are paid to the redevelopment agency pursuant to subdivision (d) of Section 33675.

33492.10. A blighted area is a military base in which the combination of conditions set forth in Section 33492.11 is so prevalent and so substantial that it causes a reduction of, or lack of, proper utilization of the area to such an extent that it constitutes a serious physical and economic burden on the community which cannot reasonably be expected to be reversed or alleviated by private enterprise or governmental action, or both, without redevelopment.

33492.11. (a) This subdivision describes physical conditions that cause blight:

(1) Buildings in which it is unsafe or unhealthy for persons to live or work. These conditions can be caused by serious building code violations, dilapidation and deterioration, defective design or physical construction, faulty or inadequate infrastructure, or other similar factors.

(2) Factors that prevent or substantially hinder the economically viable reuse or capacity of buildings or areas. This condition can be caused by a substandard design, inadequate size given present standards and market conditions, lack of parking, or other similar factors that are unique to military bases.

(3) Adjacent or nearby uses that are incompatible with each other

and that prevent the economic development of those parcels or other portions of the project area.

(4) The existence of subdivided lots of irregular form and shape and inadequate size for proper usefulness and development that are in multiple ownership.

(b) This subdivision describes economic conditions that cause blight:

(1) Depreciated or stagnant property values or impaired investments, including, but not necessarily limited to, those properties containing hazardous wastes that require the use of agency authority as specified in Article 12.5 (commencing with Section 33459).

(2) Abnormally high business vacancies, abnormally low lease rates, high turnover rates, abandoned buildings, or excessive vacant lots within an area developed for urban use or used as a military base.

(3) A lack of necessary commercial facilities that are normally found in neighborhoods, including grocery stores, drugstores, and banks and other lending institutions.

(4) Residential overcrowding or an excess of bars, liquor stores, or other businesses that cater exclusively to adults, that has led to problems of public safety and welfare.

(5) A high crime rate that constitutes a serious threat to the public safety and welfare.

33492.13. (a) A redevelopment plan, adopted pursuant to this chapter and containing the provisions set forth in Section 33670, shall contain all of the following limitations:

(1) A limitation on the number of dollars of taxes which may be divided and allocated to the redevelopment agency pursuant thereto. Taxes shall not be divided and shall not be allocated to the redevelopment agency beyond this limitation, except by amendment of the redevelopment plan pursuant to Section 33354.6.

(2) (A) The time limit on the establishing of loans, advances, and indebtedness to be paid with the proceeds of property taxes received pursuant to Section 33670 to finance in whole or in part the redevelopment project, which may not exceed 20 years from the date the county auditor certifies pursuant to Section 33492.9, except by amendment of the redevelopment plan as authorized by subparagraph (B). The loans, advances, or indebtedness may be repaid over a period of time longer than the time limit as provided in this section. No loans, advances, or indebtedness to be repaid from the allocation of taxes shall be established or incurred by the agency beyond this time limitation.

(B) The time limitation established by subparagraph (A) may be extended only by amendment of the redevelopment plan after the agency finds, based on substantial evidence, that (i) substantial blight remains within the project area; (ii) this blight cannot be eliminated without the establishment of additional debt; and (iii) the elimination of blight cannot reasonably be accomplished by private enterprise acting alone or by the legislative body's use of financing

alternatives other than tax increment financing. However, this amended time limitation may not exceed 30 years from the date the county auditor certifies pursuant to Section 33492.9.

(3) A time limit, not to exceed 30 years from the date the county auditor certifies pursuant to Section 33492.9, on the effectiveness of the redevelopment plan. After the time limit on the effectiveness of the redevelopment plan, the agency shall have no authority to act pursuant to the redevelopment plan except to pay previously incurred indebtedness and enforce existing covenants or contracts.

(4) A time limit, not to exceed 45 years from the date the county auditor certifies pursuant to Section 33492.9, to repay indebtedness with the proceeds of property taxes received pursuant to Section 33670. After the time limit established pursuant to this paragraph, an agency may not receive property taxes pursuant to Section 33670.

(b) (1) A redevelopment plan, adopted pursuant to this chapter, that does not contain the provisions set forth in Section 33670 shall contain the limitations in paragraph (2).

(2) A time limit, not to exceed 12 years from the date the county auditor certifies pursuant to Section 33492.9, for commencement of eminent domain proceedings to acquire property within the project area. This time limitation may be extended only by amendment of the redevelopment plan.

33492.15. Notwithstanding any other provision of law, all of the following shall occur:

(a) Any redevelopment agency administering a redevelopment project area adopted pursuant to this chapter shall make the following apportionments to school districts and community college districts with territory located within that project area unless an alternative formula for determining the allocation to the school district or community college district is approved pursuant to other provisions of this chapter:

(1) In the fifth fiscal year beginning after the date the county auditor certifies to the Director of Finance pursuant to Section 33492.9, 10 percent of that portion of taxes in excess of the amount identified in subdivision (a) of Section 33670 in the year of adoption of the redevelopment plan which are attributable to each school district and each community college district with territory in the project area shall be allocated to, and when collected shall be paid into, the fund of the school district or community college district.

(2) Beginning in the sixth fiscal year after the date the county auditor certifies to the Director of Finance pursuant to Section 33492.9, the amount of taxes required to be allocated to each school district and to each community college district shall be increased by increments of 10 percent of the taxes in excess of the amount identified in subdivision (a) of Section 33670 in the year of adoption of the redevelopment plan which are attributable to each school district and each community college district with territory within the project area each successive year, so that in the 15th year following certification pursuant to Section 33492.9, 100 percent of the taxes in

excess of the amount identified in subdivision (a) of Section 33670 in the year of adoption of the redevelopment plan which are attributable to each school district and each community college district with territory located within the project area shall be allocated to, and when collected shall be paid into, the fund of that school district or community college district.

(3) "Taxes attributable to each school district" means the sum of the following two amounts:

(A) The amount of property taxes which, based on the assessed value within the project area, would have been allocated to each school district if they were not allocated to the redevelopment agency.

(B) An amount equal to the product of the amount determined pursuant to subparagraph (A) and the quotient of the amount in the county or counties in which the project area lies which is deposited in the Educational Revenue Augmentation Fund from cities, counties, and special districts, divided by the total property tax which is allocated directly to all schools or to the county office of education in the county or counties in which the project area lies.

(4) The allocation of funds pursuant to this subdivision shall be made before there is a determination made regarding the amount to be allocated to schools in the affected counties from the Educational Revenue Augmentation Fund.

(b) Once a mutually agreed-upon alternative agreement is reached, and affected school districts and community college districts have been provided for pursuant to this chapter, these affected school districts and affected community college districts shall not be considered "affected taxing entities" for purposes of Sections 33492.17, 33492.19, 33492.23, 33492.27, and 33492.29.

(c) Prior to incurring any bonded indebtedness, any redevelopment agency administering a project area pursuant to this chapter may subordinate to the bonded debt the amount required to be paid to an affected school district or community college district pursuant to this section upon a finding, based upon substantial evidence, that the agency will have sufficient funds available to pay both the bonded debt payments and the payments required by this section.

(d) It is the intent of the Legislature that, if there is an identified impaction relative to the redevelopment plan and an alternative formula is proposed pursuant to this section, then appropriate legislation shall be considered and enacted.

(e) In the event the redevelopment agency receives two million dollars ($2,000,000) or more of tax increment funds in any one fiscal year during the period from the date certified to the Director of Finance pursuant to Section 33492.9 until the end of the fifth full fiscal year thereafter, in the following fiscal year the redevelopment agency shall commence making payments of tax increment funds to school districts and community college districts in accordance with the schedule set forth in subdivision (a).

33492.17. (a) For any project area formed pursuant to this chapter, the agency may pay to any taxing agency with territory located within a project area, other than the community which has adopted the project, any amounts of money which the agency has found are necessary and appropriate to alleviate any financial burden or detriment caused to any taxing agency by a redevelopment project. The payments to a taxing agency in any single year shall not exceed the amount of property tax revenues which would have been received by that taxing agency if all the property tax revenues from the project area had been allocated to all the affected taxing agencies without regard to the division of taxes required by Section 33670, except that a greater payment may be established by agreement between the agency and one or more taxing agencies, except a school district, if the other taxing agencies agree to defer payments for one or more years in order to accomplish the purposes of the project at an earlier time than would otherwise be the case. The amount of any greater payments shall not exceed the amount of payment deferred.

(b) The payments made pursuant to this section shall be approved by a resolution, adopted by the redevelopment agency, which shall contain findings, supported by substantial evidence, that the redevelopment project will cause or has caused a financial burden or detriment to the taxing agency and that the payments are necessary to alleviate the financial burden or detriment.

33492.19. Notwithstanding any other provision of law:

(a) Any affected taxing entity may call for the creation of a fiscal review committee within 15 days after receipt of the preliminary report from the agency pursuant to Section 33344.5. The fiscal review committee shall be composed of one representative from each affected taxing entity, excluding a school district or community college district.

(b) Within 15 days after receiving notification that a fiscal review committee has been created, and prior to sending a redevelopment plan to the fiscal review committee, the agency shall commence consultations with the fiscal review committee regarding the impact of the proposed redevelopment project upon the affected taxing entities.

(c) (1) The purpose of the consultations commenced pursuant to this section shall be to identify the fiscal effects of the proposed redevelopment plan upon the affected taxing entities, to specify additional information, if any, needed to enable those fiscal effects to be identified and analyzed, and to suggest possible provisions in the redevelopment plan which would alleviate or eliminate a financial burden or detriment.

(2) During consultations with the fiscal review committee and affected taxing entities, the agency shall provide all written information it possesses concerning all public or private development which is planned for or taking place in the project area, except records which disclose trade secrets or the financial condition

of contractors or potential contractors with the agency.

33492.21. Notwithstanding any other provision of law:

(a) In the event a fiscal review committee is created pursuant to Section 33492.19, the redevelopment agency shall send the redevelopment plan to the chairperson of the fiscal review committee. The county representative or chief administrative officer shall be the temporary chairperson of the fiscal review committee for the purpose of convening the fiscal review committee's first meeting.

(b) The chairperson of the fiscal review committee shall convene the fiscal review committee with all due dispatch, and hold a hearing not less than 25, and not more than 40, days from the receipt of the plan. The hearing may be continued by the fiscal review committee but shall be completed within 15 days from the date of the initial hearing unless the agency and the fiscal review committee agree to an additional period of time.

33492.23. Notwithstanding any other provision of law:

(a) In the event a fiscal review committee is created pursuant to Section 33492.19, the fiscal review committee shall analyze and report to the agency, within 30 days of the conclusion of the hearing held pursuant to Section 33492.21, on the fiscal impact of the redevelopment plan or the amendment to the redevelopment plan on each of the members of the fiscal review committee, including a determination whether the redevelopment plan or amendment will have either a beneficial effect or a financial burden or detriment upon one or more members of the fiscal review committee.

(b) The analysis prepared pursuant to this section shall be based upon all of the following information:

(1) The preliminary report prepared pursuant to Section 33344.5.

(2) The redevelopment plan or amendment.

(3) Information derived from the consultations convened between the agency and fiscal review committee pursuant to Section 33492.19.

(4) Information derived from the hearing held by the fiscal review committee pursuant to Section 33492.21.

(5) The report prepared pursuant to Section 33328.

(6) Any additional information developed by the fiscal review committee.

(c) If the report of the fiscal review committee concludes that the redevelopment plan will cause a financial burden or detriment upon one or more members of the fiscal review committee, the report shall specifically describe that fiscal burden or detriment and shall contain evidence supporting that conclusion.

(d) If the report of the fiscal review committee concludes that the redevelopment plan will cause a financial burden or detriment upon one or more members of the fiscal review committee, the report may include recommended actions to be implemented by the agency which would alleviate or eliminate the financial burden or detriment, including, but not limited to, the following:

(1) Amendments to the redevelopment plan that would:

(A) Modify the total amount of tax increments to be received by the redevelopment agency.

(B) Modify the duration of the redevelopment plan.

(C) Modify the size of the project area.

(D) Modify, in kind or number, specific projects then proposed to be undertaken by the agency.

(E) Include specific actions or projects to be undertaken by the agency that would reduce or eliminate the detrimental fiscal effect upon the members of the fiscal review committee.

(2) Payments by the agency to a member of the fiscal review committee authorized by Section 33492.25.

33492.25. Notwithstanding any other provision of law:

(a) The agency may also pay to any taxing agency with territory located within a project area, other than the community which has adopted the project, any amounts of money which the agency has found are necessary and appropriate to alleviate any financial burden or detriment caused to any taxing agency by a redevelopment project.

(b) The payments to a taxing agency made, in any single year, pursuant to this section, shall not exceed the amount of property tax revenues which would have been received by that taxing agency if all the property tax revenues from the project area had been allocated to all the affected taxing agencies without regard to the division of taxes required by Section 33670, except that a greater payment may be established by agreement between the agency and one or more taxing agencies, except a school district, if the other taxing agencies agree to defer payments for one or more years in order to accomplish the purposes of the project at an earlier time than would otherwise be the case. The amount of any greater payments shall not exceed the amount of payment deferred.

(c) The payments made pursuant to this section shall be approved by a resolution, adopted by the redevelopment agency, which shall contain findings, supported by substantial evidence, that the redevelopment project will cause or has caused a financial burden or detriment to the taxing agency and that the payments are necessary to alleviate the financial burden or detriment.

(d) The requirement that the agency may make payments to a taxing entity only to alleviate a financial burden or detriment, as defined in Section 33012, and only after approval by a resolution which contains specified findings, shall apply only to payments made by an agency pursuant to an agreement between an agency and a taxing entity which is executed by the agency on or after the effective date of amendments to this section enacted by the Statutes of 1984.

33492.27. For the purposes of this chapter, "affected taxing entity" means any governmental taxing agency that levied a property tax on all or any portion of the property located in the proposed project area in the fiscal year prior to submission of the plan

to the committee.

33492.29. An ordinance adopting a redevelopment plan under this chapter shall include a finding that the effect of tax increment financing will not cause a significant financial burden or detriment on any taxing agency deriving revenues from a project area. This finding shall only be required when the project is financed in part or in whole from revenues derived from the allocation of taxes pursuant to Section 33670.

Article 2. Castle Air Force Base Redevelopment Project Area

33492.50. (a) With the enactment of this article, it is the intent of the Legislature to provide precise and specific means to mitigate the very serious economic effects of the closure of Castle Air Force Base on surrounding communities.

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

(1) The County of Merced, with a population of 180,000, is already in a very significantly depressed condition, with an unemployment rate exceeding 18 percent, extraordinarily high costs relating to the Aid for Dependent Children program, and low property tax revenues.

(2) The closure of Castle Air Force Base will result in the elimination of over 6,000 jobs, which is one in every 20 jobs in the County of Merced and a payroll loss of $220,000,000.

(3) The impact of the closure of Castle Air Force Base will fall in an area where 70 percent of public assistance recipients live within 10 miles of the base.

(4) This act is the result of a specific agreement between the County of Merced and affected local cities to resolve the situation created by the closure of Castle Air Force Base.

(5) The Legislature grants the temporary authorization for the Castle Joint Powers Redevelopment Agency to defer 50 percent of its Low and Moderate Income Housing Fund requirements for up to five years to allow the agency to receive a larger cash-flow to help the agency pay for its initial costs. The Legislature grants this authorization only in recognition of the unusual circumstances facing the agency.

33492.51. (a) Notwithstanding any other provision of law, there is hereby created the Castle Joint Powers Redevelopment Agency, which shall be composed of the City of Atwater, the City of Merced, and the County of Merced.

(b) The Castle Joint Powers Redevelopment Agency shall have all the powers, authorities, and duties granted to it under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code and this part, except as modified by Section 33320.66 for the exclusive purpose of establishing the Castle Air Force Base project area within the unincorporated territory of the County of Merced.

33492.53. (a) In addition to the powers of any agency, the Castle

Joint Powers Redevelopment Agency shall also act as the legislative body and planning commission for all approvals and actions required and authorized by this part for the adoption and implementation of a redevelopment plan. However, all land use, planning and development decisions with regard to the land within the project area shall continue to be under the control and jurisdiction of each of the respective local legislative bodies or planning commissions, as applicable.

(b) In adopting a redevelopment project area for the area within the unincorporated territory of the County of Merced contained within the Castle Air Force Base, the following shall apply, subject to the requirements of Section 33492.13:

(1) The limitation on dollars of taxes which may be divided and allocated to the Castle Air Force Base project area shall be two hundred fifty million dollars ($250,000,000).

(2) The limitation on the time by which the agency may commence eminent domain proceedings shall be 15 years.

(c) The Castle Joint Powers Redevelopment Agency may amend the limitations enumerated in paragraph (1) of subdivision (b) pursuant to existing law.

(d) The Castle Joint Powers Redevelopment Agency may defer up to 50 percent of its Low and Moderate Income Housing Fund requirements for the Castle Air Force Base project area for up to five years. The amount of the deferral shall be considered an indebtedness and shall be repaid to the Low and Moderate Income Housing Fund within eight years of the establishment of the Castle Air Force Base project area. If the indebtedness is not eliminated by the eighth year, the county auditor or controller shall withhold an amount equal to the indebtedness and deposit those moneys into a separate Low and Moderate Income Housing Fund for use by the Castle Joint Powers Redevelopment Agency under this section.

(e) The agency shall comply with the requirements of Chapter 16 (commencing with Section 7260) of Division 4 of Title 1 of the Government Code. In addition, if any housing occupied by persons of very low, low, or moderate income who have resided in the housing for at least two years is destroyed by redevelopment agency activities, the displaced persons shall receive relocation benefits which enable those persons to lease or rent a comparable replacement dwelling for a period not to exceed 96 months.

(f) (1) The agency shall comply with the requirements of Section 33413.

(2) In addition, if any housing occupied by persons of very low, low, or moderate income is destroyed by redevelopment agency activities, the destroyed units shall be replaced with housing, of the same or greater size, which shall be affordable in direct proportion to the income levels of the persons or households displaced by the redevelopment agency activities. This housing shall be provided simultaneously with the development for which it was destroyed.

(3) The requirements imposed by paragraph (2) of this

subdivision shall not apply to any dormitory building located, as of the effective date of the act which adds this section, on Castle Air Force Base.

(4) The requirements imposed by paragraph (2) of this subdivision shall not apply to any housing removed if the vacancy rate for low-income housing within the jurisdiction of the Castle Joint Powers Redevelopment Agency, as determined by the agency, is 6 percent or higher.

(g) Notwithstanding Section 33320.65, the Castle Joint Powers Redevelopment Agency may establish a project area and adopt and amend a redevelopment plan, as modified by subdivision (a) and other provisions of this chapter, if all of the following conditions are met:

(1) The Castle Joint Powers Redevelopment Agency makes a finding of benefit to the Castle Air Force Base project area, and the approval of the County of Merced, the City of Merced, and the City of Atwater is obtained.

(2) The project area is entirely contained in two concentric and overlapping circles one of which whose center is directly in front of the main gate and has a radius of 4.75 miles. The second is centered at the intersection of Yosemite Avenue and G Street in the City of Merced with a radius of 6.5 miles. At no time shall the aggregate acreage of the project areas established pursuant to this section exceed 2 percent of either city or 1 percent of the unincorporated area of the circles.

(3) The resolution adopting a survey area pursuant to Section 33310 shall be transmitted to all affected entities, including affected school districts, within 30 days of adoption. The planning commission, in formulating the preliminary plan pursuant to Section 33330, shall consult with all affected taxing entities.

(h) The Castle Joint Powers Redevelopment Agency shall not adopt a redevelopment plan pursuant to this section until the City of Atwater adopts a housing element, pursuant to Section 65585 of the Government Code, that substantially complies with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

33492.55. As used in this chapter, "fiscal year" means a year commencing on July 1 and ending on the next June 30.

SEC. 5. Section 33670 of the Health and Safety Code is amended to read:

33670. Any redevelopment plan may contain a provision that taxes, if any, levied upon taxable property in a redevelopment project each year by or for the benefit of the State of California, any city, county, city and county, district, or other public corporation (hereinafter sometimes called "taxing agencies") after the effective date of the ordinance approving the redevelopment plan, shall be divided as follows:

(a) That portion of the taxes which would be produced by the rate upon which the tax is levied each year by or for each of the taxing

agencies upon the total sum of the assessed value of the taxable property in the redevelopment project as shown upon the assessment roll used in connection with the taxation of that property by the taxing agency, last equalized prior to the effective date of the ordinance, shall be allocated to and when collected shall be paid to the respective taxing agencies as taxes by or for the taxing agencies on all other property are paid (for the purpose of allocating taxes levied by or for any taxing agency or agencies which did not include the territory in a redevelopment project on the effective date of the ordinance but to which that territory has been annexed or otherwise included after that effective date, the assessment roll of the county last equalized on the effective date of the ordinance shall be used in determining the assessed valuation of the taxable property in the project on the effective date); and

(b) Except as provided in subdivision (e) or in Section 33492.15, that portion of the levied taxes each year in excess of that amount shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project. Unless and until the total assessed valuation of the taxable property in a redevelopment project exceeds the total assessed value of the taxable property in that project as shown by the last equalized assessment roll referred to in subdivision (a), all of the taxes levied and collected upon the taxable property in the redevelopment project shall be paid to the respective taxing agencies. When the loans, advances, and indebtedness, if any, and interest thereon, have been paid, all moneys thereafter received from taxes upon the taxable property in the redevelopment project shall be paid to the respective taxing agencies as taxes on all other property are paid.

(c) In any redevelopment project in which taxes have been divided pursuant to this section prior to 1968, located within any county with total assessed valuation subject to general property taxes for the 1967–68 fiscal year between two billion dollars ($2,000,000,000) and two billion one hundred million dollars ($2,100,000,000), if the total assessed valuation of taxable property within the redevelopment project for the 1967–68 fiscal year was reduced, the total sum of the assessed value of taxable property used as the basis for apportionment of taxes under subdivision (a) shall be reduced by 10 percent for the 1968–69 fiscal year and fiscal years thereafter.

(d) For the purposes of this section, taxes shall not include taxes from the supplemental assessment roll levied pursuant to Chapter 3.5 (commencing with Section 75) of Part 0.5 of Division 1 of the Revenue and Taxation Code for the 1983–84 fiscal year.

(e) That portion of the taxes in excess of the amount identified in subdivision (a) which are attributable to a tax rate levied by a taxing

agency for the purpose of producing revenues in an amount sufficient to make annual repayments of the principal of, and the interest on, any bonded indebtedness for the acquisition or improvement of real property shall be allocated to, and when collected shall be paid into, the fund of that taxing agency. This subdivision shall only apply to taxes levied to repay bonded indebtedness approved by the voters of the taxing agency on or after January 1, 1989.

SEC. 6. The Legislature finds and declares that, because of the unique circumstances applicable to the closure of Castle Air Force Base in the County of Merced, and set forth in Section 33492.50 of the Health and Safety Code, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution, and the enactment of Article 2 (commencing with Section 33492.50) of Chapter 4.5 of Part 1 of Division 24 of the Health and Safety Code is therefore necessary.

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.

However, as to any costs incurred by the County of Merced pursuant to this act, 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. (a) Section 1 of this bill incorporates amendments to Section 42238 of the Education Code proposed by both this bill and AB 1290. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 42238 of the Education Code, and (3) this bill is enacted after AB 1290, in which case Section 1.5 of this bill shall not become operative.

(b) Section 2 of this bill incorporates amendments to Section 84751 of the Education Code proposed by both this bill and AB 1290. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 84751 of the Education Code, and (3) this bill is enacted after AB

1290, in which case Section 2.5 of this bill shall not become operative.

CHAPTER 944

An act to amend Sections 42238 and 84751 of the Education Code, and to amend Sections 33320.1 and 33670 of, and to add Chapter 4.5 (commencing with Section 33492) to Part 1 of Division 24 of, the Health and Safety Code, relating to redevelopment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 8, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 42238 of the Education Code is amended to read:

42238. (a) For the 1984–85 fiscal year and each fiscal year thereafter, the county superintendent of schools shall determine a revenue limit for each school district in the county pursuant to this section.

(b) The base revenue limit for the current fiscal year shall be determined by adding to the base revenue limit for the prior fiscal year the following amounts:

(1) The inflation adjustment specified in Section 42238.1.

(2) For the 1985–86 and 1986–87 fiscal years only, the equalization adjustment specified in Section 42238.4.

(3) For the 1985–86 fiscal year, the amount received per unit of average daily attendance in the 1984–85 fiscal year pursuant to Section 42238.7.

(4) For the 1985–86, 1986–87, and 1987–88 fiscal years, the amount per unit of average daily attendance received in the prior fiscal year pursuant to Section 42238.8.

(c) Except for districts subject to subdivision (d), the base revenue limit computed pursuant to subdivision (b) shall be multiplied by the district average daily attendance computed pursuant to Section 42238.5.

(d) For districts for which the number of units of average daily attendance determined pursuant to Section 42238.5 is greater for the current fiscal year than for the 1982–83 fiscal year, compute the following amount, in lieu of the amount computed pursuant to subdivision (c):

(1) Multiply the base revenue limit computed pursuant to subdivision (c) by the average daily attendance computed pursuant to Section 42238.5 for the 1982–83 fiscal year.

(2) Multiply the lesser of the amount in subdivision (c) or 1.05 times the statewide average base revenue limit per unit of average daily attendance for districts of similar type for the current fiscal year

by the difference between the average daily attendance computed pursuant to Section 42238.5 for the current and 1982–83 fiscal years.

(3) Add the amounts in paragraphs (1) and (2).

(e) The base revenue limit per unit of average daily attendance shall be the lesser of the following amounts:

(1) The amount determined in subdivision (b).

(2) The amount computed pursuant to Section 42238 for the prior fiscal year divided by the prior fiscal year revenue limit average daily attendance times the sum of 1.0 and twice the percentage increase in revenue limits computed pursuant to Section 42238.1 for the current fiscal year.

(f) For districts electing to compute units of average daily attendance pursuant to paragraph (3) of subdivision (a) of Section 42238.5, the amount computed pursuant to Article 4 (commencing with Section 42280) shall be added to the amount computed in subdivision (c) or (d), as appropriate.

(g) For the 1984–85 fiscal year only, the county superintendent shall reduce the total revenue limit computed in this section by the amount of the decreased employer contributions to the Public Employees' Retirement System resulting from enactment of Chapter 330 of the Statutes of 1982, offset by any increase in those contributions, as of the 1983–84 fiscal year, resulting from subsequent changes in employer contribution rates.

The reduction shall be calculated as follows:

(1) Determine the amount of employer contributions that would have been made in the 1983–84 fiscal year if the applicable Public Employees' Retirement System employer contribution rate in effect immediately prior to the enactment of Chapter 330 of the Statutes of 1982 were in effect during the 1983–84 fiscal year.

(2) Subtract from the amount determined in paragraph (1) the greater of subparagraph (A) or (B):

(A) The amount of employer contributions that would have been made in the 1983–84 fiscal year if the applicable Public Employees' Retirement System employer contribution rate in effect immediately after the enactment of Chapter 330 of the Statutes of 1982 were in effect during the 1983–84 fiscal year.

(B) The actual amount of employer contributions made to the Public Employees' Retirement System in the 1983–84 fiscal year.

(3) For purposes of this subdivision, employer contributions to the Public Employees' Retirement System for any of the following shall be excluded from the calculation specified above:

(A) Positions supported totally by federal funds that were subject to supplanting restrictions.

(B) Positions supported by funds received pursuant to Section 42243.6.

(C) Positions supported, to the extent of employer contributions not exceeding twenty-five thousand dollars ($25,000) by any single educational agency, from a revenue source determined on the basis of equity to be properly excludable from the provisions of this

subdivision by the Superintendent of Public Instruction with the approval of the Director of Finance.

(4) For accounting purposes, the reduction made by this subdivision may be reflected as an expenditure from appropriate sources of revenue as directed by the Superintendent of Public Instruction.

(h) The Superintendent of Public Instruction shall apportion to each school district the amount determined in this section less the sum of:

(1) The district's property tax revenue received pursuant to Chapter 3 (commencing with Section 75) and Chapter 6 (commencing with Section 95) of Part 0.5 of the Revenue and Taxation Code.

(2) The amount, if any, received pursuant to Part 18.5 (commencing with Section 38101) of the Revenue and Taxation Code.

(3) The amount, if any, received pursuant to Chapter 3 (commencing with Section 16140) of the Government Code.

(4) Prior years taxes and taxes on the unsecured roll.

(5) Fifty percent of the amount received pursuant to Section 41603.

(6) The amount of motor vehicle license fees distributed pursuant to Section 11003.4 of the Revenue and Taxation Code.

(7) The amount, if any, received pursuant to any provision of the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code), except for any amount received pursuant to Section 33401 or 33676 of the Health and Safety Code that is used for land acquisition, facility construction, reconstruction, or remodeling, or deferred maintenance, except for any amount received pursuant to Section 33492.15, 33607.5, or 33607.7 of the Health and Safety Code that is allocated exclusively for educational facilities.

(i) This section shall become operative July 1, 1984.

SEC. 2. Section 84751 of the Education Code, as added by Chapter 66 of the Statutes of 1993, is amended to read:

84751. In calculating each community college district's revenue level for each fiscal year pursuant to subdivision (a) of Section 84750, the chancellor shall subtract, from the total revenues owed, all of the following:

(a) The local property tax revenue specified by law for general operating support, exclusive of bond interest and redemption.

(b) Ninety-eight percent of the fee revenues collected pursuant to Section 76300 and moneys received for fees defrayed pursuant to subdivisions (g) and (h) of that section.

(c) Motor vehicle license fees received pursuant to Section 11003.4 of the Revenue and Taxation Code.

(d) Timber yield tax revenue received pursuant to Section 38905 of the Revenue and Taxation Code.

(e) Any amounts received pursuant to Section 33492.15, 33607.5,

or 33607.7 of the Health and Safety Code, except those amounts that are allocated exclusively for educational facilities.

SEC. 3. Section 33320.1 of the Health and Safety Code is amended to read:

33320.1. (a) "Project area" means, except as provided in Section 33320.2, 33320.3, 33320.4, or 33492.3, a predominantly urbanized area of a community which is a blighted area, the redevelopment of which is necessary to effectuate the public purposes declared in this part, and which is selected by the planning commission pursuant to Section 33322.

(b) As used in this section, "predominantly urbanized" means that not less than 80 percent of the land in the project area:

(1) Has been or is developed for urban uses; or

(2) Is characterized by the conditions described in subdivision (a), (b), or (e) of Section 33032; or

(3) Is an integral part of one or more areas developed for urban uses which are surrounded or substantially surrounded by parcels which have been or are developed for urban uses. Parcels separated by only an improved right-of-way shall be deemed adjacent for the purpose of this subdivision.

(c) For the purposes of this section, a parcel of property as shown on the official maps of the county assessor is developed if that parcel is developed in a manner which is either consistent with zoning or is otherwise permitted under law.

(d) The requirement that a project be predominantly urbanized shall apply only to a project area for which a final redevelopment plan is adopted on or after January 1, 1984, or to an area which is added to a project area by an amendment to a redevelopment plan, which amendment is adopted on or after January 1, 1984.

SEC. 4. Chapter 4.5 (commencing with Section 33492) is added to Part 1 of Division 24 of the Health and Safety Code, to read:

CHAPTER 4.5. MILITARY BASE CLOSURE REDEVELOPMENT AGENCIES

Article 1. General Provisions

33492. With enactment of this chapter, it is the intent of the Legislature to provide a means of mitigating the economic and social degradation that is faced by communities the jurisdictions of which include military bases that have been ordered to be closed by the federal Base Closure Commission.

33492.1. The Legislature finds and declares that extraordinary measures must be taken to mitigate the effects of the federal government's efforts to reduce the number of military bases throughout the country.

33492.3. For any redevelopment project area formed pursuant to this chapter, the project area may include all, or any portion of, property within a military base that the federal Base Closure

Commission has voted to close when that action has been sustained by the President and Congress of the United States, regardless of the percentage of urbanized land, as defined in Section 33320.1, within the military base. The project area may include territory outside the military base if inclusion of that territory is authorized by this chapter.

33492.5. (a) In any community in which a military base is located, the Base Closure Commission has voted to close that military base, and the action of the Base Closure Commission has been sustained by the President and Congress of the United States, a project area may be adopted pursuant to the following requirements:

(1) If the project area is located entirely within the boundaries of a city, then the city redevelopment agency may adopt the redevelopment project area pursuant to this part as modified by this chapter.

(2) If the project area is located entirely within the unincorporated area of a single county, then the county redevelopment agency may adopt the redevelopment project area pursuant to this part as modified by this chapter.

(3) If the project area includes property within the jurisdictions of two or more cities, or two or more counties, or a city and a county, or any combination of the foregoing, then all of the cities and counties the jurisdictions of which include property within the boundaries of the military base and any other territory to be included within the redevelopment project area may enter into a joint powers agreement, an agreement entered into pursuant to Section 33210, or other appropriate agreement for the purpose of creating a redevelopment agency and adopting a project area pursuant to this part as modified by this chapter.

(b) A redevelopment agency to which this chapter is applicable may adopt a project area either pursuant to this chapter or pursuant to other relevant provisions of this part.

33492.7. (a) Paragraph (11) of subdivision (d) of Section 33367 shall not apply to the territory within the military base for any redevelopment project area adopted pursuant to this chapter.

(b) For any project area adopted pursuant to this chapter, Section 33492.11 may be used in lieu of Section 33031.

33492.9. Notwithstanding any other provision of law, in each county in which a redevelopment agency is formed, or a redevelopment plan is adopted, pursuant to this chapter, the county auditor shall certify to the Director of Finance the date of the final day of the first fiscal year in which one hundred thousand dollars ($100,000) or more of tax increment funds from the redevelopment project area adopted pursuant to this chapter are paid to the redevelopment agency pursuant to subdivision (d) of Section 33675.

33492.10. A blighted area is a military base in which the combination of conditions set forth in Section 33492.11 is so prevalent and so substantial that it causes a reduction of, or lack of, proper utilization of the area to such an extent that it constitutes a serious

physical and economic burden on the community which cannot reasonably be expected to be reversed or alleviated by private enterprise or governmental action, or both, without redevelopment.

33492.11. (a) This subdivision describes physical conditions that cause blight:

(1) Buildings in which it is unsafe or unhealthy for persons to live or work. These conditions can be caused by serious building code violations, dilapidation and deterioration, defective design or physical construction, faulty or inadequate infrastructure, or other similar factors.

(2) Factors that prevent or substantially hinder the economically viable reuse or capacity of buildings or areas. This condition can be caused by a substandard design, inadequate size given present standards and market conditions, lack of parking, or other similar factors that are unique to military bases.

(3) Adjacent or nearby uses that are incompatible with each other and that prevent the economic development of those parcels or other portions of the project area.

(4) The existence of subdivided lots of irregular form and shape and inadequate size for proper usefulness and development that are in multiple ownership.

(b) This subdivision describes economic conditions that cause blight:

(1) Depreciated or stagnant property values or impaired investments, including, but not necessarily limited to, those properties containing hazardous wastes that require the use of agency authority as specified in Article 12.5 (commencing with Section 33459).

(2) Abnormally high business vacancies, abnormally low lease rates, high turnover rates, abandoned buildings, or excessive vacant lots within an area developed for urban use or used as a military base.

(3) A lack of necessary commercial facilities that are normally found in neighborhoods, including grocery stores, drugstores, and banks and other lending institutions.

(4) Residential overcrowding or an excess of bars, liquor stores, or other businesses that cater exclusively to adults, that has led to problems of public safety and welfare.

(5) A high crime rate that constitutes a serious threat to the public safety and welfare.

33492.13. (a) A redevelopment plan, adopted pursuant to this chapter and containing the provisions set forth in Section 33670, shall contain all of the following limitations:

(1) A limitation on the number of dollars of taxes which may be divided and allocated to the redevelopment agency pursuant thereto. Taxes shall not be divided and shall not be allocated to the redevelopment agency beyond this limitation, except by amendment of the redevelopment plan pursuant to Section 33354.6.

(2) (A) The time limit on the establishing of loans, advances, and indebtedness to be paid with the proceeds of property taxes received

pursuant to Section 33670 to finance in whole or in part the redevelopment project, which may not exceed 20 years from the date the county auditor certifies pursuant to Section 33492.9, except by amendment of the redevelopment plan as authorized by subparagraph (B). The loans, advances, or indebtedness may be repaid over a period of time longer than the time limit as provided in this section. No loans, advances, or indebtedness to be repaid from the allocation of taxes shall be established or incurred by the agency beyond this time limitation.

(B) The time limitation established by subparagraph (A) may be extended only by amendment of the redevelopment plan after the agency finds, based on substantial evidence, that (i) substantial blight remains within the project area; (ii) this blight cannot be eliminated without the establishment of additional debt; and (iii) the elimination of blight cannot reasonably be accomplished by private enterprise acting alone or by the legislative body's use of financing alternatives other than tax increment financing. However, this amended time limitation may not exceed 30 years from the date the county auditor certifies pursuant to Section 33492.9.

(3) A time limit, not to exceed 30 years from the date the county auditor certifies pursuant to Section 33492.9, on the effectiveness of the redevelopment plan. After the time limit on the effectiveness of the redevelopment plan, the agency shall have no authority to act pursuant to the redevelopment plan except to pay previously incurred indebtedness and enforce existing covenants or contracts.

(4) A time limit, not to exceed 45 years from the date the county auditor certifies pursuant to Section 33492.9, to repay indebtedness with the proceeds of property taxes received pursuant to Section 33670. After the time limit established pursuant to this paragraph, an agency may not receive property taxes pursuant to Section 33670.

(b) (1) A redevelopment plan, adopted pursuant to this chapter, that does not contain the provisions set forth in Section 33670 shall contain the limitations in paragraph (2).

(2) A time limit, not to exceed 12 years from the date the county auditor certifies pursuant to Section 33492.9, for commencement of eminent domain proceedings to acquire property within the project area. This time limitation may be extended only by amendment of the redevelopment plan.

33492.15. Notwithstanding any other provision of law, all of the following shall occur:

(a) Any redevelopment agency administering a redevelopment project area adopted pursuant to this chapter shall make the following apportionments to school districts and community college districts with territory located within that project area unless an alternative formula for determining the allocation to the school district or community college district is approved pursuant to other provisions of this chapter:

(1) In the fifth fiscal year beginning after the date the county auditor certifies to the Director of Finance pursuant to Section

33492.9, 10 percent of that portion of taxes in excess of the amount identified in subdivision (a) of Section 33670 in the year of adoption of the redevelopment plan which are attributable to each school district and each community college district with territory in the project area shall be allocated to, and when collected shall be paid into, the fund of the school district or community college district.

(2) Beginning in the sixth fiscal year after the date the county auditor certifies to the Director of Finance pursuant to Section 33492.9, the amount of taxes required to be allocated to each school district and to each community college district shall be increased by increments of 10 percent of the taxes in excess of the amount identified in subdivision (a) of Section 33670 in the year of adoption of the redevelopment plan which are attributable to each school district and each community college district with territory within the project area each successive year, so that in the 15th year following certification pursuant to Section 33492.9, 100 percent of the taxes in excess of the amount identified in subdivision (a) of Section 33670 in the year of adoption of the redevelopment plan which are attributable to each school district and each community college district with territory located within the project area shall be allocated to, and when collected shall be paid into, the fund of that school district or community college district.

(3) "Taxes attributable to each school district" means the sum of the following two amounts:

(A) The amount of property taxes which, based on the assessed value within the project area, would have been allocated to each school district if they were not allocated to the redevelopment agency.

(B) An amount equal to the product of the amount determined pursuant to subparagraph (A) and the quotient of the amount in the county or counties in which the project area lies which is deposited in the Educational Revenue Augmentation Fund from cities, counties, and special districts, divided by the total property tax which is allocated directly to all schools or to the county office of education in the county or counties in which the project area lies.

(4) The allocation of funds pursuant to this subdivision shall be made before there is a determination made regarding the amount to be allocated to schools in the affected counties from the Educational Revenue Augmentation Fund.

(b) Once a mutually agreed-upon alternative agreement is reached, and affected school districts and community college districts have been provided for pursuant to this chapter, these affected school districts and affected community college districts shall not be considered "affected taxing entities" for purposes of Sections 33492.17, 33492.19, 33492.23, 22492.27, and 33492.29.

(c) Prior to incurring any bonded indebtedness, any redevelopment agency administering a project area pursuant to this chapter may subordinate to the bonded debt the amount required to be paid to an affected school district or community college district

pursuant to this section upon a finding, based upon substantial evidence, that the agency will have sufficient funds available to pay both the bonded debt payments and the payments required by this section.

(d) It is the intent of the Legislature that, if there is an identified impact relative to the redevelopment plan and an alternative formula is proposed pursuant to this section, then appropriate legislation shall be considered and enacted.

(e) In the event the redevelopment agency receives two million dollars ($2,000,000) or more of tax increment funds in any one fiscal year during the period from the date certified to the Director of Finance pursuant to Section 33492.9 until the end of the fifth full fiscal year thereafter, in the following fiscal year the redevelopment agency shall commence making payments of tax increment funds to school districts and community college districts in accordance with the schedule set forth in subdivision (a).

33492.17. (a) For any project area formed pursuant to this chapter, the agency may pay to any taxing agency with territory located within a project area, other than the community which has adopted the project, any amounts of money which the agency has found are necessary and appropriate to alleviate any financial burden or detriment caused to any taxing agency by a redevelopment project. The payments to a taxing agency in any single year shall not exceed the amount of property tax revenues which would have been received by that taxing agency if all the property tax revenues from the project area had been allocated to all the affected taxing agencies without regard to the division of taxes required by Section 33670, except that a greater payment may be established by agreement between the agency and one or more taxing agencies, except a school district, if the other taxing agencies agree to defer payments for one or more years in order to accomplish the purposes of the project at an earlier time than would otherwise be the case. The amount of any greater payments shall not exceed the amount of payment deferred.

(b) The payments made pursuant to this section shall be approved by a resolution, adopted by the redevelopment agency, which shall contain findings, supported by substantial evidence, that the redevelopment project will cause or has caused a financial burden or detriment to the taxing agency and that the payments are necessary to alleviate the financial burden or detriment.

33492.19. Notwithstanding any other provision of law:

(a) Any affected taxing entity may call for the creation of a fiscal review committee within 15 days after receipt of the preliminary report from the agency pursuant to Section 33344.5. The fiscal review committee shall be composed of one representative from each affected taxing entity, excluding a school district or community college district.

(b) Within 15 days after receiving notification that a fiscal review committee has been created, and prior to sending a redevelopment

plan to the fiscal review committee, the agency shall commence consultations with the fiscal review committee regarding the impact of the proposed redevelopment project upon the affected taxing entities.

(c) (1) The purpose of the consultations commenced pursuant to this section shall be to identify the fiscal effects of the proposed redevelopment plan upon the affected taxing entities, to specify additional information, if any, needed to enable those fiscal effects to be identified and analyzed, and to suggest possible provisions in the redevelopment plan which would alleviate or eliminate a financial burden or detriment.

(2) During consultations with the fiscal review committee and affected taxing entities, the agency shall provide all written information it possesses concerning all public or private development which is planned for or taking place in the project area, except records which disclose trade secrets or the financial condition of contractors or potential contractors with the agency.

33492.21. Notwithstanding any other provision of law:

(a) In the event a fiscal review committee is created pursuant to Section 33492.19, the redevelopment agency shall send the redevelopment plan to the chairperson of the fiscal review committee. The county representative or chief administrative officer shall be the temporary chairperson of the fiscal review committee for the purpose of convening the fiscal review committee's first meeting.

(b) The chairperson of the fiscal review committee shall convene the fiscal review committee with all due dispatch, and hold a hearing not less than 25, and not more than 40, days from the receipt of the plan. The hearing may be continued by the fiscal review committee but shall be completed within 15 days from the date of the initial hearing unless the agency and the fiscal review committee agree to an additional period of time.

33492.23. Notwithstanding any other provision of law:

(a) In the event a fiscal review committee is created pursuant to Section 33492.19, the fiscal review committee shall analyze and report to the agency, within 30 days of the conclusion of the hearing held pursuant to Section 33492.21, on the fiscal impact of the redevelopment plan or the amendment to the redevelopment plan on each of the members of the fiscal review committee, including a determination whether the redevelopment plan or amendment will have either a beneficial effect or a financial burden or detriment upon one or more members of the fiscal review committee.

(b) The analysis prepared pursuant to this section shall be based upon all of the following information:

(1) The preliminary report prepared pursuant to Section 33344.5.

(2) The redevelopment plan or amendment.

(3) Information derived from the consultations convened between the agency and fiscal review committee pursuant to Section 33492.19.

(4) Information derived from the hearing held by the fiscal review committee pursuant to Section 33492.21.

(5) The report prepared pursuant to Section 33328.

(6) Any additional information developed by the fiscal review committee.

(c) If the report of the fiscal review committee concludes that the redevelopment plan will cause a financial burden or detriment upon one or more members of the fiscal review committee, the report shall specifically describe that fiscal burden or detriment and shall contain evidence supporting that conclusion.

(d) If the report of the fiscal review committee concludes that the redevelopment plan will cause a financial burden or detriment upon one or more members of the fiscal review committee, the report may include recommended actions to be implemented by the agency which would alleviate or eliminate the financial burden or detriment, including, but not limited to, the following:

(1) Amendments to the redevelopment plan that would:

(A) Modify the total amount of tax increments to be received by the redevelopment agency.

(B) Modify the duration of the redevelopment plan.

(C) Modify the size of the project area.

(D) Modify, in kind or number, specific projects then proposed to be undertaken by the agency.

(E) Include specific actions or projects to be undertaken by the agency that would reduce or eliminate the detrimental fiscal effect upon the members of the fiscal review committee.

(2) Payments by the agency to a member of the fiscal review committee authorized by Section 33492.25.

33492.25. Notwithstanding any other provision of law:

(a) The agency may also pay to any taxing agency with territory located within a project area, other than the community which has adopted the project, any amounts of money which the agency has found are necessary and appropriate to alleviate any financial burden or detriment caused to any taxing agency by a redevelopment project.

(b) The payments to a taxing agency made, in any single year, pursuant to this section, shall not exceed the amount of property tax revenues which would have been received by that taxing agency if all the property tax revenues from the project area had been allocated to all the affected taxing agencies without regard to the division of taxes required by Section 33670, except that a greater payment may be established by agreement between the agency and one or more taxing agencies, except a school district, if the other taxing agencies agree to defer payments for one or more years in order to accomplish the purposes of the project at an earlier time than would otherwise be the case. The amount of any greater payments shall not exceed the amount of payment deferred.

(c) The payments made pursuant to this section shall be approved by a resolution, adopted by the redevelopment agency, which shall

contain findings, supported by substantial evidence, that the redevelopment project will cause or has caused a financial burden or detriment to the taxing agency and that the payments are necessary to alleviate the financial burden or detriment.

(d) The requirement that the agency may make payments to a taxing entity only to alleviate a financial burden or detriment, as defined in Section 33012, and only after approval by a resolution which contains specified findings, shall apply only to payments made by an agency pursuant to an agreement between an agency and a taxing entity which is executed by the agency on or after the effective date of amendments to this section enacted by the Statutes of 1984.

33492.27. For the purposes of this chapter, "affected taxing entity" means any governmental taxing agency that levied a property tax on all or any portion of the property located in the proposed project area in the fiscal year prior to submission of the plan to the committee.

33492.29. An ordinance adopting a redevelopment plan under this chapter shall include a finding that the effect of tax increment financing will not cause a significant financial burden or detriment on any taxing agency deriving revenues from a project area. This finding shall only be required when the project is financed in part or in whole from revenues derived from the allocation of taxes pursuant to Section 33670.

Article 3. Mather Air Force Base Redevelopment Project Area

33492.60. (a) With the enactment of this article, it is the intent of the Legislature to provide for precise and specific means to mitigate the very serious economic effects of the closure of Mather Air Force Base on the County of Sacramento and surrounding communities by enabling the County of Sacramento to facilitate the planning and implementation of the reuse and redevelopment of the lands comprising Mather Air Force Base and surrounding areas, in accordance with the county's land use plans and facilities financing plans, through the redevelopment process and prior to the disposition of lands by the federal government to public entities and private parties.

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

(1) Mather Air Force Base comprises over 5,700 acres in a growing outlying area of the County of Sacramento adjacent to existing urban development.

(2) The closure of Mather Air Force Base will result in the elimination of nearly 6,700 jobs at a time when the economy of the County of Sacramento is depressed and reduced tax revenues have caused serious reductions in the county budget for essential government services.

(3) The disposition by the federal government of the lands comprising Mather Air Force Base, and the development of adjacent

properties, will, unless it is undertaken pursuant to comprehensive county planning therefor and adequate public financing and other implementation measures, seriously impair the ability of the County of Sacramento to master plan the area and adjacent areas, provide for affordable housing, provide for appropriate infrastructure financing, and for phasing and provision of public services. This disposition will also jeopardize measures of the pending county general plan update to achieve compact, transit-oriented, mixed-use development phased for adequate infrastructure and public services, and thereby achieve important goals relating to air quality, transportation, open space, and protection of environmental and natural resources, affordable housing, and job-creating economic development.

(4) This chapter is necessary to allow the County of Sacramento to act quickly under the special circumstances applicable to the closure of Mather Air Force Base. This chapter promotes important local, regional, and statewide goals.

33492.61. (a) The County of Sacramento may include within a redevelopment project area all or any portion of the area described in Section 33859.2 that, for purposes of this chapter, shall be referred to as the "Mather Air Force Base Redevelopment Project Area," notwithstanding a different designation thereof by the County of Sacramento.

(b) Notwithstanding Section 33334.2, the redevelopment agency of the County of Sacramento may defer up to 50 percent of its Low and Moderate Income Housing Fund requirements for the Mather Air Force Base Redevelopment Project Area for up to 10 years. The amount of the deferral shall be considered an indebtedness, and shall be repaid to the Low and Moderate Income Housing Fund within the 11th to the 20th years after the establishment of the Mather Air Force Base Redevelopment Project Area. If the indebtedness is not eliminated by the end of the 20th year, the county auditor or controller shall withhold an amount equal to the indebtedness and deposit those funds into a separate Low and Moderate Income Housing Fund for use by the redevelopment agency pursuant to this section.

(c) Notwithstanding subdivision (d) of Section 33324 and paragraph (4) of subdivision (d) of Section 33367, the preliminary plan and redevelopment plan for the Mather Air Force Base Redevelopment Project Area shall be in conformance with the land use designation in the pending county general plan update. The adoption of a specific plan or other comprehensive land use plan for the Mather Air Force Base Redevelopment Project Area shall require a finding of conformity with the county general plan, including the housing element, as updated and as in compliance with applicable state law. The redevelopment agency shall not expend any tax increment funds allocated to it from the project area for expenses related to carrying out the project unless and until the County of Sacramento does both of the following:

(1) Adopts a housing element, pursuant to Section 65585 of the Government Code, that substantially complies with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(2) Finds that the redevelopment plan conforms to the county general plan, including the housing element thereof.

(d) Notwithstanding Section 33328, the report required by that section need only be as complete as the information then available will permit.

(e) Notwithstanding Section 33344.5, the preliminary report required by that section need not contain the information required by subdivision (c) of Section 33344.5.

(f) Notwithstanding any other provision of law:

The report submitted by the redevelopment agency to the legislative body pursuant to Section 33352 need only contain the items listed in subdivisions (a), (b), (c), (d), (h), (j), (k), and (m) of Section 33352, as modified by subdivision (e) of this section. The ordinance adopted by the legislative body pursuant to Section 33367 need only contain the items listed in subdivisions (a), (b), and (c) of, and paragraphs (2) and (4), as modified by subdivision (e) of this section, of subdivision (d) of, and paragraphs (5), (6), (11), and (12) of subdivision (d) of, Section 33367.

33492.63. (a) The territory within the Mather Air Force Base Redevelopment Project Area shall be the area specified in subdivision (b).

(b) The Mather Air Force Base Redevelopment Project Area shall consist of:

All that property situated and lying in the County of Sacramento, as follows:

(1) Parcel 1:

Beginning at a point, said point being the most northwesterly corner of that land conveyed by the Natomas Company, a corporation, to the United States of America by deed dated May 9, 1956, and recorded May 23, 1956, in Volume 3086 of Official Records, page 647, et seq., County of Sacramento, Instrument No. 38415, said point also being described as being on the west boundary of Lot 59, as said lot is described in said deed, and 415.74 feet northerly of the southwest corner of said parcel; thence, N89°44'E, 1,562.86 feet to a point located N01°24'E, 415.91 feet from the southeast corner of Lot 57 as said lot is shown on the "Amended Map of Natomas American River Subdivision No. 4," filed in the office of the County Recorder, County of Sacramento, October 19, 1918, in Book 15 of Maps, Map No. 44; thence, along the southwesterly line of that certain 80-foot strip of land described as Parcel No. 5 conveyed by the Natomas Company, a corporation, to the County of Sacramento in that certain deed dated June 24, 1942, recorded July 21, 1942, in Book 968 of Official Records, page 58, County of Sacramento, to a point where said southwesterly line intersects the centerline of the 50" Private Road, as said road is shown on the aforementioned "Amended Map

of Natomas American River Subdivision No. 4," said point located N00°16'W, 158 feet, more or less, from a concrete monument "N-7-5" as said monument is shown on said map; thence along said centerline of said Private Road N00°16'W, 960.4 feet to a point located on said centerline and 612.97 feet northerly of the southwesterly corner of Lot 4, Block 6, as said lot and block are shown on the "Official Map of Natomas Consolidated of California Subdivision No. 3," filed in the office of the County Recorder, County of Sacramento, September 13, 1913, in Book 14 of Maps, Map No. 46; thence N89°44'E, 1,950.3 feet, more or less, to a point on the east boundary of Lot 1, Block 6, as said lot and block are shown on said map; said point also being on the northerly line of Lower Placerville Road, as said road is shown on said map; thence crossing said road continuing on course N89°44'E to a point on the east line of Lot 6 and the extended east lines of Lots 8 and 9 as said lots are shown on the official "Map of Subdivision of George Hanlon No. 1 Tract" filed in the office of the County Recorder, County of Sacramento, July 6, 1923, in Book 17 of Maps, Map No. 28; thence southerly along the east lines of said Lots 6, 8, and 9, 2,450 feet, more or less, to the point of intersection of the east line of said Lot 9 and the northeasterly boundary of that parcel of land described in that certain deed dated May 17, 1920, and recorded May 20, 1920, in Book 531 of Deeds at page 124, County of Sacramento, executed by the Natomas Company of California, a corporation, to the United States of America; thence N86°05'30"E, 712 feet, more or less, to a point on the east boundary of said land, said point also being on the northerly boundary of that land conveyed by the Natomas Company, a California corporation, to the United States of America in a deed dated August 8, 1940, and recorded August 8, 1940, in Book 837 of Official Records, County of Sacramento, page 43; thence along said northerly boundary N89°59'E to a point, said point also being the southeasterly corner of that parcel of land described in the deed from Aerojet-General Corporation, an Ohio corporation, to the United States of America, dated March 12, 1959, and recorded July 30, 1959, in Volume 3843 of Official Records of the County of Sacramento, page 250; thence N46°36'E, 170.78 feet; thence S36°16'E, 128.4 feet, more or less, to a point, said point located 1,639.90 feet westerly along the southerly boundary of and from the southeast corner of Lot 10, as said lot is shown on the aforesaid "Map of George Hanlon No. 1 Tract," from which point the southeast corner of Lot 10 as said lot is shown on the aforesaid "Map of George Hanlon No. 1 Tract" bears S88°29'30"W, 1,639.90 feet; thence continuing along the northerly boundary of said land N88°29'30"E, 2,875 feet, more or less, to the southwest corner of that parcel of land described in the deed from Aerojet-General Corporation, an Ohio corporation, to the United States of America, dated March 12, 1959, and recorded July 30, 1959, in Volume 3843 of Official Records of the County of Sacramento, page 248, Instrument No. 76138; thence continuing along said northerly boundary N87°56'E, 3,188 feet, more or less, to a point, said point being more particularly described as a point in the north

boundary of the Wm. E. Bryan 2,129.33 acre tract as said tract is shown on the Plat of Subdivision of the Rancho Rio de los Americanos recorded April 4, 1866, in Book 1 of Maps at page 2, Records of Sacramento County, said point also bears S71°50'W, 1,155.2 feet from a 60-penny spike marking the northwest corner of Tract 6 of the division of the Joseph E. Fitzgerald 375.19 acre tract as shown on the map recorded October 28, 1921, in Book 2 of Record of Surveys, page 31, records of Sacramento County; thence from said point along the north boundary of said Wm. E. Bryan tract and extension thereof S07°19'E, 3,287 feet, more or less, to a point which bears S07°19'E, 3,477.6 feet from said 60-penny spike marking the northwest corner of the Joseph E. Fitzgerald 375.19 Division Tract 6; thence along the following courses and distances: S89°43'E, 117.1 feet; S00°19'W, 96.5 feet to a point tangent to a curve; thence along said curve to the left with a radius of 520.0 feet in arc distance of 714.4 feet to a point (last said point bears S39°02'E a chord distance of 659.5 feet from the beginning of said curve); thence tangent to the preceding curve S78°24'E, 603.0 feet to a point tangent to the following curve; thence along a curve to the right with a radius of 780.0 feet an arc distance of 433.1 feet to a point (last said point bears S62°29'E a chord distance of 427.6 feet from the beginning of said curve); thence tangent to the preceding curve S46°35'E, 1,713.0 feet to a point tangent to the following curve and along said curve to the right with a radius of 780.0 feet an arc distance of 622.7 feet to a point tangent to the curve at last said point bears S00°51'E (last said point bears S20°43'E a chord distance of 606.3 feet from the beginning of said curve); thence S00°17'E, 514.2 feet; thence S00°51'E, 2,000.0 feet; thence S00°34'E, 5,000.1 feet; thence S00°51'E, 914.4 feet to a point tangent to the following curve and along said curve to the right with a radius of 750.0 feet an arc distance of 121.4 feet to a point tangent to the curve at last said point bears S08°26'W, last said point bears S03°48'W, chord distance of 121.3 feet from the beginning of said curve; thence S06°10'W, 886.8 feet to a point tangent to the following curve at last said point, bears S08°26'W; thence along a curve to the left with a radius of 1,215.0 feet an arc distance of 185.5 feet to a point (last said point bears S04°03'W a chord distance of 185.3 feet from the beginning of said curve); thence tangent to the preceding curve S00°19'E, 85.9 feet to a point in the south boundary of Section 19, Township Eight (8) North, Range Seven (7) East, Mount Diablo Base and Meridian, last said point bears N89°55'W, 664.8 feet from the southeast corner of said Section 19; thence westerly and northwesterly along the southerly boundaries of that land described as Parcels No. 5 and 8 in the aforementioned Natomas Company deed to the United States of America dated August 8, 1940, as follows: west along said boundary of Section 19, 1,320 feet, more or less, to the point of intersection of said south boundary and the north-south centerline of said Section 19; thence N71°43'09"W, 2,294.89 feet; N73°07'40"E, 2,725.41 feet to the southeast corner of that certain parcel described in the deed from the United States of America to

George Morris and William Monson dated 1 March 81 and recorded 1 July 81, in Book 81-07-01, page 1108 of Official Records, County of Sacramento Instrument No. 102099; thence northerly along the east boundary of said parcel and parallel to the north-south centerline of said Section 24, 1,756.55 feet; thence N85°58'38"W, 5,377.03 feet, more or less, to the said southerly boundary; thence along said southerly boundary the following courses and distances: N68°40'05"W, 873.00 feet; N67°39'42"E, 519.16 feet; N49°31'51"W, 1,880.70 feet; N84°03'49"E, 906.28 feet; N85°11'30"W, 1,199.16 feet; N85°28'40"E, 999.98 feet; S86°50'27"E, 2,191.08 feet; thence along the west boundary of said certain parcel N01°40'22"W, 1,718.27 feet to the southeast corner of that tract of land described as tract No. 1 in the deed from Natomas Company of California, a California corporation, to the United States of America dated 3 March 1945 and recorded 5 March 1945 in Book 1126 of Deeds, page 260, County of Sacramento; thence from said southeast corner along the southern boundary of said tract No. 1, S85°56'37"W, 254.91 feet, more or less, to the easterly corner of that certain 7.96 acre tract of land described as Tract A-109 in the Declaration of Taking (Civil 7511) filed March 15, 1957, in the United States District Court, Northern District of California, Northern Division; thence along the southeasterly boundary of said tract S53°44'W, 1,240.32 feet to the southeasterly corner of that parcel of land described in the deed from the Natomas Company of California, a California corporation, to the United States of America, dated 19 June 1957 and recorded June 21, 1957, in Book 3322 of Official Records, page 566, County of Sacramento; thence along the southerly boundary of said parcel of land S53°44'W, 1,224.1 feet, more or less, to the northeasterly corner of that certain 1.76 acre tract of land described as Tract A-115 in said Declaration of Taking; thence along the southeasterly boundary of said tract, S53°44'W, 74.7 feet, more or less, to the easterly corner of that certain 4.69 acre tract of land described as Tract A-110 in said Declaration of Taking; thence along the southeasterly boundary of said tract, S53°44'W, 797 feet, more or less, to the most southerly point of that certain 3.59 acre tract of land described as Tract A-111 in said Declaration of Taking; thence along the southwesterly boundary of said tract N37°16'W, 348.98 feet to the southeasterly corner of that certain 10.47 acre tract of land described as Tract 704 in the Declaration of Taking (CIV-S-78-367-PCV), filed 14 July 1978 in the United States District Court, Eastern District of California, Northern Division; thence along the southern and western boundaries of said parcel N89°41'45"W, 1,094.57 feet, N01°45'45"W, 577.98 feet to the northwestern corner of said parcel which is also the southwestern corner of that parcel of land described in the deed from the Natomas Real Estate Company, a California corporation, to the United States of America, dated November 3, 1988, and, recorded December 6, 1988, in Official Records of Sacramento County, Instrument No. 274857; thence along the western boundary of said parcel N00°17'46"W, 66.42 feet, more or less, to the southwest corner of that

certain 23.16 acre tract of land described as Tract A-112 in the aforesaid March 15, 1957, Declaration of Taking; thence along the western boundary of said tract N03°47'W, 791.0 feet to the southwest corner of that certain 23.16 acre tract of land described as Tract A-113 in the aforesaid March 15, 1957, Declaration of Taking; thence along the western boundary of said tract N03°47'W, 802.8 feet to the southwest corner of that certain 28.76 acre tract of land described as Tract A-112 in the aforesaid March 15, 1957, Declaration of Taking; thence along the western boundary of said tract N03°47'W, 480.1 feet to the southwest corner of that parcel of land described in the deed from John Rand and Gertrude M. Rand to the United States of America dated 7 December 1972 and recorded December 19, 1972, in Book 72 12 19, page 37 of Official Records, Sacramento County; thence along the western and northern boundaries of said parcel N04°12'51"W, 85.68 feet to the northwest corner of said parcel; thence N53°14'49"S, 1,070.45 feet to the most westerly point of the land described in the deed from Dave I. Kawamura et al. to the United States of America dated 5 December 1972 and recorded December 21, 1972, in Book 72 12 21, page 90 of Official Records, Sacramento County; thence along the northern boundary of said parcel N53°14'49"E, 358.44 feet to a point where said northern boundary intersects the west boundary of that certain 211.59 acre parcel of land described as Tract A-107 in the Declaration of Taking (Civil 38082-7716) filed April 2, 1958, in the District Court of the United States, Northern District of California, Southern Division; thence northerly along said west boundary N02°10'W, 455 feet more or less to the southwest corner of that certain tract of land described in the deed from Nelson Shaver to Nelson Horatio Shaver dated June 29, 1892, and recorded in Book 142 of Deeds, page 347, Sacramento County; thence continuing along said west boundary N02°01'W, 900.3 feet; thence N00°37'E, 1,213.2 feet to a point in the centerline of Old Placerville Road, said point also being the northwest corner of said Tract A-107; thence along the northerly boundary of said tract and the centerline of Old Placerville Road, N49°22'E, 1,317.8 feet; thence N58°15'E, 748.8 feet, more or less, to a point, said point being the northeast corner of said Tract A-107; thence S04°03'23"E, 28.5 feet, more or less, to a point in the southern boundary of Old Placerville Road, said point also being the northwest corner of that certain 136.36 acre tract of land described as Tract A-102 in the Declaration of Taking (Civil 4477) filed June 16, 1942, in the District Court of the United States, Northern District of California, Northern Division; thence along the northern boundary of said Tract A-102 N56°49'37"E, 1,600.0 feet to the northwest corner of that certain parcel of land described in the deed from the Natomas Company of California, a California corporation, to the United States of America, dated May 17, 1920, and recorded May 20, 1920, in Book 531 of Deeds, page 124, County of Sacramento; thence along the northern boundary of said parcel, said northern boundary also being the southern boundary of said Old Placerville Road, N59°56'E, 640 feet, more or less, to the most

southerly point of that certain parcel of land described as a portion of Lower Placerville Road in the deed from the Natomas Company, a California corporation, to the United States of America dated 9 May 1956 and recorded May 11, 1956, in Volume 3079, page 139, Official Records of the County of Sacramento, Instrument Number 35227, said point also being the intersection of the southeasterly extension of the westerly line of Lot 69 as said lot is shown on the aforementioned "Amended Map of Natomas American River Subdivision No. 4," and the southerly boundary of said parcel; thence northerly along said westerly line of Lot 69 and its southeasterly extension and the west boundaries of Lots 55, 54, and 53, as said lots are shown on the aforementioned "Amended Map of Natomas American River Subdivision No. 4" the following courses and distances: N31°12'30"W, 67.32 feet; thence along a curve to the right having a radius of 1,432.69 feet and a central angle of 31°34' and an arc distance of 779.54 feet; N00°15'W, 1,447.42 feet, more or less, to the point of beginning.

Parcel 1 contains approximately 5,707 acres.

(2) Parcel 2:

Beginning at a point, said point being the southwesterly corner of that land shown on the "Amended Map of Natomas American River Subdivision No. 4" filed in the office of the County Recorder, County of Sacramento, October 19, 1918, in Book 15 of Maps, Map No. 44, said point also being a concrete monument "N-7-10" as said monument is shown on said map, said point also being the southwesterly corner of that certain 10.58 acre parcel of land described in the deed from the Natomas Company, a corporation, to the United States of America dated 30 November 1943 and recorded January 15, 1949, in book 1598 of Official Records at page 312, Sacramento County; thence northerly along the west boundary of said land N23°38'W, 168.03 feet to a point where said west boundary intersects the west boundary of the land described as Parcel 2 in the deed from A. Teichert & Sons, Inc., a California corporation, to the United States of America dated 3 April 1945, said point also being the most southerly point of said .01 acre parcel; thence along said west boundary and along a curve to the right, the center of which bears N53°01'02"E, 746.34 feet from said southerly point of said Parcel 2, an arc distance of 76.47 feet to the southwest corner of the 0.27 acre parcel of land described as Parcel 1 in said deed, thence along the west boundary of said Parcel 2 and continuing along said curve to the right 93.45 feet; thence N23°38'E, 220.39 feet to the beginning of a curve to the right with a radius of 746.34 feet and an arc distance 287.61 feet; thence N01°51'15"W, 65.87 feet to the southwest corner of that 0.29 acre parcel of land described in the deed from William D. Coyle et al. to the United States of America dated 25 May 1945; thence northerly along the west boundary of said 0.29 acre parcel N01°51'15"W, 700.84 feet to the southwest corner of that certain 0.52 acre parcel of land described in the deed from Ruth Johnson to the United States of America dated 26 May 1945 and recorded August 16,

1950, in Book 1890 of Official Records, page 316, Sacramento County; thence northerly along the west boundary of said 0.52 acre parcel N01°51'15"W, 1,413.94 feet to the southwesterly corner of that certain 0.98 acre parcel of land described as Parcel 3 in the deed from the State of California to the United States of America dated 25 June 1974 and recorded August 21, 1974, in Book 7408-21 of Official Records, page 224, Sacramento County; thence northerly along the westerly boundary of said Parcel 3 from a tangent that bears N04°08'53"W along a curve to the left with a radius of 400.00 feet, an angle of 39°50'52", and an arc distance of 278.19 feet; thence N43°59'45"W, 163.20 feet; thence along a tangent curve to the right with a radius of 487.84 feet, an angle of 44°00'00", and an arc distance of 374.63 feet; thence N00°00'15"E, 88.73 feet to the southwest corner of that certain 0.66 acre parcel of land described as Parcel 2 in said State of California deed; thence northerly along the westerly boundary of said Parcel 2 N00°00'15"E, 461.58 feet to the southwest corner of that certain 0.57 acre parcel of land described as Parcel 1 in said State of California deed; thence northerly along the westerly boundary of said Parcel 1 in said state of California deed; thence northerly along the westerly boundary of said Parcel 1 N00°00'15"E, 89.16 feet; thence along a tangent curve to the right with a radius of 633.11 feet, an angle of 16°30'00", and an arc distance of 182.32 feet; thence N16°30'15"E, 122.75 feet; thence along a curve to the left with a radius of 950.00 feet, an angle of 16°28'28", and an arc distance of 273.16 feet to a point, said point bears S00°01'47"W, 244.66 feet from the southerly terminus of the westerly line of that certain parcel of land described as Parcel 7 in the aforementioned Natomas Company deed; thence northerly along said westerly line N00°32'30"E, 1,163.92 feet; thence N00°32'30"W, 723.15 feet, more or less, to a point in the north boundary of Lot 71 as said lot is shown on the aforementioned "Amended Map of Natomas American River Subdivision No. 4;" thence northeasterly along said north boundary N57°51'30"E, 61.39 feet to a point, said point being the northeast corner of said Lot 71, said point also being the northwest corner of that certain 0.15 acre parcel of land described in the deed from Mable Le Couteur, a widow, to the United States of America dated 25 May 1945 and recorded March 4, 1957, in Book 3265 of Official Records, page 327, Instrument No. 18942, Sacramento County; thence northeasterly along the northerly boundary of said parcel N57°51'30"E, 29.60 feet; N57°41'30"E, 89.38 feet; thence southwesterly along a curve to the left, the center of which bears S52°30'E, 452.68 feet from a point located N57°51'30"E, 29.60 feet from the northwest corner of Lot 6, as said lot is shown on the aforementioned "Amended Map of Natomas American River Subdivision No. 4," with a radius of 452.68 feet, an arc distance of 171.65 feet; thence S12°44'30"W, 93.66 feet to a point, said point being the easterly point of that certain 0.01 acre land described in the deed from Antone J. Rodrigues and Lucinda R. Rodrigues to the United States of America dated 25 May 1945 and recorded December 17, 1957, in Volume 3420 of Official Records,

page 568, Sacramento County; thence along the easterly boundary of said parcel S12°44'30"W, 24.21 feet to a point being the intersection of said easterly boundary and the west boundary of the aforementioned Lot 6; thence southerly along the west boundary of said Lot 6 and Lots 7, 8, and 9, as said lots are also shown on the aforementioned "Amended Map of Natomas American River Subdivision No. 4," N00°32'30"E, 1,808.85 feet to a point, said point being the southwest corner of said Lot 9; thence N00°01'47"W, 79.22 feet; thence along a curve to the right with a radius of 600 feet and a central angle of 16°28'28", and an arc distance of 172.52 feet; thence S16°30'15"W, 68.22 feet to a point on the easterly boundary of the aforementioned 0.98 acre parcel of land conveyed as Parcel 1 by the State of California to the United States of America; thence along the east boundaries of said Parcel 1 and the aforementioned Parcels 2 and 3 conveyed by the State of California to the United States of America S16°30'15"W, 58.23 feet; thence along a tangent curve to the left with a radius of 573.11 feet, an angle of 16°30'00", and an arc distance of 165.04 feet; thence S00°00'15"W, 639.47 feet; thence along a tangent curve to the left with a radius of 427.84 feet, an angle of 44°00'00", and an arc distance of 328.56 feet; thence S43°59'45"E, 148.15 feet; thence along a tangent curve to the right with a radius of 500.00 feet, an angle of 01°56'15", and an arc distance of 16.91 feet to a point on the west boundary of the aforementioned 10.58 acre parcel of land from Natomas Company to the United States of America; thence along a curve to the right with a radius of 500.00 feet, a central angle of 39°41'47" and an arc distance of 346.41 feet to a point on the east boundary of said 10.58 acre parcel; thence S02°21'43"E, 4.31 feet; thence southerly along said east boundary S01°51'E, 1,357.8 feet, more or less, to a point, said point being on the north boundary of and bearing N89°45'W, 5.00 feet from the northwest corner of Lot 55 as said lot is shown on the aforementioned "Amended Map of Natomas American River Subdivision No. 4"; thence S01°51'15"E, 661.29 feet to a point on the west boundary of said Lot 55; thence S01°51'15"E, 114.14 feet to a point on a curve to the left with a radius of 686.34 feet, the center of which bears N79°53'40"E; thence along said curve to the left an arc distance of 266.85 feet; thence S23°51'E, 220.46 feet; thence along a curve to the left with a radius of 686.78 feet, the center of which bears N53°01'20"E, an arc distance of 321.05 feet, more or less, to the south line of Lot 77 as said lot is shown on the aforementioned "Amended Map of Natomas American River Subdivision No. 4"; thence along said south line S59°51'W, 144.84 feet to the point of beginning.

Parcel 2 contains approximately 8.9 acres.

33492.65. (a) Notwithstanding Section 21090 of the Public Resources Code, the redevelopment agency for the County of Sacramento or the legislative body of the County of Sacramento may determine at a noticed public hearing that the adoption of a redevelopment plan for the Mather Air Force Base Redevelopment Project Area pursuant to this chapter is not subject to the California

Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), except that projects implementing the redevelopment plan, including specific plans, rezonings, and ministerial projects, that may have a significant effect on the environment shall be subject to the California Environmental Quality Act. The environmental document for any implementing project shall include an analysis and mitigation of potential cumulative impacts that otherwise will not be known until an environmental impact report for the redevelopment plan is certified.

(b) The notice of the public hearing required pursuant to subdivision (a) shall include the date, time, and place of the hearing, a brief description of the proposed project and its location, the date when notice will be provided pursuant to Section 21092 of the Public Resources Code, and the address where copies of the notice of exemption are available for review.

(c) The notice required by this section shall be given to all organizations and individuals who have previously requested notice pursuant to the California Environmental Quality Act, and shall be given by publication, no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area affected by the proposed project.

(d) If the redevelopment agency for the County of Sacramento or the legislative body of the County of Sacramento determines, pursuant to subdivision (a), that the adoption of a redevelopment plan is not subject to the California Environmental Quality Act, the redevelopment agency shall prepare and certify an environmental impact report for the redevelopment plan within 18 months after the effective date of the ordinance adopting the redevelopment plan. An environmental impact report prepared and certified for a specific plan or other comprehensive land use plan for the Mather Air Force Base Redevelopment Project Area shall satisfy the requirement of this subdivision.

33492.67. For the project area formed on the former Mather Air Force Base pursuant to this article, the total amount to be allocated to affected school districts pursuant to Section 33492.15 shall be 78 percent of the amount calculated pursuant to paragraphs (1), (2), (3), and (4) of subdivision (a) of Section 33492.15.

33492.69. As used in this chapter, "fiscal year" means a year commencing on July 1 and ending on the next June 30.

SEC. 5. Section 33670 of the Health and Safety Code is amended to read:

33670. Any redevelopment plan may contain a provision that taxes, if any, levied upon taxable property in a redevelopment project each year by or for the benefit of the State of California, any city, county, city and county, district, or other public corporation (hereinafter sometimes called "taxing agencies") after the effective date of the ordinance approving the redevelopment plan, shall be divided as follows:

(a) That portion of the taxes which would be produced by the rate upon which the tax is levied each year by or for each of the taxing agencies upon the total sum of the assessed value of the taxable property in the redevelopment project as shown upon the assessment roll used in connection with the taxation of that property by the taxing agency, last equalized prior to the effective date of the ordinance, shall be allocated to and when collected shall be paid to the respective taxing agencies as taxes by or for the taxing agencies on all other property are paid (for the purpose of allocating taxes levied by or for any taxing agency or agencies which did not include the territory in a redevelopment project on the effective date of the ordinance but to which that territory has been annexed or otherwise included after that effective date, the assessment roll of the county last equalized on the effective date of the ordinance shall be used in determining the assessed valuation of the taxable property in the project on the effective date); and

(b) Except as provided in subdivision (e) or in Section 33492.15, that portion of the levied taxes each year in excess of that amount shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project. Unless and until the total assessed valuation of the taxable property in a redevelopment project exceeds the total assessed value of the taxable property in that project as shown by the last equalized assessment roll referred to in subdivision (a), all of the taxes levied and collected upon the taxable property in the redevelopment project shall be paid to the respective taxing agencies. When the loans, advances, and indebtedness, if any, and interest thereon, have been paid, all moneys thereafter received from taxes upon the taxable property in the redevelopment project shall be paid to the respective taxing agencies as taxes on all other property are paid.

(c) In any redevelopment project in which taxes have been divided pursuant to this section prior to 1968, located within any county with total assessed valuation subject to general property taxes for the 1967–68 fiscal year between two billion dollars ($2,000,000,000) and two billion one hundred million dollars ($2,100,000,000), if the total assessed valuation of taxable property within the redevelopment project for the 1967–68 fiscal year was reduced, the total sum of the assessed value of taxable property used as the basis for apportionment of taxes under subdivision (a) shall be reduced by 10 percent for the 1968–69 fiscal year and fiscal years thereafter.

(d) For the purposes of this section, taxes shall not include taxes from the supplemental assessment roll levied pursuant to Chapter 3.5 (commencing with Section 75) of Part 0.5 of Division 1 of the Revenue and Taxation Code for the 1983–84 fiscal year.

(e) That portion of the taxes in excess of the amount identified in subdivision (a) which are attributable to a tax rate levied by a taxing agency for the purpose of producing revenues in an amount sufficient to make annual repayments of the principal of, and the interest on, any bonded indebtedness for the acquisition or improvement of real property shall be allocated to, and when collected shall be paid into, the fund of that taxing agency. This subdivision shall only apply to taxes levied to repay bonded indebtedness approved by the voters of the taxing agency on or after January 1, 1989.

SEC. 6. The Legislature finds and declares that, because of the unique circumstances set forth in Section 33492.60 of the Health and Safety Code, applicable only to the County of Sacramento and its redevelopment agency due to the closure of Mather Air Force Base and the actions of the federal government to dispose of the land and improvements consisting of Mather Air Force Base to public and private parties before the County of Sacramento can adopt a comprehensive plan for the land use, infrastructure, and public services deemed appropriate by the county for the area comprising Mather Air Force Base and surrounding areas, and because these actions by the federal government, if not taken within the context of a comprehensive county plan, could seriously impair the ability of the County of Sacramento to achieve important local, regional, and statewide goals pertaining to air quality, transportation, open space and protection of environmental and natural resources, affordable housing, and job-creating economic development, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. The enactment of Article 3 (commencing with Section 33492.60) of Chapter 4.5 of Part 1 of Division 24 of the Health and Safety Code is therefore necessary.

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.

However, as to any costs incurred by the County of Sacramento pursuant to this act, 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 goes into immediate effect. The facts constituting the urgency are:

The federal government is in the process of closing several military facilities throughout the state. The affected local government entities need to have procedures in place to deal with the social and economic dislocations caused by these base closures. More specifically, for example, the federal government is closing Mather Air Force Base in the County of Sacramento and disposing of land and improvements comprising Mather Air Force Base. Urgent action by the County of Sacramento and its redevelopment agency is required in order to properly plan for the redevelopment and reuse of the area comprising Mather Air Force Base and surrounding areas. In order to do this, the County of Sacramento and its redevelopment agency need to be able to act quickly to establish a redevelopment project area and adopt a redevelopment plan. In like manner, other communities affected by base closures need to have authority to deal with these situations. It is, therefore, necessary that this act take effect immediately.

CHAPTER 945

An act to repeal and add Title 14 (commencing with Section 95000) of the Government Code, relating to early intervention services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 8, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Title 14 (commencing with Section 95000) of the Government Code is repealed.

SEC. 2. Title 14 (commencing with Section 95000) is added to the Government Code, to read:

TITLE 14. CALIFORNIA EARLY INTERVENTION SERVICES ACT

CHAPTER 1. GENERAL PROVISIONS

95000. This title may be cited as the California Early Intervention Services Act.

95001. (a) The Legislature hereby finds and declares all of the following:

(1) There is a need to provide appropriate early intervention services individually designed for infants and toddlers from birth through two years of age, who have disabilities or are at risk of having disabilities, to enhance their development and to minimize the potential for developmental delays.

(2) Early intervention services for infants and toddlers with disabilities or at risk represent an investment of resources, in that these services reduce the ultimate costs to our society, by minimizing the need for special education and related services in later school years and by minimizing the likelihood of institutionalization. These services also maximize the ability of families to better provide for the special needs of their child. Early intervention services for infants and toddlers with disabilities maximize the potential to be effective in the context of daily life and activities, including the potential to live independently, and exercise the full rights of citizenship. The earlier intervention is started, the greater is the ultimate cost-effectiveness and the higher is the educational attainment and quality of life achieved by children with disabilities.

(3) The family is the constant in the child's life, while the service system and personnel within those systems fluctuate. Because the primary responsibility of an infant or toddler's well-being rests with the family, services should support and enhance the family's capability to meet the special developmental needs of their infant or toddler with disabilities.

(4) Family to family support strengthens families' ability to fully participate in services planning and their capacity to care for their infant or toddler with disabilities.

(5) Meeting the complex needs of infants with disabilities and their families requires active state and local coordinated, collaborative and accessible service delivery systems that are flexible, culturally competent and responsive to family identified needs. When health, developmental, educational and social programs are coordinated, they are proven to be cost-effective, not only for systems, but for families as well.

(6) Family-professional collaboration contributes to changing the ways that early intervention services are provided and to enhancing their effectiveness.

(7) Infants and toddlers with disabilities are a part of their communities, and as citizens make valuable contributions to society as a whole.

(b) Therefore, it is the intent of the Legislature that:

(1) Funding provided under Part H of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1471 et seq.), be used to improve and enhance early intervention services as defined in this title by developing innovative ways of providing family focused, coordinated services, which are built upon existing systems.

(2) The State Department of Developmental Services, the

California Department of Education, the State Department of Health Services, the State Department of Mental Health, the State Department of Social Services, and the State Department of Alcohol and Drug Programs coordinate services to infants and toddlers with disabilities and their families. These agencies need to collaborate with families and communities to provide family centered, comprehensive, multidisciplinary, interagency community-based, early intervention services for infants and toddlers with disabilities.

(3) Families be well informed, supported, and respected as capable and collaborative decisionmakers regarding services for their child.

(4) Professionals be supported to enhance their training and maintain a high level of expertise in their field, as well as knowledge of what constitutes most effective early intervention practices.

(5) Families and professionals join in collaborative partnerships to develop early intervention services which meet the needs of infants and toddlers with disabilities, and that such partnerships be the basis for the development of services which meet the needs of the culturally and linguistically diverse population of California.

(6) To the maximum extent possible, infants and toddlers with disabilities and their families be provided services in the most natural environment, and include the use of natural supports and existing community resources.

(7) The services delivery system be responsive to the families and children it serves within the context of cooperation and coordination among the various agencies.

(8) Early intervention program quality be assured and maintained through established early intervention program and personnel standards.

(9) The early intervention system be responsive to public input and participation in the development of implementation policies and procedures for early intervention services through the forum of an interagency coordinating council established pursuant to federal regulations under Part H of the Individuals with Disabilities Education Act.

(c) It is not the intent of the Legislature to require the State Department of Education to implement this title unless adequate reimbursement, as specified and agreed to by the department, is provided to the department from federal funds from Part H of the Individuals with Disabilities Education Act.

95002. The purpose of this title is to provide a statewide system of coordinated, comprehensive, family-centered, multidisciplinary, interagency programs, responsible for providing appropriate early intervention services and support to all eligible infants and toddlers and their families.

95003. (a) The state's participation in Part H of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1471 et seq.) shall be contingent on the receipt of federal funds to cover the costs of complying with the federal statutes and regulations that impose new

requirements on the state. The State Department of Developmental Services and the State Department of Education shall annually report to the Department of Finance during preparation of the Governor's Budget, and the May revision, the budget year costs and federal funds projected to be available.

(b) If the amount of funding provided by the federal government pursuant to Part H of the Individuals with Disabilities Education Act for the 1993–94 fiscal year, or any fiscal year thereafter, is not sufficient to fund the full increased costs of participation in this federal program by the local education agencies, as required pursuant to this title, for infants and toddlers from birth through two years of age identified pursuant to Section 95014, and that lack of federal funding would require an increased contribution from the General Fund or a contribution from a local educational agency in order to fund those required and supplemental costs, the state shall terminate its participation in the program. Termination of the program shall occur on July 1 if local education agencies have been notified of the termination prior to March 10 of that calendar year. If this notification is provided after March 10 of a calendar year, then termination shall not occur earlier than July 1 of the subsequent calendar year. The voluntary contribution by a state or local agency of funding for any of the programs or services required pursuant to this title shall not constitute grounds for terminating the state's participation in that federal program. It is the intent of the Legislature that if the program terminates, the termination shall be carried out in an orderly manner with notification of parents and certificated personnel.

(c) This title shall remain in effect only until the state terminates its participation in Part H of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1471 et seq.) for individuals from birth through two years of age and notifies the Secretary of the Senate of the termination, and as of that later date is repealed. As the lead agency, the State Department of Developmental Services shall, upon notification by the Department of Finance or the State Department of Education as to the insufficiency of federal funds and the termination of this program, be responsible for the payment of services pursuant to this title when no other agency or department is required to make these payments.

95004. The early intervention services specified in this title shall be provided as follows:

(a) Direct services for eligible infants and toddlers and their families shall be provided pursuant to the existing regional center system under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) and the existing local education agency system under appropriate sections of Part 30 (commencing with Section 56000) of the Education Code and regulations adopted pursuant thereto, and Part H of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1471 et seq.).

(b) Existing obligations of the state to provide these services at state expense shall not be expanded.

(c) It is the intent of the Legislature that services be provided in accordance with Sections 303.124, 303.126, and 303.527 of Title 34 of the Code of Federal Regulations.

CHAPTER 2. ADMINISTRATION

95006. This title shall be administered under the shared direction of the Secretary of the Health and Welfare Agency and the Superintendent of Public Instruction. The planning, development, implementation, and monitoring of the statewide system of early intervention services shall be conducted by the State Department of Developmental Services in collaboration with the State Department of Education with the advice and assistance of an interagency coordinating council established pursuant to federal regulations.

95007. The State Department of Developmental Services shall serve as the lead agency responsible for administration and coordination of the statewide system. The specific duties and responsibilities of the State Department of Developmental Services shall include, but are not limited to, all of the following:

(a) Establishing a single point of contact with the federal Office of Special Education Programs for the administration of Part H of the Individuals with Disabilities Education Act.

(b) Administering the state early intervention system in accordance with Part H of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1471 et seq.), and applicable regulations and approved state application.

(c) Administering mandatory and discretionary components as specified in Sections 95022 and 95024.

(d) Administering fiscal arrangements and interagency agreements with participating agencies and community-based organizations to implement this title.

(e) Establishing interagency procedures, including the designation of local coordinating structures, as are necessary to share agency information and to coordinate policymaking activities.

(f) Adopting written procedures for receiving and resolving complaints regarding violations of Part H of the Individuals with Disabilities Education Act by public agencies covered under this title, as specified in Section 1476(b)(9) of Title 20 of the United States Code and appropriate federal regulations.

(g) Establishing, adopting, and implementing procedural safeguards that comply with the requirements of Part H of the Individuals with Disabilities Education Act, as specified in Section 1480 of Title 20 of the United States Code and appropriate federal regulations.

(h) Monitoring of agencies, institutions, and organizations receiving assistance under this title.

(i) Establishing innovative approaches to information

distribution, family support services, and interagency coordination at the local level.

(j) Ensuring the provision of appropriate early intervention services to all infants eligible under Part H of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1471 et seq.) and under Section 95014, except for those infants who have solely a low incidence disability as defined in Section 56026.5 of the Education Code and who are not eligible for services under the Lanterman Development Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code).

The development and implementation of subdivisions (e) to (h), inclusive, shall be a collaborative effort between the State Department of Developmental Services and the State Department of Education. In establishing the written procedures for receiving and resolving complaints as specified in subdivision (f) and in establishing and implementing procedural safeguards as specified in subdivision (g), it is the intent of the Legislature that these procedures be identical for all infants served under this act and shall be in accordance with Section 303.400 and subdivision (b) of Section 303.420 of Title 34 of the Code of Federal Regulations. The procedural safeguards and due process requirements established under this title shall replace and be used in lieu of due process procedures contained in Chapter 1 (commencing with Section 4500) of Division 4.5 of the Welfare and Institutions Code and Part 30 (commencing with Section 56500) of the Education Code for infants and their families eligible under this title.

95008. The State Department of Education shall be responsible for administering services and programs for infants with solely visual, hearing, and severe orthopedic impairments, and any combination thereof, who meet the criteria in Sections 56026 and 56026.5 of the Education Code, and in subdivisions (a), (b), (d), or (e) of Section 3030 of, and Section 3031 of, Title 5 of the California Code of Regulations and Part H of the Individuals with Disabilities Education Act (20 U.S.C. Section 1471 et seq.) and who are not eligible for services under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code).

95009. The development of joint regulations for meeting the requirements of this title shall be the shared responsibility of the State Department of Developmental Services on behalf of the Secretary of the Health and Welfare Agency, and the State Department of Education on behalf of the Superintendent of Public Instruction. The joint regulations shall be agreed upon by both departments. These regulations shall be developed and approved by October 1, 1995. The Department of Finance shall review and comment upon the joint regulations prior to any public hearing on them.

CHAPTER 3. STATE INTERAGENCY COORDINATION

95012. (a) The following departments shall cooperate and coordinate their early intervention services for eligible infants and their families under this title:

(1) State Department of Developmental Services.
(2) State Department of Education.
(3) State Department of Health Services.
(4) State Department of Social Services.
(5) State Department of Mental Health.
(6) State Department of Alcohol and Drug Programs.

(b) Each participating department shall enter into an interagency agreement with the State Department of Developmental Services. Each interagency agreement shall specify, at a minimum, the agency's current and continuing level of financial participation in providing services to infants and toddlers with disabilities and their families. Each interagency agreement shall also specify procedures for resolving disputes in a timely manner. Interagency agreements shall also contain provisions for ensuring effective cooperation and coordination among agencies concerning policymaking activities associated with the implementation of this title, including legislative proposals, regulation development, and fiscal planning. All interagency agreements shall be reviewed annually and revised as necessary.

CHAPTER 4. ELIGIBILITY

95014. (a) The term "eligible infant or toddler" for the purposes of this title means infants and toddlers from birth through two years of age, for whom a need for early intervention services, as specified in the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1471 et seq.) and applicable regulations, is documented by means of assessment and evaluation as required in Sections 95016 and 95018 and who meet one of the following criteria:

(1) Infants and toddlers with a developmental delay in one or more of the following five areas: cognitive development; physical and motor development, including vision and hearing; communication development; social or emotional development; or adaptive development. Developmentally delayed infants and toddlers are those who are determined to have a significant difference between the expected level of development for their age and their current level of functioning. This determination shall be made by qualified personnel who are recognized by, or part of, a multidisciplinary team, including the parents.

(2) Infants and toddlers with established risk conditions, who are infants and toddlers with conditions of known etiology or conditions with established harmful developmental consequences. The conditions shall be diagnosed by a qualified personnel recognized by, or part of, a multidisciplinary team, including the parents. The

condition shall be certified as having a high probability of leading to developmental delay if the delay is not evident at the time of diagnosis.

(3) Infants and toddlers who are at high risk of having substantial developmental disability due to a combination of biomedical risk factors, the presence of which is diagnosed by qualified clinicians recognized by, or part of, a multidisciplinary team, including the parents.

(b) Regional centers and local education agencies shall be responsible for ensuring that eligible infants and toddlers are served as follows:

(1) The State Department of Developmental Services and regional centers shall be responsible for the provision of appropriate early intervention services in accordance with Part H of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1471 et seq.) for all infants eligible under Section 95014, except for those infants with solely a visual, hearing, or severe orthopedic impairment, or any combination thereof, who meet the criteria in Sections 56026 and 56026.5 of the Education Code, and in subdivisions (a), (b), (d), or (e) of Section 3030 of, and Section 3031 of, Title 5 of the California Code of Regulations.

(2) The State Department of Education and local education agencies shall be responsible for the provision of appropriate early intervention services in accordance with Part H of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1471 et seq.) for infants with solely a visual, hearing, or severe orthopedic impairment, or any combination thereof who meet the criteria in Sections 56026 and 56026.5 of the Education Code, and in subdivisions (a), (b), (d), or (e) of Section 3030 of, and Section 3031 of, Title 5 of the California Code of Regulations, and who are not eligible for services under the Lanterman Developmental Services Disabilities Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code).

(c) For infants and toddlers and their families who are eligible to receive services from both a regional center and a local education agency, the regional center shall be the agency responsible for providing or purchasing appropriate early intervention services that are beyond the mandated responsibilities of local education agencies. The local education agency shall provide special education services up to its funded program capacity as established annually by the State Department of Education in consultation with the State Department of Developmental Services and the Department of Finance.

(d) No agency or multidisciplinary team, including any agency listed in Section 95012, shall presume or determine eligibility, including eligibility for medical services, for any other agency. However, regional centers and local education agencies shall coordinate intake, evaluation, assessment, and individualized family service plans for infants and toddlers and their families who are

served by an agency.

(e) Upon termination of the program pursuant to Section 95003, the State Department of Developmental Services shall be responsible for the payment of services pursuant to this title.

CHAPTER 5. SERVICES

95016. (a) Each infant or toddler referred for evaluation for early intervention services shall have a timely, comprehensive, multidisciplinary evaluation of his or her needs and level of functioning in order to determine eligibility. If the infant or toddler is determined eligible, an assessment shall be conducted to identify the child's unique strengths and needs and the services appropriate to meet those needs; and the resources, priorities and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler. Family assessments shall be family directed and voluntary on the part of the family.

(b) Regional centers and local education agencies or their designees shall be responsible for ensuring that the requirements of this section are implemented. The procedures, requirements, and timelines for evaluation and assessment shall be consistent with the statutes and regulations under Part H of the Individuals with Disabilities Education Act (20 U.S.C. 1471 et seq.), applicable regulations, and this title, and shall be specified in regulations adopted pursuant to Section 95028.

95018. Each eligible infant or toddler and family shall be provided a service coordinator who will be responsible for facilitating the implementation of the individualized family service plan and for coordinating with other agencies and persons providing services to the family. The qualifications, responsibilities, and functions of service coordinators shall be consistent with the statutes and regulations under Part H and this title, and shall be specified in regulations adopted pursuant to Section 95028. Pursuant to Section 303.521 of Title 34 of the Code of Federal Regulations, service coordination is not subject to any fees that might be established for any other federal or state program.

95020. (a) Each eligible infant or toddler shall have an individualized family service plan. The individualized family service plan shall be used in place of an individualized program plan required pursuant to Sections 4646 and 4646.5 of the Welfare and Institutions Code, the individual education plan required pursuant to Section 56340 of the Education Code, or any other applicable service plan.

(b) For an infant or toddler who has been evaluated for the first time, a meeting to determine eligibility and to develop the initial individualized family service plan shall be conducted within 45 calendar days of receipt of the written referral. Written parent consent to evaluate and assess shall be obtained within the 45-day

timeline. A regional center, local education agency, or their designees shall initiate and conduct this meeting.

(c) The individualized family service plan shall be in writing and shall address all of the following:

(1) A statement of the infant or toddler's present levels of physical development including vision, hearing, and health status, cognitive development, communication development, social and emotional development, and adaptive developments.

(2) With the concurrence of the family, a statement of the family's concerns, priorities, and resources related to meeting the special developmental needs of the eligible infant or toddler.

(3) A statement of the major outcomes expected to be achieved for the infant or toddler and family where services for the family are related to meeting the special developmental needs of the eligible infant or toddler.

(4) The criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions are necessary.

(5) A statement of the specific early intervention services necessary to meet the unique needs of the infant or toddler as identified in paragraph (3), including, but not limited to, the frequency, intensity, location, duration, and method of delivering the services, and ways of providing services in natural environments.

(6) A statement of the agency responsible for providing the identified services.

(7) The name of the service coordinator who shall be responsible for facilitating implementation of the plan and coordinating with other agencies and persons.

(8) The steps to be taken to ensure transition of the infant or toddler upon reaching three years of age to other appropriate services. These may include, as appropriate, special education or other services offered in natural environments.

(9) The projected dates for the initiation of services in paragraph (5) and the anticipated duration of those services.

(d) Each service identified on the individualized family service plan shall be designated as one of three types:

(1) An early intervention service, as defined in Part H (20 U.S.C. Section 1472 (2)), and applicable regulations, that is provided or purchased through the regional center, local education agency, or other participating agency. The State Department of Health Services, State Department of Social Services, State Department of Mental Health, and State Department of Alcohol and Drug Programs shall provide services in accordance with state and federal law and applicable regulations, and up to the level of funding as appropriated by the Legislature. Early intervention services identified on an individualized family service plan that exceed the funding, statutory, and regulatory requirements of these departments shall be provided or purchased by regional centers or local education agencies under subdivisions (b) and (c) of Section 95014. The State Department of

Health Services, State Department of Social Services, State Department of Mental Health, and State Department of Alcohol and Drug Programs shall not be required to provide early intervention services over their existing funding, statutory, and regulatory requirements.

(2) Any other service, other than those specified in paragraph (1), which the eligible infant or toddler or his or her family may receive from other state programs, subject to the eligibility standards of those programs.

(3) A referral to a nonrequired service that may be provided to an eligible infant or toddler or his or her family. Nonrequired services are those services that are not defined as early intervention services or do not relate to meeting the special developmental needs of an eligible infant or toddler related to the disability, but which may be helpful to the family. The granting or denial of nonrequired services by any public or private agency is not subject to appeal under this title.

(e) An annual review, and other periodic reviews of the individualized family service plan for an infant's or toddler and the infant or toddler's family shall be conducted to determine the degree of progress that is being made in achieving the outcomes specified in the plan and whether modification or revision of the outcomes or services is necessary. The frequency, participants, purpose, and required processes for annual and periodic reviews shall be consistent with the statutes and regulations under Part H and this title, and shall be specified in regulations adopted pursuant to Section 95028.

95022. The statewide system of early intervention shall be administered by the State Department of Developmental Services in collaboration with the State Department of Education and with the advice and assistance of an interagency coordinating council established pursuant to federal regulations and shall include all of the following mandatory components:

(a) A central directory that includes information about early intervention services, resources, and experts available in the state, professionals and other groups providing services to eligible infants and toddlers, and research and demonstration projects being conducted in the state. The central directory shall specify the nature and scope of the services available and the telephone number and address for each of the sources listed in the directory.

(b) A public awareness program focusing on early identification of eligible infants and toddlers and the dissemination of information about the purpose and scope of the system of early intervention services and how to access evaluation and other early intervention services.

(c) Personnel standards that ensure that personnel are appropriately and adequately prepared and trained.

(d) A comprehensive system of personnel development that provides training for personnel including, but not limited to, public

and private providers, primary referral sources, paraprofessionals, and persons who will serve as service coordinators. The training shall specifically address at least all of the following:

(1) Understanding the early intervention services system, including the family service plan process.

(2) Meeting the interrelated social, emotional, and health needs of eligible infants and toddlers.

(3) Assisting families in meeting the special developmental needs of the infant or toddler, assisting professionals to utilize best practices in family focused early intervention services and promoting family professional collaboration.

(4) Reflecting the unique needs of local communities and promoting culturally competent service delivery.

(e) A comprehensive child-find system, including policies and procedures that ensure that all infants and toddlers who may be eligible for services under this title are identified, located, and evaluated, that services are coordinated between participating agencies, and that infants and toddlers are referred to the appropriate agency.

(f) A surrogate parent program established pursuant to Section 303.405 of Title 34 of the Code of Federal Regulations to be used by regional centers and local education agencies.

CHAPTER 6. FUNDING

95024. (a) Any increased cost to local educational agencies due to the implementation of this title shall be funded from the Part H federal funds provided for the purposes of this title.

(b) Any increased costs to regional centers due to the implementation of this title shall be funded from the Part H federal funds provided for the purposes of this title.

(c) The annual Budget Act shall specify the amount of federal Part H funds allocated for local assistance and for state operations individually, for the State Department of Developmental Services, and for the State Department of Education.

(d) If federal funds are available after mandatory components and increased costs in subdivisions (a) and (b), if any, are funded, the lead agency, in consultation with the State Department of Education, may do the following:

(1) Designate local interagency coordination areas throughout the state and allocate available Part H funds to fund interagency coordination activities, including, but not limited to, outreach and public awareness, and interagency approaches to service planning and delivery. If the lead agency chooses to designate and fund local interagency coordination areas, the lead agency shall first offer to enter into a contract with the regional center or a local education agency. If the regional center or any of the local education agencies do not accept the offer, the lead agency, in consultation with the State Department of Education and the approval of the regional

center and local education agencies in the area, may directly enter into a contract with a private, nonprofit organization. Nothing in this section shall preclude a regional center or local education agency that enters into a contract with the lead agency from subcontracting with a private, nonprofit organization.

(2) Allocate funds to support family resource services, including, but not limited to, parent-to-parent support, information dissemination and referral, public awareness, family-professional collaboration activities, and transition assistance for families.

(e) If an expenditure plan is developed under subdivision (d), the lead agency, in consultation with the State Department of Education, shall give high priority to funding family resource services.

(f) Nothing in this section shall be construed to limit the lead agency's authority, in consultation with the State Department of Education, to allocate discretionary Part H funds for any legitimate purpose consistent with the statutes and regulations under Part H (20 U.S.C. Secs. 1471 to 1485, inclusive) and this title.

CHAPTER 7. DATA COLLECTION

95026. The lead agency shall maintain a system for compiling data required by the federal Office of Special Education Programs, through Part H of the Individuals with Disabilities Education Act, including the number of eligible infants and toddlers and their families in need of appropriate early intervention services, the number of eligible infants and toddlers and their families served, the types of services provided, and other information required by the federal Office of Special Education Programs. All participating agencies listed in Section 95012 shall assist in the development of the system and shall cooperate with the lead agency in meeting federal data requirements. The feasibility of using existing systems and including social security numbers shall be explored to facilitate data collection.

CHAPTER 8. REGULATIONS

95028. (a) On or before October 1, 1995, the State Department of Developmental Services, on behalf of the Secretary of the Health and Welfare Agency, and the State Department of Education, on behalf of the Superintendent of Public Instruction, shall jointly develop, approve, and implement regulations, as necessary, to comply with the requirements of this title and Part H, as specified in federal statutes and regulations.

(b) The regulations developed pursuant to this section shall include, but are not limited to, the following requirements:

(1) The administrative structure for planning and implementation of the requirements of this title and Part H.

(2) Eligibility for Part H services.

(3) Evaluation and assessment.
(4) Individualized family service plans.
(5) Service coordination.
(6) The program and service components of the statewide system for early intervention services.
(7) The duties and responsibilities of the lead agency as specified in Section 95006, including procedural safeguards and the process for resolving complaints against a public agency for violation of the requirements of Part H.

(c) The State Department of Developmental Services shall adopt regulations to implement this title in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2. Initial regulations to implement this title shall be adopted as emergency regulations. The adoption of these initial emergency regulations shall be considered by the Office of Administrative Law to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. The initial emergency regulations shall remain in effect for no more than 180 days. These regulations shall be jointly developed by the State Department of Developmental Services and the State Department of Education by July 1, 1994. The Department of Finance shall review and comment upon the emergency regulations prior to their adoption.

CHAPTER 9. EVALUATION

95029. The State Department of Developmental Services and the State Department of Education shall ensure that an independent evaluation of the program and its structure is completed by October 1, 1996. The evaluation shall address the following issues:

(a) The efficiency and cost-effectiveness of the state administrative structure, the local interagency coordinating structure, and the mandatory program components.

(b) The degree to which programs and services provided through regional centers and local education agencies fulfill the purpose of Part H of the Individuals with Disabilities Education Act.

(c) The extent to which implementation of the program has resulted in improved services for infants and their families, and greater satisfaction with service delivery by families.

(d) The outcomes and effectiveness of family resource centers.

(e) The adequacy of the Part H funding models. The evaluation shall be funded with federal funds.

CHAPTER 10. TERMINATION

95030. Unless repealed earlier pursuant to subdivision (c) of Section 95003, this division shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1998, deletes or extends that

date.

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. Title 14 (commencing with Section 95000) is added to the Government Code, to read:

TITLE 14. CALIFORNIA EARLY INTERVENTION SERVICES ACT

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

Article 1. General Provisions

95000. The Legislature finds that disabled and high-risk infants now survive the newborn period due to greatly improved surgical and medical care services; however, in any communities, services which provide the careful nurturing and stimulation that these infants need to develop to their potential are not available. The Legislature hereby finds and declares that individualized early intervention services for infants, who are at high risk or who have disabling condition, and for their families, which provide educational, developmental, health, and social services with active parent involvement, can significantly reduce the potential impact of many disabling conditions and positively influence later development when the child reaches school age.

The Legislature further finds that infants have unique needs and therefore require both a unique service delivery model, which may be different from any system currently in place in California, and unique program and personnel standards specific to the needs of infants who are at high risk or who have a disabling condition and their families.

The Legislature further acknowledges that early intervention services are cost-effective, in that these services frequently make productive citizens of children and eliminate the far greater costs of long-term remedial treatment for, and unnecessary lifelong dependency on others.

95002. It is the intent of the Legislature that those agencies which possess the greatest expertise in providing early intervention services to infants and their families in the past continue to provide

these services. It is the further intent of the Legislature that existing early intervention services rendered by state and local public agencies and private agencies be coordinated and maximized through interagency services with specific state and local government responsibilities.

95003. It is the intent of the Legislature that the State Department of Health Services, the State Department of Developmental Services, the State Department of Mental Health, the State Department of Social Services, and the State Department of Education work together to provide coordinated, interagency services to high-risk and disabled infants and their families.

95004. This title shall become operative upon the repeal of Title 14 (commencing with Section 95000) as added by Section 3 of Senate Bill 1085 of the 1993–94 Regular Session.

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 early intervention services may be available to infants and toddlers with disabilities and their families in accordance with federal program requirements, it is necessary that this act take effect immediately.

CHAPTER 946

An act to amend Section 25128 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 8, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 25128 of the Revenue and Taxation Code is amended to read:

25128. (a) Notwithstanding Section 38006, all business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four, except as provided in subdivision (b).

(b) If a taxpayer has more than 50 percent of its "gross business receipts" derived from conducting an extractive or agricultural business activity, all the business income of the taxpayer shall be apportioned to this state by multiplying the business income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

(c) For purposes of this section:

(1) "Gross business receipts" means gross receipts derived in the production of business income subject to apportionment.

(2) "Agricultural business activity" means activities relating to any stock, dairy, poultry, fruit, furbearing animal, or truck farm, plantation, ranch, nursery, or range. "Agricultural business activity" also includes activities relating to cultivating the soil or raising or harvesting any agricultural or horticultural commodity, including, but not limited to, the raising, shearing, feeding, caring for, training, or management of animals on a farm as well as the handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated.

(3) "Extractive business activity" means activities relating to the production, refining, or processing of oil, natural gas, or mineral ore.

(4) In any case where the income and apportionment factors of two or more affiliated banks or corporations are required to be included in a combined report under Section 25101, the term "taxpayer" shall refer to all of those corporations.

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 947

An act to add Section 2056 to the Business and Professions Code, relating to medicine.

[Approved by Governor October 8, 1993. Filed with Secretary of State October 8, 1993.]

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

SECTION 1. Section 2056 is added to the Business and Professions Code, to read:

2056. (a) The purpose of this section is to provide protection against retaliation for physicians who advocate for medically appropriate health care for their patients pursuant to Wickline v. State of California 192 Cal. App. 3d 1630.

(b) It is the public policy of the State of California that a physician and surgeon be encouraged to advocate for medically appropriate health care for his or her patients. For purposes of this section, "to advocate for medically appropriate health care" means to appeal a payor's decision to deny payment for a service pursuant to the reasonable grievance or appeal procedure established by a medical group, independent practice association, preferred provider organization, foundation, hospital medical staff and governing body, or payer, or to protest a decision, policy, or practice that the physician, consistent with that degree of learning and skill ordinarily

possessed by reputable physicians practicing in the same or a similar locality and under similar circumstances, reasonably believes impairs the physician's ability to provide medically appropriate health care to his or her patients.

(c) The application and rendering by any person of a decision to terminate an employment or other contractual relationship with or otherwise penalize a physician and surgeon principally for advocating for medically appropriate health care consistent with that degree of learning and skill ordinarily possessed by reputable physicians practicing in the same or a similar locality and under similar circumstances violates the public policy of this state.

(d) This section shall not be construed to prohibit a payer from making a determination not to pay for a particular medical treatment or service, or to prohibit a medical group, independent practice association, preferred provider organization, foundation, hospital medical staff, hospital governing body acting pursuant to Section 809.05, or payer from enforcing reasonable peer review or utilization review protocols or determining whether a physician has complied with those protocols.

(e) Medically appropriate health care in a hospital licensed pursuant to Section 1250 of the Health and Safety Code shall be defined by the hospital medical staff and approved by the governing body, consistent with that degree of learning and skill ordinarily possessed by reputable physicians practicing in the same or a similar locality and under similar circumstances.

(f) Nothing in this section shall be construed to prohibit the governing body of a hospital from taking disciplinary actions against a physician and surgeon as authorized by Sections 809.05, 809.4, and 809.5.

(g) Nothing in this section shall be construed to prohibit the Medical Board of California from taking disciplinary actions against a physician and surgeon under Article 12 (commencing with Section 2220).

(h) For purposes of this section, "person" has the same meaning as set forth in Section 2032.

CHAPTER 948

An act to amend Sections 46003 and 46003.5 of, and to add Section 46015 to, the Food and Agricultural Code, and to amend Sections 26200.5, 26569.22, 26569.23, 26569.29, 26569.30, 26569.31, 26569.32, 26569.34, 26569.35, and 26569.36 of, and to add Sections 26569.51, 26569.52, 26569.53, and 26850.6 to, the Health and Safety Code, relating to organic foods, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 8, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 46003 of the Food and Agricultural Code is amended to read:

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 with respect to 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 14 members. Six members shall be producers, at least one of whom shall be a producer of meat, fowl, fish, dairy products, or eggs. Two members shall be processors, 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 members of the advisory board described in subdivision (b) shall be reimbursed for the reasonable expenses actually incurred in the performance of their duties, as determined by the advisory board and approved by the director.

(d) 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.

SEC. 2. Section 46003.5 of the Food and Agricultural Code is amended to read:

46003.5. (a) On or before July 1, 1996, the director, in consultation with the Organic Food Advisory Board, shall adopt regulations listing specific substances that 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.

Prior to the promulgation of the national materials list by the United States Department of Agriculture pursuant to the federal Organic Foods Production Act of 1990 (7 U.S.C. Secs. 6501 to 6522,

incl.) the Organic Food Advisory Board, in consultation with the director, shall determine which, if any, substance may be allowed for use in the production and handling of organic foods in this state. Within 90 days of promulgation of the national materials list by the United States Department of Agriculture, the Organic Food Advisory Board, in consultation with the director, shall determine which, if any, substance allowed for use by the national materials list may be allowed for use in the production and handling of organic foods in this state.

(b) Prior to adoption of these regulations, the director shall issue administratively a preliminary, nonexhaustive list of materials that 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.

SEC. 3. Section 46015 is added to the Food and Agricultural Code, to read:

46015. Except as provided in paragraphs (1) and (2) of subdivision (b) of Section 26569.22 of the Health and Safety Code, it is unlawful for any person to commingle nonorganic commodities with commodities sold as organic either in the same container, as defined in Section 42506, or when displaying commodities for sale at retail.

SEC. 4. Section 26200.5 of the Health and Safety Code is amended to read:

26200.5. The Food Safety Fund is hereby created as a special fund in the State Treasury. All moneys collected by the department under Section 26506.2 and under Article 4.5 (commencing with Section 26569.20) of Chapter 5 shall be deposited in the Food Safety Fund, for use by the department, upon appropriation by the Legislature, for the purposes of providing funds necessary to carry out and implement the inspection provisions of this division relating to food and the registration provisions of Article 4.5 (commencing with Section 26569.20) of Chapter 5.

SEC. 5. Section 26569.22 of the Health and Safety Code is amended to read:

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 that 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, 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 where 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 where 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 where 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 where 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 where 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 where 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 where the medium is manufactured or produced during 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 where the commodity is grown during seeding or inoculation. If a prohibited material is applied in the area prior to seeding or inoculation, a residue test shall be performed on the commodity grown from that seeding or inoculation.

(6) In the case of any raw agricultural commodity that is grown directly from seed without soil or any growing medium, including, by way of example, sprouts, no prohibited material shall have been applied to the seed, and no prohibited material shall have been applied to the area where the commodity is grown after introduction 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), except as follows:

(1) Water, air, and salt may be added to the processed food.

(2) Ingredients other than raw agricultural commodities as described in subdivision (a) may be added to the processed food if these ingredients are included in the national list adopted by the United States Secretary of Agriculture pursuant to Section 6517 of the federal Organic Foods Production Act (7 U.S.C. Sec. 6501 et seq.) and do not represent more than 5 percent of the weight of the total finished product, excluding salt and water.

(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 that are produced, distributed, and processed without any prohibited material having been applied or administered.

SEC. 6. Section 26569.23 of the Health and Safety Code is amended to read:

26569.23. No food that 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 5 percent of the federal Environmental Protection Agency tolerance level.

SEC. 7. Section 26569.29 of the Health and Safety Code is amended to read:

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, the Attorney General, any prosecuting attorney, any governmental agency responsible for enforcing laws related to the production or handling of food sold as organic, 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. Records acquired pursuant to this subdivision shall not be public records as that term is defined in Section 6252 of the Government Code and shall not be subject to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(b) Upon written request of any person that establishes cause for the request, the director and the Director of Food and Agriculture shall obtain and provide to the requesting party within 10 working days of the request a copy of any of the following records required to be kept under this article that pertain to a specific product sold or offered for sale, and that identify substances applied, administered, or added to that product, except that financial information about an operation or transaction, information regarding the quantity of a substance administered or applied, the date of each administration or application, information regarding the

identity of suppliers or customers, and the quantity or price of supplies purchased or products sold shall be removed before disclosure and shall not be released to any person other than persons and agencies authorized to acquire records under subdivision (a):

(1) Records of a 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, except for processing aids that are not residual in the product and spices and seasonings exempt from labeling requirements in Parts 145 and 146 of Title 21 of the Code of Federal Regulation, 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).

This subdivision shall be the exclusive means of public access to records required to be kept by producers, processors, handlers, and retailers under this article.

(c) Information specified in subdivision (b) that is required to be released upon request shall not be considered a "trade secret" under Section 26235, Section 1060 of the Evidence Code, or the Uniform Trade Secrets Act (Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code).

(d) The director or the Director of Food and Agriculture may charge the person requesting records a reasonable fee to reimburse him or her self or the source of the records for the cost of reproducing the records requested.

(e) Any person who first imports into this state, for resale, food sold as organic shall obtain and provide to the enforcement authority, upon request, proof that the products being sold have been certified by an accredited certifying organization or have otherwise been

produced in compliance with this article.

(f) The director shall not be required to obtain records not in his or her possession in response to a subpoena. Prior to releasing records required to be kept pursuant to this chapter in response to a subpoena, the director shall delete any information regarding the identity of suppliers or customers and the quantity or price of supplies purchased or products sold.

(g) Subdivisions (b), (c), and (d) shall become inoperative on January 1, 1995.

SEC. 8. Section 26569.30 of the Health and Safety Code is amended to read:

26569.30. (a) Commencing 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), by a certification organization registered pursuant to Section 46009 of the Food and Agricultural Code, or by the Director of Food and Agriculture or a county agricultural commissioner pursuant to Section 46009 of the Food and Agricultural Code or a federally accredited certification organization.

(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 five 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) Effective January 1, 1992, a certification organization which certifies processed food sold as organic, except for processed meat, fowl, or dairy products, shall register 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 December 1, 1993. The registration form shall include a written statement affirming compliance with all requirements for certification organizations specified in Section 26569.30 to 26569.34, inclusive, and confirmation that each component of the organization's certification plan has been filed as specified in Section 26569.33. The director shall reject a registration submission that is incomplete or not in compliance with this article.

(e) Commencing 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 registration fee shall be five hundred dollars ($500), unless the certification organization is also registered as a certifier of producers by the Director of Food and Agriculture under Section 46009 of the Food and Agricultural Code, in which case the registration fee shall be one hundred dollars ($100).

(g) The director may audit the organization's certification procedures and records at any time. Records of certification organizations not otherwise required to be released upon request or made publicly available shall not be released by the director except to other employees of the department, the Department of Food and Agriculture, a county agricultural commissioner, the Attorney General, any prosecuting attorney, or any government agency responsible for enforcing laws related to the activities of the person subject to this division.

SEC. 9. Section 26569.31 of the Health and Safety Code is amended to read:

26569.31. Prior to initial certification of a producer, a registered certification organization shall conduct at least one initial physical inspection of the premises at which the food to be certified is produced. This inspection shall include the recordkeeping system necessary for compliance with Section 26569.28 and the area or facility at which the food is produced.

SEC. 10. Section 26569.32 of the Health and Safety Code is amended to read:

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 or a federally accredited 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.

SEC. 11. Section 26569.34 of the Health and Safety Code is amended to read:

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.

(b) Processed or multiingredient food sold as organic may only be certified if all the organic ingredients are certified.

SEC. 12. Section 26569.35 of the Health and Safety Code is amended to read:

26569.35. (a) 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 register with the director, and shall thereafter annually renew the registration unless no longer so engaged. Processors and handlers of processed food that are registered with the department pursuant to Article 1.5 (commencing with Section 26506) shall register under this section in conjunction with the annual renewal of their registration pursuant to Article 1.5 (commencing with Section 26506). All others required to register under this subdivision shall register within 30 days of forms being made available for this purpose. Any processor or handler of processed foods required to register under this subdivision that does not pay the registration fee required by subdivision (c) within 30 days of the date on which the fee is due and payable shall pay a penalty of 1 percent per month on the unpaid balance.

(b) Registration shall be on a form provided by the director and shall be valid for a period of one calendar year from the date of validation of the completed registration form. The director shall make forms available for this purpose on or before January 1, 1994. The information provided on the registration form shall include all of the following:

(1) The nature of the registrant's business, including the types and quantities of each type of product that are sold as organic.

(2) The total current annual gross sales in dollars of products sold as organic.

(3) The names of all certification organizations and governmental entities, if any, providing certification to the registrant pursuant to this article.

(c) A registration form shall be accompanied by payment of a nonrefundable registration fee of one hundred dollars ($100), payable to the department.

(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) The director shall provide a validated copy of the completed registration form to the registrant.

(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. Registration information regarding quantity of products sold and gross sales volume in dollars shall be deleted prior to public inspection and copying and shall not be released to any person except other employees of the department, the Department of Food and Agriculture, a county agricultural commissioner, the Attorney General, any prosecuting attorney, or any government agency responsible for enforcing laws related to the activities of the person subject to this division.

(h) The requirements of this section shall not apply to retailers of food sold as organic.

SEC. 13. Section 26569.36 of the Health and Safety Code is amended to read:

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 registration 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 Sections 26569.31 to 26569.34, inclusive. The director may administratively establish a procedure whereby certification organizations operating outside the state may apply for and receive recognition.

SEC. 14. Section 26569.51 is added to the Health and Safety Code, immediately following Section 26569.50, to read:

26569.51. (a) All organic food regulations and any amendments to those regulations adopted pursuant to the Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.), that are in effect on the date this bill is enacted or that are adopted after that date shall be the organic food regulations of this state.

(b) The department may, by regulation, prescribe conditions under which organic foods may be sold in this state whether or not these conditions are in accordance with regulations adopted pursuant to the Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.) if the director submits these regulations for approval to the federal Secretary of Agriculture as required by Section 6507 of Title 7 of the United States Code and the Secretary approves the

regulations pursuant to the federal Organic Foods Production Act.

SEC. 15. Section 26569.52 is added to the Health and Safety Code, to read:

26569.52. It shall be unlawful for a person to represent in advertising or labeling that the person or the foods of the person are registered pursuant to this article.

SEC. 16. Section 26569.53 is added to the Health and Safety Code, to read:

26569.53. On or before March 1, 1995, the director shall compile and publish a summary of information collected under Section 26569.35, including the following:

(a) The total number of registrations received under this section.

(b) The total number and quantity of each type of product sold as organic by all registrants combined.

(c) The total annual organic gross sales volume of all registrants combined, and the median gross annual organic sales of all registrants.

(d) The names of all registrants.

(e) The number of registrants in each of the following ranges of annual gross sales volume:

(1) $0–$5,000
(2) $5,001–$10,000
(3) $10,001–$25,000
(4) $25,001–$50,000
(5) $50,001–$75,000
(6) $75,001–$100,000
(7) $100,001–$125,000
(8) $125,001–$150,000
(9) $150,001–$175,000
(10) $175,001–$200,000
(11) $200,001–$250,000
(12) $250,001–$300,000
(13) $300,001–$400,000
(14) $400,001–$500,000
(15) $500,001–$750,000
(16) $750,001–$1,000,000
(17) $1,000,001–$1,500,000
(18) $1,500,001–$2,000,000
(19) $2,000,001–$2,500,000
(20) $2,500,001–$5,000,000
(21) $5,000,001–$7,500,000
(22) $7,500,001–$10,000,000
(23) $10,000,001–$15,000,000
(24) $15,000,001–$20,000,000
(25) $20,000,001 and above.

(f) The report published pursuant to this section shall present the required information in an aggregate form that preserves the confidentiality of the proprietary information of individual registrants.

SEC. 17. Section 26850.6 is added to the Health and Safety Code, to read:

26850.6. Notwithstanding any provision of this division, or any other provision of law, the department shall have no affirmative obligation to administer, regulate, or enforce the provisions of state law relating to organic foods except Section 26569.30, which relates to the registration of persons who certify processors of organic foods, and Section 26569.35, which relates to the registration of processors of organic foods.

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 for organic food to meet the standards necessary to protect public health and safety, it is necessary that this act take effect immediately.

CHAPTER 949

An act to add Section 2025 to the Business and Professions Code, relating to pain management.

[Approved by Governor October 8, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 2025 is added to the Business and Professions Code, to read:

2025. The board through its regular mailing shall notify all licensees of the existence of pain management guidelines published by the Agency for Health Care Policy and Research of the Public Health Service within the United States Department of Health and Human Services, and shall provide the published guidelines to licensees upon request.

CHAPTER 950

An act to amend Sections 11462, 11466.2, and 11467 of, and to add Sections 11462.05 and 11469.1 to, 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 October 8, 1993. Filed with Secretary of State October 11, 1993.]

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

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

(a) The federal Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272), as implemented in this state by Chapter 978 of the Statutes of 1982 and subsequent legislation, led to an appropriate focus of safely maintaining abused and neglected children in their natural homes whenever possible. In order to promote long-term stability of children, permanency planning efforts have been oriented toward prompt and decisive action either to maintain a child in his or her own home, or, if this is not feasible, to arrange for placement in a permanent home with another family.

(b) Since the enactment of federal Public Law 96-272, significant changes have occurred in child welfare services and foster care. The nature of children receiving services has changed dramatically, with more children having serious emotional, medical, and behavioral problems. Additionally, the large number of substance-exposed infants born in the last decade has placed increased demands on the child welfare services and foster care systems.

(c) Due to the changing needs of children, the types of services required and delivered have changed in the last decade, while retaining a commitment to community-based services in the least restrictive and most familylike setting possible. A continuum of different types of caregivers in settings ranging from in-home family care with few supportive services to institutional care with intensive treatment has developed to address the range of different needs on both a permanent and temporary basis.

(d) Chapter 1294 of the Statutes of 1989 provides a solid foundation for bridging the gap between a child's need for services with appropriate provision of those services while ensuring accountability in service delivery. Chapter 1294 of the Statutes of 1989 not only requires comprehensive assessment and documentation of a child's needs, including the need for mental health services, via the level of care assessment process, but also requires performance standards and outcome measures to evaluate the appropriateness of county placement decisions and group home care.

(e) Concurrent with the changing nature of children in care and the delivery of services, the availability of public and private resources to fund services has undergone considerable change. The fiscal capacity of federal, state, and county governments to fund child welfare services and foster care changed significantly pursuant to the 1991 realignment of social services programs. Moreover, providers of out-of-home care have faced increasing costs and proportionately declining reimbursements for services provided.

(f) Recent important policy changes encouraging the prevention of out-of-home placements when possible, family reunification, adoption and other long-term stable placements when reunification is not feasible, and a greater local share of the costs of foster care have caused a reduction in the statewide average occupancy of group homes. The Legislature recognizes that the 90 percent occupancy standard used to initially determine service level points may penalize some group homes unfairly by requiring them to provide staffing for children who are not actually in the group home.

(g) In light of the changes that have occurred subsequent to the passage of federal Public Law 96-272 and Chapter 1294 of the Statutes of 1989, an evaluation of the child welfare services and foster care programs should be undertaken to identify modifications needed to ensure that progress continues to be made toward the goal of assessing and addressing the needs of children while maintaining accountability for service delivery. The evaluation should include, but not be limited to, all of the following elements of Chapter 1294 of the Statutes of 1989:

(1) The level of care assessment tool, including the status of its implementation and the appropriate population to whom it should be applied.

(2) Performance standards and outcome measures for county placement decisions and group home care, including indicators of quality of care, such as stability of placement, reduction of recidivism, and educational progress, and not be limited to fiscal indicators, such as cost avoidance due to reduction or avoidance of out-of-home care.

(3) The rate classification level system for establishing rates for group home care.

SEC. 2. Section 11462 of the Welfare and Institutions Code, as amended by Section 40 of Chapter 69 of the Statutes of 1993, is amended to read:

11462. (a) (1) 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.

(2) Notwithstanding paragraph (1), foster care providers licensed as group homes shall have rates established only if the group home

is organized and operated on a nonprofit basis as required under subdivision (h) of Section 11400.

(3) The department shall terminate the rate, effective January 1, 1993, of any group home that is not organized and operated on a nonprofit basis as required under subdivision (h) of Section 11400.

(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 the 1990–91 fiscal year 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 the 1991–92 fiscal year for each RCL, shall be equal to the standard rate for each RCL for the period July 1, 1992, to September 13, 1992, inclusive, and shall be 92.5 percent of the standard rate for each RCL for the period September 14, 1992, to June 30, 1993, inclusive.

(3) The rate floor for each RCL shall be 95 percent of the standard rate for each RCL for the 1993–94 fiscal year. The rate floor shall be equal to the standard rate for each RCL for the 1994–95 fiscal year 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 the 1990–91 fiscal year 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.

(3) The department shall not reduce the rate, establish an overpayment, or take other actions pursuant to paragraph (2) for any period that a group home program maintains the level of care and services associated with the RCL for children actually residing in the facility. Determinations of levels of care and services shall be made in the same way as modifications of overpayments are made pursuant to paragraph (2) of subdivision (b) of Section 11466.2.

(4) Beginning July 1, 1994, for group homes paid at rates below the standard rate established by subdivision (g), a group home program shall remain at its current RCL if it maintains at least the level of care and services associated with that percentage of the points required to be at that RCL that equals the percentage of the standard rate used to establish the group home's rate. In no event, however, shall points per child per month be reduced more than ten points below the minimum required for the current RCL. The RCL for a program shall not increase due to the operation of this paragraph absent any program changes approved by the department pursuant to subdivision (k).

(5) A group home program that substantially changes its staffing pattern from that reported in the group home program statement shall provide notification of this change to all counties that have placed children currently in care. This notification shall be provided whether or not the RCL for the program may change as a result of the change in staffing pattern.

(g) The standardized schedule of rates for the 1990–91 fiscal year 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

(h) (1) For the 1990–91 fiscal year, 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 the 1990–91 fiscal year 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 1989–90 fiscal year 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 the 1989–90 fiscal year at or above the standard rate for the RCL for the 1990–91 fiscal year shall continue to receive the 1989–90 fiscal year rate.

(2) For the 1996–97 fiscal year and the 1997–98 fiscal year, the standardized rate for each RCL shall be adjusted by an amount equal to CNI computed pursuant to the methodology described in Section 11453.

(3) Notwithstanding paragraph (2), on and after the operative date of this paragraph the standardized rate for each RCL in effect on June 30, 1992, shall be the standardized rate for the remainder of fiscal year 1992–93. The department shall adjust rates downward, as necessary to comply with this paragraph.

(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.

(4) Beginning with the 1994–95 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) (A) 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.

(B) On and after the operative date of this subparagraph, the department shall not, prior to July 1, 1993, establish a rate for a new group home program of a new or existing provider. However, in order to allow for the continued operation of group homes which, prior to January 1, 1993, had a rate established as a group home organized and operated on a for-profit basis and which have subsequently organized and operated on a nonprofit basis, the department shall establish a rate for the remainder of the 1992–93 fiscal year for those providers not to exceed the RCL and AFDC-FC rate received by the provider prior to the operative date of this subparagraph.

(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) (1) For the purpose of this subdivision, "program change" means any alteration to an existing group home program planned by a provider that will increase the RCL or the AFDC-FC rate. An increase in the licensed capacity or other alteration to an existing group home program that does not increase the RCL or AFDC-FC rate shall not constitute a program change.

(2) (A) Prior to July 1, 1993, the rate for a group home program shall not increase, as the result of a program change, from the rate established for the program effective June 30, 1992. For rate increases as a result of a program change which become effective between July 1, 1992, and the effective date of this paragraph, the department shall adjust rates downward, as necessary, to comply with this chapter.

Notwithstanding any other provision of law, a group home provider shall be allowed to change a group home program to reflect a decrease in services due to the provisions of this paragraph.

(B) For the 1993–94 fiscal year, the rate for a group home program shall not increase, as the result of a program change, from the rate established for the program effective July 1, 1993, except as provided in paragraph (3).

(3) (A) Commencing with the operative date of this paragraph and only during the 1992–93 fiscal year, and the 1993–94 fiscal year, the department shall not establish a rate for a new program of a new or existing provider, or approve a program change for an existing provider that either increases the program's RCL or AFDC-FC rate, or increases the licensed capacity of the program as the result of decreases in another program with a lower RCL or lower AFDC-FC rate that is operated by that provider, unless both of the conditions specified in this paragraph are met.

(i) The licensee obtains a letter of recommendation from the host county, primary placing county, or regional consortium of counties regarding the proposed program change or new program.

(ii) The county determines that there is no increased cost to the General Fund.

(B) Notwithstanding subparagraph (A), the department may grant a request for a new program or program change, not to exceed 25 beds, statewide, if the licensee obtains a letter of recommendation from the host county, primary placing county, or regional consortium of counties regarding the proposed program change or new program and the new program or program change will result in a reduction of referrals to state hospitals during the 1992–93 fiscal year or the 1993–94 fiscal year.

(*l*) 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.

(m) 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.

(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. 3. Section 11462 of the Welfare and Institutions Code, as amended by Section 41 of Chapter 69 of the Statutes of 1993, is

amended to read:

11462. (a) (1) 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.

(2) Notwithstanding paragraph (1), foster care providers licensed as group homes shall have rates established only if the group home is organized and operated on a nonprofit basis as required under subdivision (h) of Section 11400. The department shall terminate the rate effective January 1, 1993, of any group home not organized and operated on a nonprofit basis as required under subdivision (h) of Section 11400.

(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, shall be equal to the standard rate for each RCL for the period July 1, 1992, to September 13, 1992, inclusive, and shall be 92.5 percent of the standard rate for each RCL for the period September 14, 1992, to June 30, 1993, inclusive.

(3) The rate floor for each RCL shall be 95 percent of the standard rate for each RCL for the 1993–94 fiscal year. The rate floor shall be equal to the standard rate for each RCL for the 1994–95 fiscal year 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.

(3) The department shall not reduce the rate, establish an overpayment, or take other actions pursuant to paragraph (2) for any period that a group home program maintains the level of care and services associated with the RCL for children actually residing in the facility. Determinations of levels of care and services shall be made in the same way as modifications of overpayments are made pursuant to paragraph (2) of subdivision (b) of Section 11466.2.

(4) Beginning July 1, 1994, for group homes paid at rates below the standard rate established by subdivision (g), a group home program shall remain at its current RCL if it maintains at least the level of care and services associated with that percentage of the points required to be at that RCL that equals the percentage of the standard rate used to establish the group home's rate. In no event, however, shall points per child per month be reduced more than ten points below the minimum required for the current RCL. The RCL for a program shall not increase due to the operation of this paragraph absent any program changes approved by the department pursuant to subdivision (k).

(5) A group home program that substantially changes it staffing pattern from that reported in the group home program statement shall provide notification of this change to all counties that have placed children currently in care. This notification shall be provided whether or not the RCL for the program may change as a result of the change in staffing pattern.

(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 the 1996–97 and 1997–98 fiscal years, the standardized rate for each RCL shall be adjusted by an amount equal to the California Necessities Index 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 1994–95 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) (A) 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.

(B) On and after the operative date of this subparagraph, the department shall not, prior to July 1, 1993, establish a rate for a new group home program of a new or existing provider.

(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) (1) For the purpose of this subdivision, "program change" means any alteration to an existing group home program planned by a provider that will increase the RCL or AFDC-FC rate. An increase in the licensed capacity or other alteration to an existing group home program that does not increase the RCL or AFDC-FC rate shall not constitute a program change.

(2) (A) Prior to July 1, 1993, the rate for a group home program shall not increase, as the result of a program change, from the rate established for the program effective June 30, 1992. For rate increases as a result of a program change which became effective between July 1, 1992, and the effective date of this paragraph, the department shall

adjust rates downward as necessary to comply with this chapter. Notwithstanding any other provisions of law, a group home provider shall be allowed to change a group home program to reflect a decrease in services due to the provisions of this paragraph.

(B) For the 1993–94 fiscal year, the rate for a group home program shall not increase, as the result of a program change, from the rate established for the program effective July 1, 1993, except as provided in paragraph (3).

(3) (A) For the 1993–94 fiscal year, the department shall not establish a rate for a new program of a new or existing provider or approve a program change for an existing provider that either increases the program's RCL or AFDC-FC rate, or increases the licensed capacity of the program as a result of decreases in another program with a lower RCL or lower AFDC-FC rate that is operated by that provider, unless both of the conditions specified in this paragraph are met.

(i) The licensee obtains a letter of recommendation from the host county, primary placing county, or regional consortium of counties regarding the proposed program change or new program.

(ii) The county determines that there is no increased cost to the General Fund.

(B) Notwithstanding subparagraph (A), the department may grant a request for a new program or program change, not to exceed 25 beds, statewide, if (i) the licensee obtains a letter of recommendation from the host county, primary placing county, or regional consortium of counties regarding the proposed program change or new program, and (ii) the new program or program change will result in a reduction of referrals to state hospitals during the 1993–94 fiscal year.

(*l*) 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.

(m) 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.

(n) This section shall become operative on July 1, 1995.

SEC. 4. Section 11462.05 is added to the Welfare and Institutions Code, to read:

11462.05. By October 1, 1995, the department shall review and recommend to the appropriate policy and fiscal committees of the Legislature, a new or revised ratesetting system for facilities

receiving reimbursement under Sections 11462 and 11462.01. The department shall conduct this review and develop recommendations with the advice and assistance of county placement agencies, group home provider associations, an other individuals and organizations as designated by the director. The recommendations shall be based on the department's review and evaluation of the current program classification system, group home actual cost data, and information from the group home program statements and level of care assessments specified in Section 11467.

SEC. 5. Section 11466.2 of the Welfare and Institutions Code is amended to read:

11466.2. (a) The department shall perform or have performed group home program and fiscal audits as needed. Group home programs shall maintain all child-specific, programmatic, personnel, fiscal, and other information affecting group home ratesetting and AFDC-FC payments for a period not less than five years.

(b) (1) The department shall develop regulations to correct a group home program's RCL, and to adjust the rate and to recover any overpayments resulting from an overstatement of the projected level of care and services.

(2) Beginning in fiscal year 1990–91, the department shall modify the amount of the overpayment pursuant to paragraph (1) in cases where the level of care and services provided per child in placement equals or exceeds the level associated with the program's RCL. In making this modification, the department shall determine whether services other than child care supervision were provided to children in placement in an amount that is at least proportionate on a per child basis to the amount projected in the group home's rate application. In cases where these services are provided in less than a proportionate amount, staffing for child care supervision in excess of its proportionate share not be substituted for non-child care supervision staff hours.

(c) (1) In any audit conducted by the department, the department, or other public or private audit agency with which the department contracts, shall coordinate with the department's licensing and ratesetting entities so that a consistent set of standards, rules, and auditing protocols are maintained. The department, or other public or private audit agency with which the department contracts, shall make available to all group home providers, in writing, any standards, rules, and auditing protocols to be used in those audits.

(2) The department shall provide exit interviews with providers whenever deficiencies found are explained and the opportunity exists for providers to respond. The department shall develop regulations specifying the procedure for the appeal of audit findings.

SEC. 6. Section 11467 of the Welfare and Institutions Code is amended to read:

11467. (a) It is the intent of the Legislature that dependent children of the court and wards of the court in need of, or at risk of,

out-of-home care are appropriately placed with caregivers that meet their needs. This can initially be accomplished by developing and implementing a level of care assessment process and instrument or instruments that identify the child's needs for structure, supervision, and services, and matches those needs to program statements for group homes, foster family agencies, and small family homes that identify the level of structure, supervision, and services provided by the facility. Ultimately, the goal of the level of care assessment process is to ensure that all dependent children of the court and wards of the court are appropriately placed by matching assessed needs to the full range of placement resources, including family-based resources.

(b) By July 1, 1994, the State Department of Social Services, in consultation with the State Department of Developmental Services, county probation, social service, and mental health departments and foster care providers, shall develop a standard form for program statements for ratesetting, community care licensing, and county placement purposes for all of the following facility types, in the order listed:

(1) Group homes.

(2) Foster family agencies.

(3) Small family homes.

(c) By July 1, 1994, the State Department of Social Services, in consultation with the State Department of Mental Health, county probation, social service, and mental health departments and foster care providers, shall develop and implement a level of care assessment instrument and process which shall match the assessed needs of the dependent child of the court or ward of the court and his or her family with the structure, supervision, and services provided by appropriate placement resources, if applicable, as determined by the standard program statements established pursuant to this subdivision.

(d) The level of care assessment instrument developed pursuant to subdivision (b) shall include specified indicators of a child's need for mental health treatment, for purposes of placement determination. The department shall annually analyze, on a sampling basis, the indicators of mental health need specified on the level of care assessment instrument for all dependent children of the court and wards of the court in out-of-home placement, in order to determine their unmet mental health services needs, and shall make that information available to the Legislature, on request.

(e) No later than January 1, 1995, the department and the Department of Mental Health, jointly, shall report to the Legislature on the requirements specified, and on the progress of plans for meeting the Legislature's intent for a level of care assessment instrument process for all dependent children of the court and wards of the court.

SEC. 7. Section 11469.1 is added to the Welfare and Institutions Code, to read:

11469.1. The performance standards and outcome measures required by Section 11469 shall meet all of the following requirements:

(a) They shall include indicators of quality of care, including, but not limited to, stability of placement, reduction in recidivism, educational progress, and improvement in social behavior, and shall not consist solely of fiscal indicators, such as cost-avoidance due to reduction or avoidance of out-of-home care.

(b) They shall apply to all providers of out-of-home care, including, but not limited to, providers of services provided either directly by, or under contract with, a county welfare department or county probation department.

(c) They shall be used to develop baseline standards against which to measure future performance and to provide a basis for making comparisons among different programs and placements.

SEC. 8. The State Department of Social Services shall adopt emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code to implement this act. The adoption of regulations pursuant to this section in order to implement this act shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, emergency regulations adopted pursuant to this section shall not be subject to 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 for more than 120 days unless the adopting agency complies with all of the provisions of Chapter 3.5 (commencing with Section 11340), as required by subdivision (e) of Section 11346.1 of the Government Code.

SEC. 9. (a) For the purpose of implementing this act in the 1993–94 fiscal year, the sum of three hundred eighty-four thousand dollars ($384,000) is appropriated from the General Fund to the State Department of Social Services in augmentation of Item 5180-001-001 of Chapter 55 of the Statutes of 1993, Program 10, Welfare Program Operations, and the sum of one hundred sixty-seven thousand dollars ($167,000) is appropriated from the Federal Trust Fund to the State Department of Social Services in augmentation of Item 5180-001-890 of Chapter 55 of the Statutes of 1993, Program 10, Welfare Program Operations.

(b) It is the intent of the Legislature that funding for costs related to the implementation of this act in fiscal years subsequent to the 1993–94 fiscal year shall be provided in the annual Budget Act.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that needed services are appropriately and

cost-effectively provided to abused, neglected, and delinquent children as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 951

An act to add and repeal Chapter 12.85 (commencing with Section 18987) of Part 6 of Division 9 of the Welfare and Institutions Code, relating to youths.

[Approved by Governor October 8, 1993. Filed with Secretary of State October 11, 1993.]

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

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

(a) The condition of California's children is in sharp decline.

(b) In 1991, 1.8 million of, or 22.3 percent of, California's children lived in poverty, 200,000 more than in 1988.

(c) Over the past four years, the birth rate for teenage mothers has risen by 25 percent.

(d) Child abuse and neglect reports rose from 63.5 to 70.2 per 1,000 children between 1988 and 1991.

(e) In 1992, 10 percent of all children were separated from their parents and were living in foster care.

(f) Homicides among youth rose from 456 in 1987 to 702 in 1990.

(g) California's performance was worse than national data on 83 percent of measures of children's welfare included on a 1992 statewide "report card."

(h) The current service delivery system for children and families, based on a multitude of narrow uncoordinated, separately funded, narrowly targeted categorical programs emphasizes short-term crisis management over prevention, and typically fails to address the broader needs of the child or family.

(i) Collaborative, integrated child and family services delivery systems, such as those being developed under the Healthy Start Supportive Services for Children Act (Chapter 5 (commencing with Section 8800) of Part 5 of the Education Code), and other efforts, are showing great promise in addressing the comprehensive needs of children and families.

(j) These integrated services efforts have identified the myriad of separate funding streams for child and family services to be a serious impediment to the provision of comprehensive child and family services. Not only does current funding prevent families from receiving appropriate services, but administrative requirements often use up to 25 percent of program funds and bury local agencies in duplicative paperwork.

(k) The report of the 1992 Children's Summits, representing the views of county, city, and school officials, called for studying "... methods of decategorizing the system ... that address an array of services and allow the blending of funding streams."

(*l*) The Legislative Analyst, in the 1993–94 Perspectives and Issues Report on the Budget, recommended that the Legislature enact legislation to "... allocate a portion of existing categorical funds as block grants to local agencies and establish outcome-based performance measures."

(m) In order to determine whether local communities can better serve children and families if categorical funds are blended, a pilot project that is needed that will test the feasibility of allowing communities to do all of the following:

(1) Make decisions locally regarding the best use of state and local human services funds.

(2) Blend funding streams to facilitate integrated services programs for children and families.

(3) Increase the efficiency of administering human services.

SEC. 2. Chapter 12.85 (commencing with Section 18987) is added to Part 6 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 12.85. YOUTH PILOT PROGRAM

18987. (a) Notwithstanding any other provision of law related to the funding and delivery of state programs and services specified in this section, designated counties, if they comply with the provisions of this chapter, shall be authorized to transfer, to the extent possible, into a county child and family services fund, for five years, some or all funds for at least four of the following services for children and families:

(1) Adoption services.
(2) Child abuse prevention services.
(3) Child welfare services.
(4) Delinquency prevention services.
(5) Drug and alcohol services.
(6) Eligibility determination.
(7) Employment and training services.
(8) Foster care services.
(9) Health services.
(10) Juvenile facilities.
(11) Mental health services.
(12) Probation services.
(13) Housing.
(14) Youth development services.
(15) All other appropriately identified and targeted services for children and families.

(b) Local education agencies, cities, or private, nonprofit agencies may also allocate funds to the county child and family services fund for recreation, juvenile justice, or other services provided to children

and families.

(c) The county child and family services fund shall be used to fund comprehensive, integrated services for high-risk, low-income, multiproblem children and families in alternative and innovative ways, as detailed in county strategic plans. The fund may be used to provide services in a designated geographical area within the county or to a targeted population.

18987.05. (a) Not later than December 1, 1994, the Governor, or the Governor's designee shall select up to five counties from among eligible counties that apply to participate in the program.

(b) A county shall be eligible for participation only if all of the following apply:

(1) The county has a demonstrated record of successful interagency collaboration and service integration.

(2) The county has submitted a strategic plan that complies with the requirements of Section 18987.3.

(3) The county's strategic plan and pilot project include one or more local education agencies.

(c) At least one of the counties selected for the pilot program shall be a rural county, if at least one rural county applies and complies with this chapter.

18987.1. Counties selected to participate may implement the program on either January 1, 1995, or July 1, 1995.

18987.15. The Governor or the Governor's designee shall be responsible for all of the following:

(a) Facilitation of any state interagency coordination necessary for the implementation of a participating county's plan.

(b) Coordination of technical assistance to the counties participating in the pilot program.

(c) Applying to the federal government, where appropriate and feasible, for federal waivers necessary to carry out or enhance projects under the pilot program.

(d) Monitoring county compliance with the requirements of this chapter.

(e) Seeking nonstate resources to conduct county evaluations pursuant to subdivision (f) of Section 18987.3.

18987.2. (a) (1) In order to participate in the pilot program authorized by this chapter, a county board of supervisors shall establish a child and family interagency coordinating council.

(2) A council established pursuant to this subdivision shall plan, implement, monitor, and evaluate the pilot program.

(b) A county board of supervisors may designate an existing interagency coordination council to perform the functions specified in paragraph (2) of subdivision (a) if the existing interagency coordination council meets the representation requirements of Section 18987.25.

(c) City and local education agency representatives shall be appointed by the appropriate governing bodies.

(d) The board of supervisors shall undertake reasonable measures

to ensure that membership of the interagency coordinating council reflects the cultures and ethnicities of the pilot program area.

(e) The board of supervisors of a county, as a condition of participation in the pilot program, shall approve both the strategic plan developed pursuant to Section 18987.3 and the county's participation in the pilot program authorized by this chapter. If city or school services or funds are included in the pilot program, the strategic plan shall also be approved by the governing bodies of any city or local education agency whose services or funds will be involved in the pilot program.

(f) Approved strategic plans shall be submitted to the Governor or his or her designee not later than October 1, 1994.

18987.25. A council established pursuant to Section 18987.2 shall be comprised of, at a minimum, all of the following:

(a) The county superintendent of schools, or the superintendent of each school district included in the pilot project.

(b) A representative of the county juvenile justice system.

(c) County, city, and school officials responsible for funds or services included in the pilot program.

(d) Representatives of all of the following:

(1) Service providers affected by the strategic plan.

(2) Labor organizations representing public employees who will be affected by the strategic plan.

(3) Recipients of services included in the strategic plan.

18987.3. Each child and family interagency coordinating council shall develop a strategic plan to use blended funding. The plan shall contain all of the following:

(a) A list of the members of the county child and family interagency coordinating council, and a description of project responsibilities for each member.

(b) Identification of the county or the area within the county to be served by blended funds.

(c) A description of the population to be served, the amount and types of current services available from public, private non-for-profit, and community-based services agencies, the needs of that population, and the goals, objectives, and outcomes of the services to be provided.

(d) A timeline showing how the county proposes to implement the pilot project.

(e) A description of existing collaborative, integrated services efforts and how blended funding will be used in conjunction with these efforts.

(f) A description of the services to be funded by the county child and family services fund.

(g) An identification of the state and local funds to be consolidated and how those blended funds shall be used.

(h) (1) A description of an evaluation plan that meets all of the following requirements:

(A) It is based on community needs and service plans.

(B) It includes baseline data and performance indicators and outcomes relevant to services funded by the county child and family services fund.

(C) It measures outcomes for children, families, and communities targeted by the pilot project.

(D) It utilizes, where applicable, state-adopted performance and outcome measures developed for specific populations included in the county plan.

(2) The evaluation shall also identify obstacles encountered in implementation of the pilot program.

18987.36. The board of supervisors of each participating county shall submit, to the Governor or the Governor's designee, and to the agency responsible for evaluating the success of the pilot project, all of the following:

(a) An annual report showing which funds were transferred into the county child and family services fund and an annual status update indicating the extent to which the plan has been implemented.

(b) Interim evaluation reports on the implementation and measurements of progress toward performance outcomes of the pilot program, to be submitted following the second and fourth year of the implementation of the pilot program.

(c) A final evaluation of the pilot program, to be submitted not later than six months after the completion of the fifth year of the implementation of the pilot program.

18987.45. The pilot program authorized by this chapter shall be deemed successful in a given county if, at a minimum, the outcomes from the services funded by the county child and family services fund show improvement over baseline performance.

18987.5. This chapter shall remain operative only until July 1, 2001, shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

CHAPTER 952

An act to amend Sections 17021.5, 17021.6, 17031.8, 17056, 17060.2, 17062, and 50408 of, and to add Section 17062.5 to, the Health and Safety Code, relating to housing, and making an appropriation therefor.

[Approved by Governor October 8, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 17021.5 of the Health and Safety Code is amended to read:

17021.5. (a) Any employee housing which has qualified, or is intended to qualify, for a permit to operate pursuant to this part may invoke the provisions of this section.

(b) Any employee housing providing accommodations for six or fewer employees shall be deemed a single-family structure with a residential land use designation for the purposes of this section. For the purpose of all local ordinances, employee housing shall not be included within the definition of a boarding house, rooming house, hotel, dormitory, or other similar term that implies that the employee housing is a business run for profit or differs in any other way from a family dwelling. No conditional use permit, zoning variance, or other zoning clearance shall be required of employee housing that serves six or fewer employees that is not required of a family dwelling of the same type in the same zone. Use of a family dwelling for purposes of employee housing serving six or fewer persons shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) or local building codes.

(c) Except as otherwise provided in this part, employee housing that serves six or fewer employees shall not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other family dwellings of the same type in the same zone are not likewise subject. Nothing in this subdivision shall be construed to forbid the imposition of local property taxes, fees for water services and garbage collection, fees for normal inspections, local bond assessments, and other fees, charges, and assessments to which other family dwellings of the same type in the same zone are likewise subject. Neither the State Fire Marshal nor any local public entity shall charge any fee to the owner, operator or any resident for enforcing fire inspection regulations pursuant to state law or regulation or local ordinance, with respect to employee housing which serves six or fewer persons.

(d) For the purposes of any contract, deed, or covenant for the transfer of real property, employee housing which serves six or fewer employees shall be considered a residential use of property and a use of property by a single household, notwithstanding any disclaimers to the contrary. For purposes of this section, "employee housing" includes employee housing defined in subdivision (b) of Section 17008, even if the housing accommodations or property are not located in a rural area, as defined by Section 50101.

(e) The Legislature hereby declares that it is the policy of this state that each county and city shall permit and encourage the development and use of sufficient numbers and types of employee housing facilities as are commensurate with local needs. This section shall apply equally to any charter city, general law city, county, city and county, district and any other local public entity.

SEC. 2. Section 17021.6 of the Health and Safety Code is amended to read:

17021.6. (a) The owner of any employee housing who has qualified, or is intended to qualify, for a permit to operate pursuant

to this part may invoke the provisions of this section.

(b) Any employee housing providing accommodations for 12 or fewer employees shall be deemed an agricultural land use designation for the purposes of this section. For the purpose of all local ordinances, employee housing shall not be deemed a use that implies that the employee housing is an activity that differs in any other way from an agricultural use. No conditional use permit, zoning variance, or other zoning clearance shall be required of employee housing that serves 12 or fewer employees that is not required of any other agricultural activity in the same zone. The permitted occupancy in employee housing in an agricultural zone shall include agricultural employees who do not work on the property where the employee housing is located.

(c) Except as otherwise provided in this part, employee housing that serves 12 or fewer employees shall not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other agricultural activities in the same zone are not likewise subject. Nothing in this subdivision shall be construed to forbid the imposition of local property taxes, fees for water services and garbage collection, fees for normal inspections, local bond assessments, and other fees, charges, and assessments to which other agricultural activities in the same zone are likewise subject. Neither the State Fire Marshal nor any local public entity shall charge any fee to the owner, operator, or any resident for enforcing fire inspection regulation pursuant to state law or regulation or local ordinance, with respect to employee housing that serves 12 or fewer persons.

(d) For the purposes of any contract, deed, or covenant for the transfer of real property, employee housing which serves 12 or fewer employees shall be considered an agricultural use of property, notwithstanding any disclaimers to the contrary. For purposes of this section, "employee housing" includes employee housing defined in subdivision (b) of Section 17008, even if the housing accommodations or property are not located in a rural area, as defined by Section 50101.

(e) The Legislature hereby declares that it is the policy of this state that each county and city shall permit and encourage the development and use of sufficient numbers and types of employee housing facilities as are commensurate with local need. This section shall apply equally to any charter city, general law city, county, city and county, district, and any other local public entity. For the purposes of this section, "12 or fewer employees" does not include the family members of any employee.

SEC. 3. Section 17031.8 of the Health and Safety Code is amended to read:

17031.8. (a) An agency which exercises the responsibility for the enforcement of this part pursuant to Section 17050 shall submit to the Department of Housing and Community Development the information specified in subdivision (c) by June 30 of each year regarding the previous calendar year.

(b) The Department of Housing and Community Development shall gather the information specified in subdivision (c) for all permittees for which it acts as the enforcement agency and include a summary of the information from the permittees and enforcement agencies in the annual report submitted pursuant to Section 50408 regarding housing programs administered by the department, and shall submit the information specified in subdivision (c) to the Legislative Analyst, the Assembly Committee on Housing and Community Development, and the Senate Committee on Housing and Urban Affairs pursuant to subdivision (d) of Section 17056 as part of the annual report required pursuant to Section 50408.

(c) The following information shall be provided for purposes of subdivisions (a) and (b):

(1) The number and location of employee housing, including the number of current-year and past-year permits for employee housing, previously inactive employee housing, and previously permitted employee housing.

(2) The number and location of employee housing found operating without a permit.

(3) The number and location of inactive employee housing and the number of occupants residing in the employee housing when it was most recently occupied.

(4) The number of preoccupancy inspections, occupancy inspections, and reinspections performed.

(5) A schedule of permit fees charged and the total amount of fees collected, and the total amount in reinspection fees collected.

(6) The number and character of any complaints received during the time the housing has been operated as employee housing.

(7) The number and character of violations of this part, building standards published in the State Building Standards Code relating to employee housing, and other regulations adopted pursuant to this part, or conditions of the permits. The information required by this paragraph shall include the number of violations that resulted in civil citations, the number of cases referred to prosecutorial agencies such as the Attorney General or local district attorneys, the number of cases filed to enforce this part, and the amounts of all fines and civil penalties collected as a result of the enforcement of this part.

(8) The number of staff hours dedicated to the implementation of the Employee Housing Act (Part 1 (commencing with Section 17000)).

(9) The number and location of employee housing receiving an exemption pursuant to Section 17031, 17031.3, 17031.4, or 17033.

SEC. 4. Section 17056 of the Health and Safety Code is amended to read:

17056. (a) In every part of the state, notwithstanding assumption of responsibilities by local enforcement agencies pursuant to Section 17050, the department shall establish procedures and devote resources to locating and prosecuting the most serious violators of this part and those who refuse to apply for or obtain permits to

operate pursuant to this part, as determined by the department.

(b) The department shall maximize the efforts of personnel implementing this part by seeking to use new resources and nontraditional means, by coordinating with state, local, and federal agencies and by training and coordinating with local health and building departments.

(c) All of the requirements of this part shall be performed by civil service employees of the department who, to the extent feasible, shall be bilingual in Spanish and English.

(d) The Legislative Analyst shall provide a report to the Legislature, as part of the report on the Governor's 1994–95 Budget, and may provide reports in annual budget reports thereafter. This report shall describe in detail the implementation of this part. This report shall be based on the information collected by the department pursuant to Section 17031.8. This report shall also include the approximate level of personnel years allocated for the purposes of this section, the number of new permits to operate issued or number of prosecutions undertaken, all fines and civil penalties collected, and other relevant information. Each year, the department shall provide the information collected pursuant to Section 17031.8 for the Legislative Analyst to prepare this report. Each report also shall include proposed amendments to this part which would facilitate the provision and maintenance of housing consistent with the requirements of this part, and which would facilitate enforcement of this part.

SEC. 5. Section 17060.2 of the Health and Safety Code is amended to read:

17060.2. (a) Notwithstanding any other provision of law, the operator of employee housing shall provide a resident of every unit in the employee housing with a written copy in English and Spanish of every order or notice of violation issued by an enforcement agency accompanied by an explanation of the owner's or operator's anticipated response to the order or notice. Each notice shall also advise the occupants of the right to a hardship deferral and the procedure for obtaining this, as set forth in subdivision (c). These copies may be provided by first class mail or by posting a copy of the notice in a prominent place on each residential unit.

(b) (1) The enforcement agency shall not require the vacating of all or any part of an accommodation unless it concurrently orders the operator to provide for the relocation of the tenants consistent with the requirements of Section 17062 prior to the date the vacating is required and requires expeditious demolition or repair to comply with this part, the building standards related to employee housing, or other rules and regulations adopted pursuant to this part. Any local government may, prior to January 1, 1994, enact a local relocation ordinance that imposes requirements more stringent than those contained in this section. The tenant or tenant association may enforce the relocation remedies of this section, and the enforcement agency, to the extent feasible, shall cooperate in these efforts. The

enforcement agency may require vacation and demolition or itself vacate the building, repair, demolish, or institute any other appropriate action or proceeding, if either of the following occurs:

(A) The repair work is not done as scheduled or cannot be completed within a reasonable period of time.

(B) There is a significant threat to the residents' or public health and safety.

(2) Prior to vacating and demolishing the accommodation, the public agency shall exert every reasonable effort to obtain or cause repairs. In addition, to the extent feasible, if the public entity causes vacation of the accommodation, it shall cooperate in efforts to obtain compensation from the owner or operator to compensate the displaced residents for their relocation expenses, including rent differentials.

(c) The enforcement agency or a court of competent jurisdiction may, in cases of extreme hardship to tenants of employee housing, provide for deferral of the effective date of orders of abatement. Any deferral of the effective date of any order of abatement shall include conditions, including, but not limited to, payment of rent to an appropriate receiver, which will ensure progress towards correcting defects, or assist in relocation of tenants prior to closure of the employee housing.

SEC. 6. Section 17062 of the Health and Safety Code is amended to read:

17062. (a) Any state or local agency which participated in the investigation and enforcement pursuant to this part shall be reimbursed for its investigative and legal costs prior to and subsequent to the judgment.

(b) Notwithstanding any other provision of law, upon motion by the enforcement agency, the operator, or the tenants, the court may issue an order which would result in correction of defects, rather than closure of the employee housing. The order may provide, notwithstanding subdivision (a), that fines and penalties be paid for improvements, or that a lien be levied against the property to pay the costs of an independent receiver to complete repairs, or any other just and reasonable procedures.

(c) (1) (A) If employee housing is maintained in a manner that violates any provision of this part, including any rule, standard, or regulation promulgated pursuant to this part, and the violation is so extensive and of such a nature that the health and safety of residents or the public is substantially endangered, and if the owner or operator does not, within a reasonable time after issuance of the notice or order by the enforcement agency, correct the condition that is the cause of the violation, the enforcement agency, tenant, or tenant association or organization may, in addition to any other remedies provided by law, seek the appointment of a receiver pursuant to this subdivision.

(B) In its petition to the court, the enforcement agency, tenant, or tenant association or organization shall include proof that notice

of the petition was served not less than five days prior to filing the petition, pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure, to all persons with a recorded interest in the real property upon which the substandard employee housing exists.

(C) In appointing a receiver, the court shall consider whether the owner has been afforded a reasonable opportunity to correct the conditions cited in the notice of violation. The court shall not appoint any person as a receiver unless the person has demonstrated to the court his or her capacity, willingness, and expertise to develop and supervise a viable financial and construction plan for the satisfactory rehabilitation of the employee housing. If a receiver is appointed, the owner and his or her agent of the substandard employee housing shall be enjoined from collecting rents from the tenants, interfering with the receiver in the operation of the substandard employee housing, and encumbering or transferring the substandard employee housing or real property upon which the employee housing is situated.

(2) Any receiver appointed pursuant to this section shall have all of the following powers and duties in the order of priority listed in this paragraph, unless the court otherwise permits:

(A) To take full and complete control of the substandard employee housing.

(B) To manage the substandard employee housing and pay expenses of the operation of the substandard employee housing and real property upon which the employee housing is located, including taxes, insurance, utilities, general maintenance, and debt secured by an interest in the real property. However, the receiver shall not operate the employee housing for a longer period each year than the period it previously was operated as employee housing each year by the operator or owner.

(C) To secure a cost estimate and construction plan from a licensed contractor for the repairs necessary to correct the conditions cited in the notice of violation.

(D) To enter into contracts and employ a licensed contractor as necessary to correct the conditions cited in the notice of violation.

(E) To collect all rents and income from the substandard employee housing.

(F) To use all rents and income from the substandard employee housing to pay for the cost of rehabilitation and repairs determined by the court as necessary to correct the conditions cited in the notice of violation.

(G) To borrow funds to pay for repairs necessary to correct the conditions cited in the notice of violation and to borrow funds to pay for any relocation benefits authorized by paragraph (4) and secure that debt, with court approval, with a lien on the real property upon which the substandard employee housing is located. The lien shall be recorded in the county recorder's office in the county within which the employee housing is located.

(H) To exercise the powers granted receivers under Section 568 of the Code of Civil Procedure.

(3) The receiver shall be entitled to the same fees, commissions, and necessary expenses as receivers in actions to foreclose mortgages.

(4) If the conditions of the employee housing or the repair or rehabilitation thereof significantly affect the safe and sanitary use of the substandard employee housing by any tenant, to the extent that the tenant cannot safely reside in his or her unit, then the receiver shall provide relocation benefits in accordance with paragraph (3) of subdivision (d).

(5) The relocation compensation provided for in this section shall not preempt any local ordinance that provides for greater relocation assistance.

(6) In addition to any reporting required by the court, the receiver shall prepare monthly reports to the state or local enforcement agency which shall contain information on at least the following items:

(A) The total amount of rent payment received.

(B) Nature and amount of contracts negotiated relative to the operation or repair of the property.

(C) Payments made toward the repair of the premises.

(D) Progress of necessary repairs.

(E) Other payments made relative to the operation of the employee housing.

(F) Amount of tenant relocation benefits paid.

(7) The receiver shall be discharged when the conditions cited in the notice of violation have been remedied in accordance with the court order or judgment and a complete accounting of all costs and repairs has been delivered to the court. Upon removal of the condition, the owner, the mortgagee, or any lienor of record may apply for the discharge of all moneys not used by the receiver for removal of the condition and all other costs authorized by this section.

(8) The prevailing party in an action pursuant to this section shall at the court's equitable discretion be entitled to reasonable attorney's fees and court costs as may be fixed by the court.

(9) The county recorder may charge and collect fees for the recording of all notices and other documents required by this section pursuant to Article 5 (commencing with Section 27360) of Chapter 6 of Division 2 of Title 3 of the Government Code.

(10) Nothing in this section shall be construed to limit those rights available to tenants and owners under any other provision of the law.

(11) Nothing in this section shall be construed to deprive an owner of substandard employee housing of all procedural due process rights guaranteed by the California Constitution and the United States Constitution, including, but not limited to, receipt of notice of the violation claimed and an adequate and reasonable period of time to comply with any orders that are issued by the

enforcement agency or the court.

(d) If the court finds that the employee housing is in a condition that substantially endangers the health and safety of residents pursuant to subdivision (a) of Section 17980.6, upon the entry of any order or judgment, the court shall do all of the following:

(1) Order the owner to pay all reasonable and actual costs of the enforcement agency including, but not limited to, inspection costs, investigation costs, enforcement costs, attorney's fees or costs, and all costs of prosecution.

(2) Order that the local enforcement agency shall provide the tenants with notice of the court order or judgment.

(3) Order that, if the owner undertakes repairs or rehabilitation as a result of being cited for a notice under this chapter, and if the conditions of the premises or the repair or rehabilitation thereof significantly affect the safe and sanitary use of the premises by any lawful tenant, so that the tenant cannot safely reside in the premises, then the owner shall provide or pay relocation benefits to each lawful tenant as specified in subdivision (b) of Section 17060.2. These benefits shall consist of actual reasonable moving and storage costs and relocation compensation. The actual moving and storage costs shall consist of all the following:

(A) Transportation of the tenant's personal property to the new location. The new location shall be in close proximity to the substandard premises, except where relocation to a new location beyond a close proximity is determined by the court to be justified.

(B) Packing, crating, unpacking, and uncrating the tenant's personal property.

(C) Insurance of the tenant's property while in transit.

(D) The reasonable replacement value of property lost, stolen, or damaged (not through the fault or negligence of the displaced person, his or her agent, or his or her employee) in the process of moving, where insurance covering the loss, theft, or damage is not reasonably available.

(E) The cost of disconnecting, dismantling, removing, reassembling, reconnecting, and reinstalling machinery, equipment, or other personal property of the tenant, including connection charges imposed by utility companies for starting utility service.

(e) (1) The relocation compensation shall be an amount equal to the differential between the contract rent and the fair market rental value determined by the United States Department of Housing and Urban Development for a unit of comparable size within the area for the period that the unit is being repaired, not to exceed 120 days or the duration that the camp is open, or the term of employment, whichever is less.

(2) (A) If the court finds that a tenant has been substantially responsible for causing or substantially contributing to the substandard conditions, then the relocation benefits of this section shall not be paid to this tenant. Each other tenant on the premises who has been ordered to relocate due to the substandard conditions

and who is not substantially responsible for causing or contributing to the conditions shall be paid these benefits and moving costs at the time that he or she actually relocates.

(B) The court shall determine the date when the tenant is to relocate, and order the tenant to notify the enforcement agency and the owner of the address of the premises to which he or she has relocated, within five days after the relocation.

(C) (i) The court shall order that the owner shall offer the first right to occupancy of the premises to each tenant who received benefits pursuant to paragraph (3) of subdivision (d), before letting the unit for rent to a third party. The owner's offer on the first right to occupancy to the tenant shall be in writing, and sent by first-class certified mail to the address given by the tenant at the time of relocation. If the owner has not been provided the tenant's address by the tenant as prescribed by this section, the owner shall not be required to provide notice under this section or offer the tenant the right to return to occupancy.

(ii) The tenant shall notify the owner in writing that he or she will occupy the unit. The notice shall be sent by first-class certified mail no later than 10 days after the notice has been mailed by the owner.

(D) The court shall order that failure to comply with any abatement order under this chapter shall be punishable by civil contempt penalties under Chapter 6 (commencing with Section 17995) of Part 1.5, and any other penalties and fines as are available.

(f) The initiation of a proceeding or entry of a judgment pursuant to this section or Section 17980.6 shall be deemed to be a "proceeding" or "judgment" as provided by paragraph (4) or (5) of subdivision (a) of Section 1942.5 of the Civil Code.

(g) The term "owner," for the purposes of this section, shall include the owner, including any public entity that owns residential real property, at the time of the initial notice or order and any successor in interest who had actual or constructive knowledge of the notice, order, or prosecution.

(h) The remedies authorized by this section shall be in addition to those provided by any other law.

(i) Nothing in this section or in Section 17980.6 shall impair the rights of an owner exercising his or her rights established pursuant to Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 of the Government Code.

SEC. 7. Section 17062.5 is added to the Health and Safety Code, to read:

17062.5. All fines, civil penalties, and damages awarded pursuant to this part shall be paid as provided in this section. The court order shall direct payment of these moneys for the costs authorized by subdivision (a) of Section 17062 or subdivision (d) of Section 17055. Thereafter, 50 percent of the balance of the total award shall be paid to the agency, person, or entity to which subdivision (a) of Section 17062 or subdivision (d) of Section 17055 is applicable. The balance of the award, if at least one thousand dollars ($1,000) is paid to that

agency, person, or entity, shall be deposited in the Farmworker Housing Grant Fund, created pursuant to Section 50517.5, for expenditure by the department without further appropriation in a manner consistent with the other requirements of Section 50517.5, for any of the following purposes:

(a) Rental housing that serves lower and very low income households, as defined in Sections 50079.5 and 50105, respectively, who are agricultural employees.

(b) Rental dormitories for unaccompanied men or women who are agricultural employees.

(c) Rehabilitation or replacement of existing employee housing for seasonal use.

SEC. 8. Section 50408 of the Health and Safety Code is amended to read:

50408. (a) On or before December 31 of each year, the department shall submit an annual report to the Governor and both houses of the Legislature on the operations and accomplishments during the previous fiscal year of the housing programs administered by the department.

(b) The report shall include all of the following information:

(1) The number of units assisted by those programs.

(2) The number of individuals and households served and their income levels.

(3) The distribution of units among various areas of the state.

(4) The amount of other public and private funds leveraged by the assistance provided by those programs.

(5) Information detailing the assistance provided to various groups of persons by programs that are targeted to assist those groups.

(6) The information required to be reported pursuant to Section 17031.8.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. 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 953

An act to add Sections 18904.3 and 18904.35 to, and to add and repeal Section 18904.4 of, the Welfare and Institutions Code, relating to food stamps.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

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

(a) High unemployment and increasing poverty means that more people are hungry.

(b) While food stamp participation in California is at a record high, it is estimated that 45 percent of those eligible for benefits do not receive them.

(c) Many of those not receiving food stamps are unaware of their potential eligibility.

SEC. 2. Section 18904.3 is added to the Welfare and Institutions Code, to read:

18904.3. (a) Where private nonprofit organizations are successful in raising money for food stamp outreach activities and have secured a local governmental agency to serve as the contracting agency, the department shall, upon request and subject to approval by the United States Department of Agriculture, act as their state entity for receipt of matching funds.

(b) Any reduction in federal funding to the state that is due to the result of any audit of food stamp outreach contracts or activities shall be applied to the appropriate local government that served as the contracting agency for food stamp outreach activities.

SEC. 3. Section 18904.35 is added to the Welfare and Institutions Code, to read:

18904.35. Upon approval of a final plan for food stamp outreach activities, in accordance with Section 18904.4, the department shall, in determining whether to request federal matching funds for a food stamp outreach activity, give priority consideration to those activities that implement the final plan.

SEC. 4. Section 18904.4 is added to the Welfare and Institutions Code, to read:

18904.4. (a) The State Department of Social Services shall establish a Food Stamp Outreach Task Force, to develop a state plan for food stamp outreach, especially targeted, but not limited to, the working poor and recently unemployed, eligible seasonal and migrant farmworkers, applicants who primarily speak languages other than English, and households with disabled or homebound members. In preparing the state plan, the task force shall review food stamp outreach efforts conducted in California and elsewhere, as

well as outreach efforts for other income or food assistance programs. The final plan shall contain criteria for determining the eligibility of a nonprofit organization to receive federal matching funds. This section shall not be construed as permitting additional requirements to be imposed upon the counties or the department. The final plan shall be subject to the approval of the department and the United States Department of Agriculture.

(b) The task force shall consist of 18 members, or a smaller number of members if any of the entities specified in this subdivision do not agree to become members. The task force shall be comprised of the following, except for any of the entities specified in this subdivision that does not desire to become a member:

(1) The State Department of Social Services.
(2) California Food Policy Advocates.
(3) Western Center on Law and Poverty.
(4) Children's Advocacy Institute.
(5) California Council of Churches.
(6) California Hunger Action Coalition.
(7) Children Now.
(8) Cal/Neva Community Action Association.
(9) Southern California Interfaith Hunger Coalition.
(10) California Association of Information and Referral Services.
(11) United States Department of Agriculture.
(12) State Employees International Union.
(13) Southern California Public Utility Corporation.
(14) California Welfare Directors Association.
(15) Cooperative Extension.
(16) Coalition of California Welfare Rights Organizations, Inc.
(17) Two at-large members, chosen by the other members of the task force.

(c) Members of the task force established pursuant to this act shall serve without compensation.

(d) The Legislature finds and declares that, as a voluntary organization, the task force shall be funded from private sources or the expenses shall be borne by participating private members at no cost to the public.

(e) The task force shall meet a minimum of three times over six months beginning January 1, 1994. The state plan shall be completed no later than July 1, 1994. All task force meetings shall be held in Sacramento.

(f) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1995, deletes or extends that date.

CHAPTER 954

An act to amend Sections 12403.7, 12403.8, and 12450 of, and to add Article 6 (commencing with Section 12460) to Chapter 4 of Title 2 of Part 4 of, the Penal Code, relating to weapons, and making an appropriation therefor.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 12403.7 of the Penal Code is amended to read:

12403.7. (a) Notwithstanding any other law, any person may purchase, possess, or use tear gas and tear gas weapons for the projection or release of tear gas if the tear gas and tear gas weapons are approved by the Department of Justice and are used solely for self-defense purposes, subject to the following requirements:

(1) No person convicted of a felony or any crime involving an assault under the laws of the United States, of the State of California, or any other state, government, or country or convicted of misuse of tear gas under paragraph (8) shall purchase, possess, or use tear gas or tear gas weapons.

(2) No person who is addicted to any narcotic drug shall purchase, possess, or use tear gas or tear gas weapons.

(3) No person shall sell or furnish any tear gas or tear gas weapon to a minor.

(4) No person who is a minor shall purchase, possess, or use tear gas or tear gas weapons.

(5) (A) No person shall purchase, possess, or use any tear gas weapon that expels a projectile, or that expels the tear gas by any method other than an aerosol spray, or that is of a type, or size of container, other than authorized by regulation of the Department of Justice.

(B) The department, with the cooperation of the State Department of Health Services, shall develop standards regarding the type of tear gas and tear gas weapons that may lawfully be purchased, possessed, and used pursuant to this section.

(C) Every tear gas container and tear gas weapon that may be lawfully purchased, possessed, and used pursuant to this section shall have a label that states: "WARNING: The use of this substance or device for any purpose other than self-defense is a felony under the law. The contents are dangerous—use with care."

(D) After January 1, 1984, every tear gas container and tear gas weapon that may be lawfully purchased, possessed, and used pursuant to this section shall have a label that discloses the date on which the useful life of the tear gas weapon expires.

(6) Effective March 1, 1994, every tear gas container and tear gas

weapon that may be lawfully purchased, possessed, and used pursuant to this section be accompanied by an insert including directions for use, first aid information, safety and storage information, and explanation of the legal ramifications of improper use of the tear gas container or tear gas product. The Department of Justice may issue informational guidelines that shall be used as a minimum standard for compliance with this insert requirement.

(7) (A) No person shall purchase, possess, or use any tear gas or any tear gas weapon that has been certified by the Department of Justice without first obtaining a tear gas instruction card issued by the Department of Justice. Any person who legally possesses a tear gas certificate issued by the Department of Justice prior to March 1, 1994, shall obtain oleoresin capsicum certification pursuant to this section to purchase, possess, or use a tear gas weapon in which the active ingredient is oleoresin capsicum. Commencing March 1, 1994, the department shall issue a tear gas instruction card to an applicant if any of the following criteria are satisfied:

(i) The applicant has completed a course in the use of tear gas and tear gas weapons certified by the Department of Justice.

(ii) The applicant has completed an objective test as prescribed by the Department of Justice that includes a requirement that the participant test spray a tear gas canister that contains inert ingredients. The purpose of the objective test is to ensure knowledge of tear gas safety. The test shall consist of not less than 20, nor more than 30, questions. An applicant shall respond successfully to at least 75 percent of the total number of questions to pass the test. This test shall be administered by a licensed point-of-sale tear gas retailer or by a certified tear gas training institution.

(iii) Completion of point-of-sale instruction, administered by a licensed point-of-sale tear gas retailer, or by a certified tear gas training institution that satisfies each of the following criteria:

(I) Includes an instructional videotape not more than 30 minutes that has been approved by the Department of Justice. The instructional training for oleoresin capsicum certification shall not exceed 10 minutes, as specified by the department, for any person who legally possesses a tear gas certificate issued by the Department of Justice prior to March 1, 1994.

(II) Requires the course participants to test spray a tear gas canister that contains inert ingredients.

(B) If the purchase of tear gas or any tear gas weapon is denied, the retailer denying the purchase shall inform the person in writing of the reason for the denial. The valid instruction card shall be carried on the person when carrying tear gas or tear gas weapons and shall be presented for examination to the retailer from whom any tear gas or tear gas weapons are purchased. The sale of tear gas or tear gas weapons by a retailer to a person who fails to present a valid instruction card is a violation of Section 12420.

(C) The following fees shall be established by the Department of Justice. The establishment of these fees is exempt from Chapter 3.5

(commencing with Section 11340) of Part 1 of Division 3 of the Government Code. The following fees may be charged:

(i) A fee charged to the applicant for the tear gas instruction card not to exceed ten dollars ($10) paid to the Department of Justice for the cost of the Department of Justice to administer the program.

(ii) A fee, not to exceed five dollars ($5), paid to the Department of Justice by each person requesting a replacement certificate from the department.

(iii) A fee to the applicant for the objective test or point-of-sale instruction not to exceed ten dollars ($10) paid to the point-of-sale retailer or administrator of the objective test or Department of Justice certified tear gas training institution.

(iv) A fee, not to exceed five dollars ($5), paid to the Department of Justice by each person who legally possesses a tear gas certificate issued prior to March 1, 1994, and who requests oleoresin capsicum certification to obtain a tear gas weapon in which oleoresin capsicum is the active ingredient.

(v) Pursuant to clause (i) of subparagraph (A) of paragraph (7), Department of Justice certified tear gas training institutions are hereby authorized to charge a fee covering the actual cost of that training.

(8) Any person who uses tear gas or tear gas weapons except in self-defense is guilty of a public offense and is punishable by imprisonment in a state prison for 16 months, or two or three years or in a county jail not to exceed one year or by a fine not to exceed one thousand dollars ($1,000), or by both the fine and imprisonment, except that if the use is against a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, engaged in the performance of his or her official duties and the person committing the offense knows or reasonably should know that the victim is a peace officer, the offense is punishable by imprisonment in a state prison for 16 months or two or three years or by a fine of one thousand dollars ($1,000), or by both the fine and imprisonment.

(b) Notwithstanding Section 12420, any person who has not obtained a tear gas instruction card issued by the Department of Justice and who uses in self-defense, or purchases or possesses for the purpose of self-defense, any tear gas or tear gas weapon that has been certified by the Department of Justice as acceptable pursuant to Article 5 (commencing with Section 12450) is guilty of an infraction, punishable by a fine not to exceed one hundred dollars ($100). Any person who uses in self-defense, or purchases or possesses for the purpose of self-defense, any tear gas or tear gas weapon that has not been certified by the Department of Justice is guilty of a misdemeanor, punishable by imprisonment in a county jail for a period not to exceed one year, or by a fine not to exceed two thousand dollars ($2,000), or by both the fine and imprisonment.

(c) The tear gas instruction card specified in paragraph (7) of subdivision (a) shall be valid, provided the person meets the requirements in subdivision (a), and shall be nontransferable.

(d) Documentation necessary to administer this section shall be uniform throughout the state as prescribed by the Department of Justice.

(e) The Department of Justice may adopt and promulgate regulations concerning the purchase and disposal of self-defense tear gas weapons, the standards for tear gas training courses, and the approval of facilities at which the training shall occur as necessary to ensure the safe use and possession of any tear gas weapon.

(f) The Department of Justice may develop standards and promulgate regulations concerning the requirements for obtaining a tear gas instruction card.

SEC. 2. Section 12403.8 of the Penal Code is amended to read:

12403.8. (a) Notwithstanding paragraph (4) of subdivision (a) of Section 12403.7, a minor who has attained the age of 16 years may purchase, possess, and use tear gas or tear gas weapons pursuant to this chapter if he or she has signed an affidavit in a format prescribed by the Department of Justice stating under penalty of perjury his or her intent to use the tear gas or tear gas weapon solely for self-defense purposes and has obtained the written consent of his or her parent or guardian, as specified in subdivision (b).

(b) Notwithstanding paragraph (3) of subdivision (a) of Section 12403.7, a person may sell or furnish tear gas or a tear gas weapon to a minor who has attained the age of 16 years and who presents a statement of consent signed and verified by the minor's parent or guardian and a signed affidavit in a format prescribed by the Department of Justice stating under penalty of perjury the person's intent to use the tear gas or tear gas weapon solely for self-defense purposes.

(c) Any civil liability of a minor arising out of his or her use of tear gas or a tear gas weapon other than for self-defense is imposed upon the person who signed and verified the statement of consent specified in subdivision (b) who shall be jointly and severally liable with the minor for any damages proximately resulting from the negligent or wrongful act or omission of the minor in the use of the tear gas or a tear gas weapon.

(d) The Department of Justice shall prescribe the form of the statement of consent required by subdivision (b).

SEC. 3. Section 12450 of the Penal Code is amended to read:

12450. Except as specified in Section 12460, no tear gas or tear gas weapon shall be possessed, sold, or transported in this state after January 1, 1971, unless, pursuant to this article, the Department of Justice has certified that particular type and brand of tear gas or tear gas weapon to be acceptable.

SEC. 4. Article 6 (commencing with Section 12460) is added to Chapter 4 of Title 2 of Part 4 of the Penal Code, to read:

Article 6. Oleoresin Capsicum

12460. Notwithstanding Section 12450, any person who is otherwise in compliance with this chapter may purchase, possess, or use tear gas, or a tear gas weapon, in which the active ingredient is oleoresin capsicum. However, no oleoresin capsicum tear gas weapon that will cause or permit the release or emission of oleoresin capsicum either as a liquid or gas through being vaporized or otherwise dispersed in the air shall be purchased, possessed, used, sold, or transported in this state unless the Department of Justice has certified that the particular brand of oleoresin capsicum tear gas or type of oleoresin capsicum tear gas weapon is acceptable pursuant to Article 5 (commencing with Section 12450).

SEC. 5. The sum of ninety-six thousand dollars ($96,000) is hereby appropriated from the General Fund to the Department of Justice to meet startup costs associated with this article. It is the intent of the Legislature that these funds be repaid to the General Fund no later than January 1, 1996.

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 955

An act to amend Sections 6161, 6165, and 6180.14 of, and to amend, repeal, and add Section 6171 of, the Business and Professions Code, and to amend Sections 13401, 13404, and 13406 of the Corporations Code, relating to professional law corporations.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 6161 of the Business and Professions Code is amended to read:

6161. An applicant for registration as a law corporation shall supply to the State Bar all necessary and pertinent documents and information requested by the State Bar concerning the applicant's plan of operation, including but not limited to a copy of its articles of incorporation, certified by the Secretary of State, a copy of its

bylaws, certified by the secretary of the corporation, the name and address of the corporation, the names and addresses of its officers, directors, shareholders, members, if any, and employees who will render professional services, the address of each office, and any fictitious name or names which the corporation intends to use. The State Bar may provide forms of application. If the Board of Governors or a committee authorized by it finds that the corporation is duly organized and existing pursuant to the General Corporation Law, or pursuant to subdivision (b) of Section 13406 of the Corporations Code, that each officer (except as provided in Section 13403 of the Corporations Code), director, shareholder (except as provided in subdivision (b) of Section 13406 of the Corporations Code), and each employee who will render professional services is a licensed person as defined in the Professional Corporation Act, and that from the application it appears that the affairs of the corporation will be conducted in compliance with law and the rules and regulations of the State Bar, the State Bar shall upon payment of the registration fee in such amount as it may determine issue a certificate of registration. The application shall be signed and verified by an officer of the corporation.

SEC. 1.5. Section 6161 of the Business and Professions Code is amended to read:

6161. An applicant for registration as a law corporation shall supply to the State Bar all necessary and pertinent documents and information requested by the State Bar concerning the applicant's plan of operation, including, but not limited to, a copy of its articles of incorporation, certified by the Secretary of State, a copy of its bylaws, certified by the secretary of the corporation, the name and address of the corporation, the names and addresses of its officers, directors, shareholders, members, if any, and employees who will render professional services, the address of each office, and any fictitious name or names which the corporation intends to use. The State Bar may provide forms of application. If the Board of Governors or a committee authorized by it finds that the corporation is duly organized and existing or duly qualified for the transaction of intrastate business pursuant to the General Corporation Law, or pursuant to subdivision (b) of Section 13406 of the Corporations Code, that each officer (except as provided in Section 13403 of the Corporations Code), director, shareholder (except as provided in subdivision (b) of Section 13406 of the Corporations Code), and each employee who will render professional services is a licensed person as defined in the Professional Corporation Act, or a person licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices, and that from the application it appears that the affairs of the corporation will be conducted in compliance with law and the rules and regulations of the State Bar, the State Bar shall upon payment of the registration fee in such amount as it may determine issue a certificate of registration. The application shall be signed and verified by an officer

of the corporation.

SEC. 2. Section 6165 of the Business and Professions Code is amended to read:

6165. Except as provided in Sections 13403 and 13406 of the Corporations Code, each director, shareholder, and each officer of a law corporation shall be a licensed person as defined in the Professional Corporation Act.

SEC. 2.5. Section 6165 of the Business and Professions Code is amended to read:

6165. Except as provided in Sections 13403 and 13406 of the Corporations Code, each director, shareholder, and each officer of a law corporation shall be a licensed person as defined in the Professional Corporation Act, or a person licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices.

SEC. 3. Section 6171 of the Business and Professions Code is amended to read:

6171. With the approval of the Supreme Court, the State Bar may formulate and enforce rules and regulations to carry out the purposes and objectives of this article, including rules and regulations requiring all of the following:

(a) That the articles of incorporation or bylaws of a law corporation shall include a provision whereby the capital stock of the corporation owned by a disqualified person (as defined in the Professional Corporation Act) or a deceased person shall be sold to the corporation or to the remaining shareholders of the corporation within such time as the rules and regulations may provide.

(b) That a law corporation as a condition of obtaining a certificate pursuant to the Professional Corporation Act and this article shall provide and maintain security by insurance or otherwise for claims against it by its clients for errors and omissions arising out of the rendering of professional services; provided that a law corporation described in subdivision (b) of Section 13406 of the Corporations Code shall be deemed to have fulfilled its obligations under this subdivision if the corporation is the insured for claims against it by its clients for errors and omissions arising out of the rendering of professional services on an errors and omissions liability insurance policy, or, if no such policy exists, if the board of directors of the corporation had made all reasonable efforts in good faith to obtain available liability insurance.

(c) That the name of the law corporation and any name or names under which it renders legal services shall be in compliance with the rules and regulations; provided that a law corporation described in subdivision (b) of Section 13406 of the Corporations Code may use a name which does not contain the last name of any person.

(d) That the law corporation shall obtain from the State Bar and maintain current a fictitious name permit when required by the rules and regulations; that the permit may be obtained, maintained, suspended, and revoked pursuant to procedures set forth in the rules

and regulations; and that the law corporation shall pay an application and renewal fee for the permit in such amounts as may be determined by the State Bar.

(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. 3.5. Section 6171 is added to the Business and Professions Code, to read:

6171. With the approval of the Supreme Court, the State Bar may formulate and enforce rules and regulations to carry out the purposes and objectives of this article, including rules and regulations requiring all of the following:

(a) That the articles of incorporation or bylaws of a law corporation shall include a provision whereby the capital stock of the corporation owned by a disqualified person (as defined in the Professional Corporation Act) or a deceased person shall be sold to the corporation or to the remaining shareholders of the corporation within such time as the rules and regulations may provide.

(b) That a law corporation, as a condition of obtaining a certificate pursuant to the Professional Corporation Act and this article, shall provide and maintain security by insurance or otherwise for claims against it by its clients for errors and omissions arising out of the rendering of professional services.

(c) That the name of the law corporation and any name or names under which it renders legal services shall be in compliance with the rules and regulations.

(d) That the law corporation shall obtain from the State Bar, and maintain current, a fictitious name permit when required by the rules and regulations; that the permit may be obtained, maintained, suspended, and revoked pursuant to procedures set forth in the rules and regulations; and that the law corporation shall pay an application and renewal fee for the permit in such amounts as may be determined by the State Bar.

(e) This section shall become operative January 1, 1996.

SEC. 4. Section 6180.14 of the Business and Professions Code is amended to read:

6180.14. As used in this article, "attorney" means a member or former member of the State Bar; "law practice" means (a) a law practice conducted by an individual; (b) a law practice conducted by a partnership, if Section 6180 applies to all partners; and (c) a law practice conducted by a law corporation, if Section 6180 applies to all shareholders of the corporation or if the corporation is described in subdivision (b) of Section 13406 of the Corporations Code. This article does not apply to legal services rendered as an employee, or under a contract which does not create the relationship of lawyer and client.

SEC. 5. Section 13401 of the Corporations Code is amended to read:

13401. As used in this part:

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

(b) "Professional corporation" means a corporation organized under the General Corporation Law or pursuant to subdivision (b) of Section 13406 which is engaged in rendering professional services in a single profession, except as otherwise authorized in Section 13401.5, pursuant to a certificate of registration issued by the governmental agency regulating the profession as herein provided and which in its practice or business designates itself as a professional or other corporation as may be required by statute. However, any professional corporation rendering professional services by persons duly licensed by the Medical Board of California or any examining committee under the jurisdiction of the board, the State Board of Pharmacy, the Board of Examiners in Veterinary Medicine, the Board of Architectural Examiners, the Certified Shorthand Reporters Board, or the Board of Registered Nursing shall not be required to obtain a certificate of registration in order to render those professional services.

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

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

SEC. 5.3. Section 13401 of the Corporations Code is amended to read:

13401. As used in this part:

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

(b) "Professional corporation" means a corporation organized under the General Corporation Law or pursuant to subdivision (b) of Section 13406 which is engaged in rendering professional services in a single profession, except as otherwise authorized in Section 13401.5, pursuant to a certificate of registration issued by the governmental agency regulating the profession as herein provided and which in its practice or business designates itself as a professional or other corporation as may be required by statute. However, any professional corporation or foreign professional corporation rendering professional services by persons duly licensed by the Medical Board of California or any examining committee under the

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

(c) "Foreign professional corporation" means a corporation organized under the laws of a state of the United States other than this state that is engaged in a profession of a type for which there is authorization in the Business and Professions Code for the performance of professional services by a professional corporation.

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

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

SEC. 5.5. Section 13401 of the Corporations Code is amended to read:

13401. As used in this part:

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

(b) "Professional corporation" means a corporation organized under the General Corporation Law or pursuant to subdivision (b) of Section 13406 which is engaged in rendering professional services in a single profession, except as otherwise authorized in Section 13401.5, pursuant to a certificate of registration issued by the governmental agency regulating the profession as herein provided and which in its practice or business designates itself as a professional or other corporation as may be required by statute. However, any professional corporation rendering professional services by persons duly licensed by the Medical Board of California or any examining committee under the jurisdiction of the board, the State Board of Pharmacy, the Board of Examiners in Veterinary Medicine, the Board of Architectural Examiners, the Certified Court Reporters Board, or the Board of Registered Nursing shall not be required to obtain a certificate of registration in order to render those professional services.

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

employee.

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

SEC. 5.7. Section 13401 of the Corporations Code is amended to read:

13401. As used in this part:

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

(b) "Professional corporation" means a corporation organized under the General Corporation Law or pursuant to subdivision (b) of Section 13406 which is engaged in rendering professional services in a single profession, except as otherwise authorized in Section 13401.5, pursuant to a certificate of registration issued by the governmental agency regulating the profession as herein provided and which in its practice or business designates itself as a professional or other corporation as may be required by statute. However, any professional corporation or foreign professional corporation rendering professional services by persons duly licensed by the Medical Board of California or any examining committee under the jurisdiction of the board, the State Board of Pharmacy, the Board of Examiners in Veterinary Medicine, the Board of Architectural Examiners, the Certified Court Reporters Board, or the Board of Registered Nursing shall not be required to obtain a certificate of registration in order to render those professional services.

(c) "Foreign professional corporation" means a corporation organized under the laws of a state of the United States other than this state that is engaged in a profession of a type for which there is authorization in the Business and Professions Code for the performance of professional services by a professional corporation.

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

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

SEC. 6. Section 13404 of the Corporations Code is amended to read:

13404. A corporation may be formed under the General Corporation Law or pursuant to subdivision (b) of Section 13406 for

the purposes of qualifying as a professional corporation in the manner provided in this part and rendering professional services. The articles of incorporation of a professional corporation shall contain a specific statement that the corporation is a professional corporation within the meaning of this part. Except as provided in subdivision (b) of Section 13401, no professional corporation shall render professional services in this state without a currently effective certificate of registration issued by the governmental agency regulating the profession in which such corporation is or proposes to be engaged, pursuant to the applicable provisions of the Business and Professions Code or the Chiropractic Act expressly authorizing such professional services to be rendered by a professional corporation.

SEC. 7. Section 13406 of the Corporations Code is amended to read:

13406. (a) Subject to the provisions of subdivision (b), shares of capital stock in a professional corporation may be issued only to a licensed person, and any shares issued in violation of this restriction shall be void. Unless there is a public offering of securities by a professional corporation, its financial statements shall be treated by the Commissioner of Corporations as confidential, except to the extent that such statements shall be subject to subpoena in connection with any judicial or administrative proceeding, and may be admissible in evidence therein. No shareholder of a professional corporation shall enter into a voting trust, proxy, or any other arrangement vesting another person (other than another licensed person who is a shareholder of the same corporation) with the authority to exercise the voting power of any or all of his shares, and any such purported voting trust, proxy, or other arrangement shall be void.

(b) A professional law corporation may be incorporated as a nonprofit public benefit corporation under the Nonprofit Public Benefit Corporation Law under either of the following circumstances:

(1) The corporation is a qualified legal services project or a qualified support center within the meaning of subdivisions (a) and (b) of Section 6213 of the Business and Professions Code.

(2) The professional law corporation otherwise meets all of the requirements and complies with all of the provisions of the Nonprofit Public Benefit Corporation Law, as well as all of the following requirements:

(A) All of the members of the corporation, if it is a membership organization as described in the Nonprofit Corporation Law, are persons licensed to practice law in California.

(B) All of the members of the professional law corporation's board of directors are persons licensed to practice law in California.

(C) Seventy percent of the clients to whom the corporation provides legal services are lower income persons as defined in Section 50079.5 of the Health and Safety Code, and to other persons who would not otherwise have access to legal services.

(D) The corporation shall not enter into contingency fee contracts with clients.

(c) A professional law corporation incorporated as a nonprofit public benefit corporation that is a recipient in good standing as defined in subdivision (c) of Section 6213 of the Business and Professions Code shall be deemed to have satisfied all of the filing requirements of a professional law corporation under Sections 6161.1, 6162, and 6163 of the Business and Professions Code.

SEC. 7.5. Section 13406 of the Corporations Code is amended to read:

13406. (a) Subject to the provisions of subdivision (b), shares of capital stock in a professional corporation may be issued only to a licensed person or to a person who is licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices, and any shares issued in violation of this restriction shall be void. Unless there is a public offering of securities by a professional corporation or by a foreign professional corporation in this state, its financial statements shall be treated by the Commissioner of Corporations as confidential, except to the extent that such statements shall be subject to subpoena in connection with any judicial or administrative proceeding, and may be admissible in evidence therein. No shareholder of a professional corporation or of a foreign professional corporation qualified to render professional services in this state shall enter into a voting trust, proxy, or any other arrangement vesting another person (other than another person who is a shareholder of the same corporation) with the authority to exercise the voting power of any or all of his or her shares, and any such purported voting trust, proxy or other arrangement shall be void.

(b) A professional law corporation may be incorporated as a nonprofit public benefit corporation under the Nonprofit Public Benefit Corporation Law under either of the following circumstances:

(1) The corporation is a qualified legal services project or a qualified support center within the meaning of subdivisions (a) and (b) of Section 6213 of the Business and Professions Code.

(2) The professional law corporation otherwise meets all of the requirements and complies with all of the provisions of the Nonprofit Public Benefit Corporation Law, as well as all of the following requirements:

(A) All of the members of the corporation, if it is a membership organization as described in the Nonprofit Corporation Law, are persons licensed to practice law in California.

(B) All of the members of the professional law corporation's board of directors are persons licensed to practice law in California.

(C) Seventy percent of the clients to whom the corporation provides legal services are lower income persons as defined in Section 50079.5 of the Health and Safety Code, and to other persons who would not otherwise have access to legal services.

(D) The corporation shall not enter into contingency fee contracts with clients.

(c) A professional law corporation incorporated as a nonprofit public benefit corporation that is a recipient in good standing as defined in subdivision (c) of Section 6213 of the Business and Professions Code shall be deemed to have satisfied all of the filing requirements of a professional law corporation under Sections 6161.1, 6162, and 6163 of the Business and Professions Code.

SEC. 8. Section 1.5 of this bill incorporates amendments to Section 6161 of the Business and Professions Code proposed by both this bill and SB 687. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 6161 of the Business and Professions Code, and (3) this bill is enacted after SB 687, in which case Section 1 of this bill shall not become operative.

SEC. 9. Section 2.5 of this bill incorporates amendments to Section 6165 of the Business and Professions Code proposed by both this bill and SB 687. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 6165 of the Business and Professions Code, and (3) this bill is enacted after SB 687, in which case Section 2 of this bill shall not become operative.

SEC. 10. (a) Section 5.3 of this bill incorporates amendments to Section 13401 of the Corporations Code proposed by both this bill and SB 687. It shall only become operative if (1) both bills are enacted and become effective January 1, 1994, (2) each bill amends Section 13401 of the Corporations Code, (3) AB 1807 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 687, in which case Sections 5, 5.5, and 5.7 of this bill shall not become operative.

(b) Section 5.5 of this bill incorporates amendments to Section 13401 of the Corporations Code proposed by both this bill and AB 1807. It shall only become operative if (1) both bills are enacted and become effective January 1, 1994, (2) each bill amends Section 13401 of the Corporations Code, (3) SB 687 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1807 in which case Sections 5, 5.3, and 5.7 of this bill shall not become operative.

(c) Section 5.7 of this bill incorporates amendments to Section 13401 of the Corporations Code proposed by this bill, SB 687, and AB 1807. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1994, (2) all three bills amend Section 13401 of the Corporations Code, and (3) this bill is enacted after SB 687 and AB 1807, in which case Sections 5, 5.3, and 5.5 of this bill shall not become operative.

SEC. 11. Section 7.5 of this bill incorporates amendments to Section 13406 of the Corporations Code proposed by both this bill and SB 687. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends

Section 13406 of the Corporations Code, and (3) this bill is enacted after SB 687, in which case Section 7 of this bill shall not become operative.

CHAPTER 956

An act to amend Sections 40448.5, 40452, and 40512 of the Health and Safety Code, and to amend Section 9250.11 of the Vehicle Code, relating to air pollution.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 40448.5 of the Health and Safety Code is amended to read:

40448.5. (a) The south coast district shall establish a program to encourage voluntary participation in projects to increase the utilization of clean-burning fuels. The south coast district shall coordinate its program with the state board, the State Energy Resources Conservation and Development Commission, and other appropriate state and federal agencies and private organizations that are conducting activities to promote the use of clean-burning fuels.

(b) After holding at least two public hearings to solicit public comment on a clean-burning fuels program, the south coast district shall adopt a program of activities for increasing the use of clean-burning fuels in the transportation and stationary source sectors.

(c) The program shall include an identification of potential funding sources, including, but not limited to, state and federal funds; private-sector funds; revenues from district permit, variance, and emission fees; proceeds from district penalty settlements and judgments; and funds from other sources under the jurisdiction of the south coast district.

(d) In developing its program, the south coast district shall consider promoting projects in the transportation and stationary source sectors utilizing methanol fuel, fuel cells, liquid petroleum gas, natural gas, including compressed natural gas, combination fuels, synthetic fuels, electricity, including electric vehicles, and other clean-burning fuels.

(e) When considering which clean fuels projects to promote, the south coast district shall consider, among other factors, the current and projected economic costs and availability of fuels, the cost-effectiveness of emission reductions associated with clean fuels compared with other pollution control alternatives, the use of new pollution control technologies in conjunction with traditional fuels as an alternative means of reducing emissions, potential effects on

public health, ambient air quality, visibility within the region, and other factors determined to be relevant by the south coast district.

(f) When implementing clean fuels projects, the south coast district shall consider limiting the use of clean fuels to specific seasons, time of day, and locations if those limitations are found by the district to further the goals of the program.

(g) The south coast district shall coordinate the clean-burning fuels program with transportation control measures adopted pursuant to paragraph (4) of subdivision (b) of Section 40440 to reduce traffic congestion, air pollution, and motor vehicle fuel consumption.

SEC. 2. Section 40452 of the Health and Safety Code is amended to read:

40452. On or before April 1, 1991, and annually thereafter, the south coast district shall submit a report to the state board and the Legislature summarizing its regulatory activities for the preceding calendar year. The report shall include:

(a) A summary of each major rule and rule amendment adopted by the south coast district board. The summary shall include emission reductions to be accomplished by each rule or regulation; the cost per ton of emission reduction to be achieved from each rule or regulation; other alternatives that were considered through the environmental assessment process; the cost per ton of comparable emission reductions that could have been achieved from each alternative; a statement of the reason why a given alternative was chosen; the conclusions and recommendations of the district's socioeconomic analysis, including any evaluations of employment impacts; and the source of funding for the rule or regulation. For the purposes of this subdivision, a major rule or rule amendment is one that is intended to significantly affect air quality or which imposes emission limitations.

(b) The number of permits to operate or to construct, by type of industry, that are issued and denied, and the number of permits to operate that are not renewed.

(c) Data on emission offset transactions and applications, by pollutant, during the previous fiscal year, including an accounting of the number of applications for permits for new or modified sources that were denied because of the unavailability of emission offsets.

(d) The district's forecast of budget and staff increases proposed for the following fiscal year, and projected for the next two fiscal years. Budget and staff increases shall be related to existing programs and rules, and to new programs or rules to be adopted during the following years. The budget forecast shall provide a workload justification for proposed budget and staff changes and shall identify any cost savings to be achieved by program or staff changes. The budget forecast shall include increases in permit fees and other fees proposed for the following fiscal year and projected for the next two fiscal years. Budget information developed by the district pursuant to Section 42311.1 may be used to comply with the requirements

established under this section.

(e) An identification of the source of all revenues collected that are used, or proposed to be used, to finance activities related to either stationary or nonstationary sources.

(f) A response to audit recommendations pursuant to Sections 40453 and 42311.1. The response shall include proposed statutory changes needed to implement the recommendations.

(g) The results of the clean fuels program as specified in Section 40448.5. This element of the report shall be submitted biennially.

SEC. 3. Section 40512 of the Health and Safety Code is amended to read:

40512. (a) The south coast district board may impose a fee surcharge based on a formula associated with quantity of emissions and the effect of these emissions on ambient air quality within the south coast district to generate sufficient revenues to pay for any of its costs associated with the development and implementation of Section 40448.5.

(b) The total amount of funds collected from these surcharge fees shall not exceed five hundred thousand dollars ($500,000) in each of the first two fiscal years of the development or implementation of Section 40448.5. All surcharge fees received by the south coast district pursuant to this section shall be deposited in a clean fuels and transportation control measures account which shall be established and maintained by the south coast district.

(c) In subsequent fiscal years, the total amount of funds collected from these surcharge fees shall not exceed 25 percent of the amount of fees received the previous fiscal year from registered motor vehicle owners pursuant to Section 9250.11 of the Vehicle Code. The surcharge fees received by the south coast district pursuant to this section shall be used to pay for the initial costs incurred by the Department of Motor Vehicles to implement the motor vehicle fee program established by Section 9250.11 of the Vehicle Code.

(d) All fees received by the south coast district pursuant to Section 9250.11 of the Vehicle Code shall be deposited in the clean fuels and transportation control measures account and shall be used solely for transportation and vehicular-related program activities within the program established by this section. Not more than 2½ percent of the funds in the account shall be used for the south coast district administrative costs.

SEC. 4. Section 9250.11 of the Vehicle Code is amended to read:

9250.11. (a) In addition to any other fees specified in this code and the Revenue and Taxation Code, a fee of one dollar ($1) may be imposed by the South Coast Air Quality Management District and shall be paid to the department, upon renewal of registration of any motor vehicle subject to Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code and registered in the south coast district, except any vehicle that is expressly exempted under this code from the payment of registration fees.

(b) Prior to imposing fees pursuant to this section, the south coast

district board shall approve the imposition of the fees through the adoption of a resolution by both a majority of the district board and a majority of the district board who are elected officials. After deducting all costs incurred pursuant to this section, the department shall distribute the additional fees collected pursuant to subdivision (a) to the south coast district, which shall use the fees to reduce air pollution from motor vehicles through implementation of Section 40448.5 of the Health and Safety Code.

(c) Any memorandum of understanding reached between the district and a county prior to the imposition of a one dollar ($1) fee by a county shall remain in effect and govern the allocation of the funds generated in that county by that fee.

(d) The South Coast Air Quality Management District shall adopt accounting procedures to ensure that revenues from motor vehicle registration fees are not commingled with other program revenues.

(e) This section shall become inoperative on August 1, 1999, and, as of January 1, 2000, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2000, deletes or extends the dates on which it becomes inoperative and 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 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 957

An act to amend Section 30796.7 of the Streets and Highways Code, relating to transportation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 30796.7 of the Streets and Highways Code is amended to read:

30796.7. (a) Notwithstanding any other provision of law, the San Diego Association of Governments may impose a toll on vehicles crossing the San Diego-Coronado Bridge. The toll shall be established by the association after conducting at least one public hearing.

(b) The authority of the commission relative to tolls on the bridge is hereby transferred to the San Diego Association of Governments.

All tolls established by the commission shall remain in effect until June 30, 1995, unless changed by the San Diego Association of Governments. Thereafter, all tolls on the bridge shall be at the rates established by the San Diego Association of Governments, except that at no time shall the rate of toll for Class 1 vehicles exceed one dollar and fifty cents ($1.50) per vehicle.

(c) (1) The revenues from any tolls imposed on the bridge shall be used first for expenses related to the collection of tolls and operation of the bridge, including, but not limited to, reimbursement for any operating and maintenance costs and, second, for improvements to the bridge and its approaches. Tolls shall be established at an amount which will generate revenue sufficient to meet the requirements set forth in this paragraph, as determined by the department.

(2) The revenues from any tolls imposed on the bridge may also be used for costs incurred by the San Diego Association of Governments in administering this section and for either or both of the following:

(A) Transportation services that either increase the capacity of the bridge and its approaches or reduce the demand for travel in the transportation corridor that includes the bridge.

(B) Alternative forms of transportation, within the transportation corridor that includes the bridge, that reduce congestion and air pollution, including, but not limited to, ferry service and public transit.

(d) For the purposes of this section, "transportation corridor" means the San Diego-Coronado Bridge and its approaches which extend from Route 5 in the City of San Diego to the North Island Naval Air Station via Route 282, and to the Naval Amphibious Base via Route 75 in the City of Coronado.

(e) All money deposited in the San Diego-Coronado Toll Bridge Revenue Fund prior to March 26, 1992, and not expended, encumbered, or programmed before January 1, 1994, is appropriated to the Controller for allocation to the San Diego Association of Governments for the purposes of paragraph (2) of subdivision (c).

(f) Not later than June 30, 1995, and not later than June 30 of every even-numbered year thereafter, the San Diego Association of Governments shall adopt an expenditure plan specifying the projects and programs that are to be funded with toll revenues, and shall submit copies of each plan to the Senate Committee on Transportation and the Assembly Committee on Transportation.

(g) If the San Diego Association of Governments imposes tolls pursuant to subdivision (a), it shall reimburse the department for costs incurred by the department in operating the bridge, collecting tolls, and performing other related services. The association and the department shall enter into an agreement which provides for the full reimbursement of the department for all operating and maintenance costs.

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 toll revenues from the San Diego-Coronado Bridge may be used for the purposes that were intended by legislation enacted in 1992, it is necessary for this act to take effect immediately.

CHAPTER 958

An act to amend Sections 4000.1 and 24007 of, and to add Section 5751.5 to, the Vehicle Code, relating to vehicles.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 4000.1 of the Vehicle Code is amended to read:

4000.1. (a) Except as otherwise provided in subdivision (b), (c), or (d) of this section, or subdivision (b) of Section 43654 of the Health and Safety Code, the department shall require upon initial registration, and upon transfer of ownership and registration, of any motor vehicle subject to Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, and upon registration of a motor vehicle previously registered outside this state which is subject to those provisions of the Health and Safety Code, a valid certificate of compliance or a certificate of noncompliance, as appropriate, issued in accordance with Section 44015 of the Health and Safety Code.

(b) With respect to new vehicles certified pursuant to Chapter 2 (commencing with Section 43100) of Part 5 of Division 26 of the Health and Safety Code, the department shall accept a statement completed pursuant to subdivision (b) of Section 24007 in lieu of the certificate of compliance.

(c) For purposes of determining the validity of a certificate of compliance or noncompliance submitted in compliance with the requirements of this section, the definitions of new and used motor vehicle contained in Chapter 2 (commencing with Section 39010) of Part 1 of Division 26 of the Health and Safety Code shall control.

(d) Subdivision (a) does not apply to a transfer of ownership and registration under any of the following circumstances:

(1) In any district in which biennial certification is required and a valid certificate was issued in connection with the most recent renewal of registration of the vehicle, and the transfer occurred not more than 60 days following the date by which that renewal of registration was required.

(2) The transferor is either the parent, grandparent, child,

grandchild, or spouse of the transferee.

(3) A vehicle registered to a sole proprietorship is transferred to the proprietor as owner.

(4) The transfer is between companies whose principal business is leasing vehicles, if there is no change in the lessee or operator of the vehicle or between the lessor and the person who has been, for at least one year, the lessee's operator of the vehicle.

(5) The transfer is between the lessor and lessee of the vehicle, if there is no change in the lessee or operator of the vehicle.

(6) The vehicle was manufactured prior to the 1966 model-year.

(e) The State Air Resources Board, under Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, may exempt designated classifications of motor vehicles from subdivision (a) as it deems necessary, and shall notify the department of that action.

SEC. 2. Section 5751.5 is added to the Vehicle Code, to read:

5751.5. (a) Upon transfer of the title or interest of the registered owner of a motor vehicle that is subject to Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, if no certificate of compliance or certificate of noncompliance is submitted to the department pursuant to the exemptions described in paragraph (1) of subdivision (d) of Section 4000.1, the transferor of that vehicle shall sign and deliver to the transferee, upon completion of the transaction, the original copy of a statement, under penalty of perjury, that he or she has not modified the emissions system of the vehicle and does not have any personal knowledge of anyone else modifying the system in a manner that causes the emission system to fail to qualify for the issuance of a certificate of compliance pursuant to Section 44015 of the Health and Safety Code. The transferor shall keep a duplicate copy of the statement delivered to the transferee pursuant to this section. The department shall prescribe and make available to transferors the necessary forms to comply with this subdivision.

(b) Any form prescribed by the department pursuant to subdivision (a) shall contain the following statement and a space for the signatures of the transferor and transferee at the end of the statement:

"WARNING TO THE BUYER

"A certificate of compliance was submitted to the Department of Motor Vehicles for this vehicle within the past 60 days. However, at present, you may be purchasing a vehicle that may not be in compliance with specified emission standards.

"By signing this statement, you acknowledge that the seller is not required to provide you with an additional certificate of compliance prior to the completion of this transaction.

"You may have this vehicle tested at a licensed smog check station prior to completion of this transaction to verify compliance. If the

vehicle passes the test, you shall be responsible for the costs of the test. If the vehicle fails the test, the seller is obligated to reimburse you the cost of having the vehicle tested and, without expense to you, must have the vehicle repaired to comply with specified emission standards prior to completion of this transaction.

(Transferor)	(Date)
(Transferee)	(Date)"

(c) Any sale of a motor vehicle with regard to which the transferor is found to have committed perjury, as described in subdivision (a), may be rescinded by the transferee within 60 days of the date that the transferee obtained knowledge of the perjury. The transferee shall be entitled to recover all consideration paid to the transferor and any interest from the date of sale. In addition, the court may, upon motion, award reasonable attorney's fees to the prevailing plaintiff.

SEC. 3. 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) Paragraph (2) does not apply to any vehicle whose transfer of ownership and registration is described in subdivision (d) of Section 4000.1.

(4) 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.

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 959

An act to add and repeal Article 2.1 (commencing with Section 12170) of Chapter 4 of Part 2 of Division 2 of the Public Contract Code, relating to state and local purchasing.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Article 2.1 (commencing with Section 12170) is added to Chapter 4 of Part 2 of Division 2 of the Public Contract Code, to read:

Article 2.1. Recycled Fluids, Paints, and Solvents

12170. Fitness and quality being equal, all state agencies shall purchase the following products whenever available:

(a) Rerefined automotive lubricants, including, but not limited to, crank case oil, engine oil, transmission fluid, and power steering fluid, for all state vehicles, including, but not limited to, all fleet cars, trucks, and buses, so long as the cost of the rerefined automotive lubricants are not more than 5 percent greater than the lowest price quoted by suppliers offering nonrecycled automotive lubricant.

(b) Recycled antifreeze fluid so long as the cost of the antifreeze fluid is not more than 5 percent greater than the lowest price quoted by suppliers offering nonrecycled antifreeze fluid.

(c) Recycled solvents so long as the cost of the recycled solvents is not more than 5 percent greater than the lowest price quoted by suppliers offering nonrecycled solvents.

(d) Recycled paints, so long as the cost of the recycled paints is not more than 5 percent greater than the lowest price quoted by suppliers offering nonrecycled paints.

(e) "Fitness and quality" shall be defined in this section as meeting all specifications required of the product for its specific use, including those required of a manufacturer's warranty. Procuring agencies may set special standards for motor oil used in engines that operate under extreme conditions, including law enforcement vehicles that run at excessive speeds or for long periods of operation.

(f) "Available" shall be defined in this section as providing comparable delivery services and packaging specifications as the agency requires from all suppliers of that product.

(g) "Rerefined motor oil" shall be defined in this section as having a neutral oil content consisting of at least 70 percent rerefined oil.

(h) "Recycled paint" shall be defined in this section as having a recycled content consisting of at least 50 percent postconsumer paint. Preconsumer or secondary paint shall not qualify as "recycled paint" pursuant to this subdivision.

(i) "Recycled antifreeze fluid" and "recycled solvents" shall be defined in this section as having a recycled content of at least 70 percent recycled materials.

(j) State agencies may submit claims to the board pursuant to the pilot program in Section 12162.

(k) This article shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute which is chaptered prior to that date extends or deletes that date.

CHAPTER 960

An act to amend and repeal Sections 12162, 12205, and 12310 of, and to add and repeal Sections 12159 and 12305.5 of, the Public Contract Code, relating to recycling.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. The Legislature hereby finds and declares the following:

(a) The Purchasing Division of the City of San Jose, which specifies recycled content in its bid solicitations, paid competitive prices or less for recycled-content products in the 1991–92 fiscal year.

(b) The Bureau of Street Maintenance of the City of Los Angeles saved approximately eight million dollars ($8,000,000) in paving material cost over the past five years by using recycled asphalt pavement.

(c) The City of Santa Rosa saves over thirty-three thousand dollars ($33,000) annually by using retreaded tires on the back portion of its city buses.

(d) A California vendor of rerefined oil reports that the quality of rerefined motor oil is the same as virgin motor oil and that costs are competitive.

(e) Some private companies that buy recycled products, such as bond paper, toilet tissue, and cardboard boxes, find that total recycled paper purchases cost not more than 2 to 4 percent more than virgin paper products, which is below the state's 5-percent price preference for recycled paper.

(f) A 1992 study conducted by Integrated Recycling Inc. for the California Integrated Waste Management Board found that many cities and counties are buying recycled content plastic products. Board staff estimates that the cost of recycling plastic products was either less than the cost of virgin products or not more than 5 to 10 percent higher.

(g) Minimum recycled content requirements for glass containers are the major factor influencing the Department of General Services' and California State University system's high rate for purchases of recycled glass products, which was 79 percent in 1990.

(h) Recycled latex paint, which is very similar to the virgin product in quality, consistency, and performance, is offered free of charge to the public by some counties and is offered for from three dollars ($3) to five dollars ($5) per gallon in other counties to cover collection and transportation costs. A California waste management company has saved thirty thousand dollars ($30,000) in paint costs to date by using rerefined latex paint on its bins.

(i) Compost produced from yard trimmings has been purchased

by the state at a slightly lower price than shredded bark for mulching highway landscaping. Co-compost is available in bulk from several commercial producers for under eight dollars ($8) per cubic yard and has been used to diminish the total costs of commercial fertilizers and water usage in the production of San Joaquin Valley cotton.

(j) Substituting recycled materials for virgin resources provides additional savings by (1) extending the life of solid waste landfills, (2) saving solid waste landfill operation and maintenance costs and, consequently, total disposal costs, (3) saving energy, (4) reducing air pollution, (5) conserving water and other significant natural resources, (6) reducing mining wastes, and (7) providing employment opportunities, ranging from water extraction to recycled product manufacturing.

(k) Furthermore, Executive Order W-7-91 states that "California should set the example of leadership in minimizing waste and promoting increased use of recycled products." The Governor's Task Force on Waste Reduction and Recycling has recommended that a coordinator for each state agency should "ensure that all measures are taken to reduce waste, reuse materials when possible, recycle all recyclable items, and procure materials with recycled content . . . in all state offices and facilities."

(*l*) Accordingly, the purpose of this act is to do all of the following:

(1) Maximize the state procurement of recycled products, as well as maximize source reduction, by using funds appropriated in the Budget Act. It is recognized that, if certain products made with recycled materials cost more than the same products made with virgin material, a state agency may need to purchase fewer products or apply cost savings from buying other products made with recycled materials toward the purchase of those more costly products.

(2) Assist state agencies in complying with Executive Order W-7-91 and the recommendations of the Governor's Task Force on Waste Reduction and Recycling and, as a result, generate new or expanding markets for recycled products and increase recycling-related businesses in the state.

(3) Maximize the amount of secondary and postconsumer waste in products purchased by the state.

(4) Help achieve the goals of the California Integrated Waste Management Board's Market Development Plan, including job creation and the diversion of solid waste from landfills.

SEC. 2. Section 12159 is added to the Public Resources Code, to read:

12159. (a) If a recycled product, as defined in subdivision (a) of Section 12200, costs more than the same product made with virgin material, the state agency shall, if feasible, purchase fewer of those more costly products or apply cost savings, if any, gained from buying other recycled products towards the purchase of those more costly products to meet the solid waste diversion goals of Section 41780.

(b) All state agencies shall, if feasible, establish purchasing practices which ensure the purchase of materials, goods, and supplies

which may be recycled or reused. Each state agency shall initiate activities for the collection, separation, and recycling of recyclable materials and may appoint a recycling coordinator to assist in implementing this section.

(c) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute which is chaptered prior to that date extends or deletes that date.

SEC. 3. Section 12162 of the Public Contract Code is amended to read:

12162. (a) The department shall set the following goals for the purchase of recycled paper products:

(1) By January 1, 1994, at least 40 percent of the total dollar amount of paper products purchased or procured shall be a recycled paper product, as defined in Section 12161. In addition, at least 15 percent of the total fine writing and printing paper purchased or procured shall be a recycled paper product, as defined in Section 12161.

(2) By January 1, 1996, at least 50 percent of the total dollar amount of paper products purchased or procured shall be a recycled paper product, as defined in Section 12161. In addition, at least 25 percent of the total fine writing and printing paper purchased or procured shall be a recycled paper product, as defined in Section 12161.

(b) All state agencies shall report to the department and to the board on their progress in meeting the goals specified in this section and Section 12205 and shall submit to the department and to the board a detailed plan to meet those goals. The department shall develop a uniform reporting procedure which state agencies shall follow. If at any time a goal has not been met, the department, in consultation with the board, shall review procurement policies and shall make recommendations for immediate revisions to ensure that the goal is met. The department, in consultation with the board, shall present its conclusions and recommendations on these revisions of procurement policies to the Legislature in the department's annual report pursuant to Section 12225.

(c) (1) All state agencies shall give a purchase preference, not to exceed 10 percent, to recycled paper products, if the product's fitness, quality, availability, and price meet the requirements of Section 12161. The board, in consultation with the department, shall establish, on or before May 1, 1994, and every two years thereafter, price preferences for the purposes of meeting the goals set forth in this section and Section 12205 for recycled products. For those priority commodities, as defined by the board, the price preference established by the board shall not be less than 5 percent. The board shall publish the established price preferences annually in the board's report to the Legislature pursuant to Section 40507 of the Public Resources Code.

(2) In establishing the price preferences, the board shall take into consideration the following factors:

(A) Materials that comprise the largest percentage of the state's solid waste stream.

(B) Materials that have the highest percentage of postconsumer waste.

(C) Materials that require expanded markets.

(D) Any other market factors as determined by the board.

(3) The combined dollar amount of preference granted pursuant to this section and any other provision of law shall not exceed one hundred thousand dollars ($100,000).

(d) Notwithstanding paragraph (1) of subdivision (c), the recycled paper bidder preference shall not exceed fifty thousand dollars ($50,000) if a preference exceeding that amount would preclude an award to a small business that offers nonrecycled paper products and is qualified in accordance with Section 14838 of the Government Code.

(e) The board shall implement a pilot program, from January 1, 1994, to January 1, 1997, for funding claims submitted by state agencies for providing the price preferences required by this section and Section 12205. A state agency's purchase of recycled paper products pursuant to subdivision (a) shall be ineligible for claims under the pilot program. On or before March 31, 1996, in conjunction with the annual report required by Section 40507 of the Public Resources Code, the board shall report to the Legislature and Governor on the pilot program and make recommendations concerning the continuation or modification of the program. A sum of not more than three hundred thousand dollars ($300,000) total, or one hundred thousand dollars ($100,000) annually, shall be expended for the purposes of implementing the pilot program. This subdivision shall be operative only if adequate funds for the pilot program are made available.

(f) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute which is chaptered prior to that date extends or deletes that date.

SEC. 4. Section 12205 of the Public Contract Code is amended to read:

12205. (a) (1) All state agencies shall require all contractors to certify in writing the minimum percentage, if not the exact percentage, of postconsumer and secondary material in the materials, goods, or services provided or used. This certification shall be furnished under penalty of perjury.

(2) The department, in consultation with the board, shall review and revise the procurement specifications currently used by state agencies in order to eliminate restrictive specifications and discrimination against the procurement or purchase of recycled products. Fitness and quality being equal, all state agencies shall purchase recycled products instead of nonrecycled products whenever recycled products are available at the same total cost as nonrecycled products. All state agencies shall allow a price preference as determined by the board pursuant to Section 12162. In

determining procurement specifications, with the exception of any specifications which have been established to preserve the public health and safety, all state procurement and purchasing specifications shall be established in a manner which results in the maximum state procurement and purchase of recycled products.

(c) (1) To assist the state in meeting the goals of subdivision (a) of Section 12162 and subdivision (e) of this section, the department, in consultation with the board, may also establish recycled-content disclosure, recycled product-only bids, cooperative purchasing arrangements or conduct an analysis of solid waste diversion from disposal facilities to meet the goals for recycled products and to encourage the maximum state procurement and purchase of recycled products. All state agencies shall, if feasible, implement recycled product-only bids for recycled products as defined in subdivision (a) of Section 12200, in order to meet the goals for recycled products set forth in this section and Section 12162.

(2) This subdivision applies to the procurement or purchase of the following materials, goods, and supplies, or products containing the following recycled resources:

(A) Paper products, which include, but are not limited to, fine papers, such as xerographic and envelope papers and form bond, corrugated boxes, newsprint, tissue, and toweling.

(B) Compost and co-compost products.

(C) Glass.

(D) Oil.

(E) Plastic.

(F) Solvents and paint, including water-based paint.

(G) Tires.

(d) All state agencies shall, if feasible, establish purchasing practices which ensure the purchase of materials, goods, and supplies which may be recycled or reused when discarded.

(e) The department shall set the following goals for purchases made by state agencies:

(1) By January 1, 1996, at least 20 percent of state purchases are of recycled products.

(2) By January 1, 1998, at least 30 percent of state purchases are of recycled products.

(3) By January 1, 2000, at least 50 percent of state purchases are of recycled products.

(4) The goals specified in this subdivision shall be applied to the purchases of state agencies for products listed in this section, except in subparagraph (A) of paragraph (2) of subdivision (c) for which goals are specified in Section 12162.

(f) The purchases of the state agencies shall meet each goal for, and be applied to the total dollar amount of, each specified product category as defined in this section.

(g) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute which is chaptered prior to that date extends or deletes that date.

SEC. 5. Section 12305.5 is added to the Public Contract Code, to read:

12305.5. (a) If a recycled product costs more than the same product made with virgin material, the Legislature shall purchase fewer of those more costly products or apply cost savings, if any, gained from buying other recycled products towards the purchase of those more costly products.

(b) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute which is chaptered prior to that date extends or deletes that date.

SEC. 6. Section 12310 of the Public Contract Code is amended to read:

12310. (a) The Legislature shall set the following goals in the purchase of recycled paper products:

(1) By January 1, 1995, at least 40 percent of the total dollar amount of paper products purchased or procured by the Legislature shall be purchased as a recycled paper product, as defined in Section 12301. In addition, at least 15 percent of the total fine writing and printing paper purchased by the Legislature shall be recycled paper products, as defined in Section 12301.

(2) By January 1, 1997, at least 50 percent of the total dollar amount of paper products purchased or procured by the Legislature shall be purchased as a recycled paper product, as defined in Section 12301. In addition, at least 25 percent of the total fine writing and printing paper purchased by the Legislature shall be recycled paper products, as defined in Section 12301.

(3) If at any time the goal for recycled products has not been met, the Legislature and the department, in consultation with the board, shall review the procurement policies of the Legislature and shall make recommendations for immediate revisions to ensure that each goal is met. Revisions include, but are not limited to, raising the purchasing preference and altering the goals for each or all recycled products. The department, in consultation with the board, shall present its conclusions and recommendations on these revisions of procurement policies to the Legislature in the department's biennial report pursuant to Section 12225.

(b) When contracting with the Legislature for the sale of recycled paper products, the contractor shall certify in writing to the contracting officer or his or her representative, that the recycled paper products offered contain the minimum percentage of waste materials required by subdivision (c) of Section 12301. The contractor shall specify the minimum, if not the exact, percentage of recycled product in the paper product, including both the secondary and postconsumer waste content. This certification shall be furnished under penalty of perjury.

(c) The Legislature may, in consultation with the board, print a symbol on paper products selected by the Legislature. The symbol shall be similar to the following:

Printed on recycled paper. This symbol shall be printed only on

paper products meeting the definition of recycled paper products in Section 12301.

(d) This section shall not prevent the Legislature from using existing stocks of paper products.

(e) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute which is chaptered prior to that date extends or deletes that date.

CHAPTER 961

An act to amend Section 40980 of, to add Sections 40322.5, 40701.5, and 40704.5 to, to repeal and add Sections 40100 and 40152 of, and to repeal Section 40153 of, the Health and Safety Code, relating to air pollution.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 40100 of the Health and Safety Code is repealed.

SEC. 2. Section 40100 is added to the Health and Safety Code, to read:

40100. (a) On and after July 1, 1994, the membership of the governing board of each county district, including any district formed on or after that date, shall include (1) one or more members who are mayors, city council members, or both, and (2) one or more members who are county supervisors.

(b) The number of those members and their composition shall be determined jointly by the county and the cities within the district, and shall be approved by the county, and by a majority of the cities which contain a majority of the population in the incorporated area of the district.

(c) The governing board shall reflect, to the extent feasible and practicable, the geographic diversity of the district and the variation of population between the cities in the district.

(d) The members of the governing board who are mayors or city council members shall be selected by the city selection committee. The members of the governing board who are county supervisors shall be selected by the county.

(e) This section does not apply to any district in which the population of the incorporated area of the county is 35 percent or less of the total county population, as determined by the district on June 30, 1994, or to a county district having a population of more than 2,500,000 as of June 30, 1990.

(f) If a district fails to comply with subdivisions (a) and (b), the membership of the governing board shall be determined as follows:

(1) In districts in which the population in the incorporated areas represents between 36 and 50 percent of the total county population, one-third of the members of the governing board shall be mayors or city council members, and two-thirds shall be county supervisors.

(2) In districts in which the population in the incorporated areas represents more than 50 percent of the total county population, one-half of the members of the governing board shall be mayors or city council members, and one-half shall be county supervisors.

(3) The number of those members shall be determined as provided in subdivision (b) and the members shall be selected pursuant to subdivision (d).

(4) For purposes of paragraphs (1) and (2), if any number which is not a whole number results from the application of the term "one-third," "one-half," or "two-thirds," the number of county supervisors shall be increased to the nearest integer, and the number of mayors or city council members decreased to the nearest integer.

SEC. 3. Section 40152 of the Health and Safety Code is repealed.

SEC. 4. Section 40152 is added to the Health and Safety Code, to read:

40152. (a) On and after July 1, 1994, the membership of the governing board of each unified district, including any district formed on or after that date, shall include (1) one or more members who are mayors, city council members, or both, and (2) one or more members who are county supervisors.

(b) The number of those members and their composition shall be determined jointly by the counties and cities within the district, and shall be approved by a majority of the counties, and by a majority of the cities which contain a majority of the population in the incorporated area of the district.

(c) The governing board shall reflect, to the extent feasible and practicable, the geographic diversity of the district and the variation of population between the cities in the district.

(d) The members of the governing board who are mayors or city council members shall be selected by a majority of the cities in the district. The members of the governing board who are county supervisors shall be selected by a majority of the counties in the district.

(e) If a district fails to comply with subdivisions (a) and (b), the membership of the governing board shall be determined as follows:

(1) In districts in which the population in the incorporated areas represents 35 percent or less of the total district population, one-fourth of the members of the governing board shall be mayors or city council members, and three-fourths shall be county supervisors.

(2) In districts in which the population in the incorporated areas represents between 36 and 50 percent of the total county population, one-third of the members of the governing board shall be mayors or city council members, and two-thirds shall be county supervisors.

(3) In districts in which the population in the incorporated areas

represents more than 50 percent of the total county population, one-half of the members of the governing board shall be mayors or city council members, and one-half shall be county supervisors.

(4) The number of those members shall be determined as provided in subdivision (b) and the members shall be selected pursuant to subdivision (d).

(5) For purposes of paragraphs (1) to (3), inclusive, if any number which is not a whole number results from the application of the term "one-fourth," "one-third," "one-half," "two-thirds," or "three-fourths," the number of county supervisors shall be increased to the nearest integer, and the number of mayors or city council members decreased to the nearest integer.

(f) This section does not apply to a district if the membership of the governing board of the district includes both county supervisors and mayors or city council members on June 30, 1994.

SEC. 5. Section 40153 of the Health and Safety Code is repealed.

SEC. 6. Section 40322.5 is added to the Health and Safety Code, to read:

40322.5. (a) Notwithstanding any other provision of this chapter, on and after July 1, 1994, the membership of the governing board of each regional district, including any district formed on or after that date, shall include (1) one or more members who are mayors, city council members, or both, and (2) one or more members who are county supervisors.

(b) The number of those members and their composition shall be determined jointly by the counties and cities within the district, and shall be approved by a majority of the counties, and by a majority of the cities which contain a majority of the population in the incorporated area of the district.

(c) The governing board shall reflect, to the extent feasible and practicable, the geographic diversity of the district and the variation of population between the cities in the district.

(d) The members of the governing board who are mayors or city council members shall be selected by a majority of the cities in the district. The members of the governing board who are county supervisors shall be selected by a majority of the counties in the district.

(e) If a district fails to comply with subdivisions (a) and (b), the membership of the governing board shall be determined as follows:

(1) In districts in which the population in the incorporated areas represents 35 percent or less of the total county population, one-fourth of the members of the governing board shall be mayors or city council members, and three-fourths shall be county supervisors.

(2) In districts in which the population of the incorporated areas represents between 36 and 50 percent of the total county population, one-third of the members of the governing board shall be mayors or city council members, and two-thirds shall be county supervisors.

(3) In districts in which the population of the incorporated areas

represents more than 50 percent of the total county population, one-half of the members of the governing board shall be mayors or city council members, and one-half shall be county supervisors.

(4) The number of those members shall be determined as provided in subdivision (b) and the members shall be selected pursuant to subdivision (d).

(5) For purposes of paragraphs (1) to (3), inclusive, if any number which is not a whole number results from the application of the term "one-fourth," "one-third," "one-half," "two-thirds," or "three-fourths," the number of county supervisors shall be increased to the nearest integer, and the number of mayors or city council members decreased to the nearest integer.

(f) This section does not apply to a district if the membership of the governing board of the district includes both county supervisors and mayors or city council members on June 30, 1994.

SEC. 7. Section 40701.5 is added to the Health and Safety Code, to read:

40701.5. (a) Funding for a district may be provided by, but is not limited to, any one or any combination of the following sources:

(1) Grants.

(2) Subventions.

(3) Permit fees.

(4) Penalties.

(5) A surcharge or fee pursuant to Section 41081 or 44223 on motor vehicles registered in the district.

(6) An annual per capita assessment on those cities which have agreed to have a member on the district board for purposes of Section 40100, 40152, 40322.5, 40704.5, or 40980 and on counties included within the district. Any annual per capita assessment imposed by the district on those cities and counties included within the district shall be imposed on an equitable per capita basis.

(b) Paragraph (6) of subdivision (a) does not apply to the San Joaquin Valley Unified Air Pollution Control District or, if that unified district ceases to exist, the valley district.

SEC. 8. Section 40704.5 is added to the Health and Safety Code, to read:

40704.5. (a) Notwithstanding any other provision of law, on and after July 1, 1994, the membership of the governing board of an air quality management district, including any district formed on or after that date, shall include (1) one or more members who are mayors, city council members, or both, and (2) one or more members who are county supervisors.

(b) The number of those members and their composition shall be determined jointly by the counties and cities within the district, and shall be approved by a majority of the counties, and by a majority of the cities which contain a majority of the population in the incorporated area of the district.

(c) The governing board shall reflect, to the extent feasible and practicable, the geographic diversity of the district and the variation

of population between the cities in the district.

(d) The members of the governing board who are mayors or city council members shall be selected by the city selection committee if the district only contains one county, or a majority of the cities within the district if the district contains more than one county. The members of the governing board who are county supervisors shall be selected by the county if the district only contains one county or a majority of counties within the district if the district contains more than one county.

(e) If a district fails to comply with subdivisions (a) and (b), the composition of the governing board shall be determined as follows:

(1) In districts in which the population in the incorporated areas represents 35 percent or less of the total county population, one-fourth of the members of the governing board shall be mayors or city council members, and three-fourths shall be county supervisors.

(2) In districts in which the population in the incorporated areas represents between 36 and 50 percent of the total county population, one-third of the members of the governing board shall be mayors or city council members, and two-thirds shall be county supervisors.

(3) In districts in which the population in the incorporated areas represents more than 50 percent of the total county population, one-half of the members of the governing board shall be mayors or city council members and one-half shall be county supervisors.

(4) The number of those members shall be determined as provided in subdivision (b) and the members shall be selected pursuant to subdivision (d).

(5) For purposes of paragraphs (1) to (3), inclusive, if any number which is not a whole number results from the application of the term "one-fourth," "one-third," "one-half," "two-thirds," or "three-fourths," the number of county supervisors shall be increased to the nearest integer, and the number of mayors or city council members decreased to the nearest integer.

(f) This section does not apply to a district if the membership of the governing board of the district includes both county supervisors and mayors or city council members on June 30, 1994.

SEC. 9. Section 40980 of the Health and Safety Code is amended to read:

40980. (a) The Sacramento district shall, at a minimum, be governed by a district board composed of the Board of Supervisors of the County of Sacramento.

(b) If the County of Placer submits a resolution of inclusion, pursuant to Section 40963, one or more elected officials from that county shall be included on the Sacramento district board, pursuant to agreement between that county and the Sacramento district board.

(c) (1) On and after July 1, 1994, the membership of the Sacramento district board shall include (A) one or more members who are mayors or city council members, or both, and (B) one or

more members who are county supervisors.

(2) The number of those members and their composition shall be determined jointly by the counties and cities within the district, and shall be approved by a majority of the counties, and by a majority of the cities which contain a majority of the population in the incorporated area of the district.

(d) The governing board shall reflect, to the extent feasible and practicable, the geographic diversity of the district and the variation of population between the cities in the district.

(e) The members of the governing board who are mayors or city council members shall be selected by the city selection committee if the district only contains one county, or a majority of the cities within the district if the district contains more than one county. The members of the governing board who are county supervisors shall be selected by the county if the district only contains one county or a majority of counties within the district if the district contains more than one county.

(f) (1) If the district fails to comply with subdivision (c), one-third of the members of the governing board shall be mayors or city council members, and two-thirds shall be county supervisors. The number of those members shall be determined as provided in paragraph (2) of subdivision (c) and the members shall be selected pursuant to subdivision (e).

(2) For purposes of paragraph (1), if any number which is not a whole number results from the application of the term "one-third" or "two-thirds," the number of county supervisors shall be increased to the nearest integer, and the number of mayors or city council members decreased to the nearest integer.

SEC. 10. Sections 1 to 6, inclusive, and Sections 8 and 9 of this act shall become operative July 1, 1994.

SEC. 11. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

CHAPTER 962

An act to add and repeal Section 149.1 to the Streets and Highways Code, relating to transportation.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

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

(1) The San Diego Association of Governments (SANDAG) has been awarded a federal technical assistance grant, and has another federal grant pending to conduct a congestion pricing and transit development demonstration program on the Interstate Highway Route 15 (I-15) high-occupancy vehicle expressway for purposes of increasing revenues for transit development in the I-15 corridor.

(2) The I-15 corridor lacks adequate transit service and there are currently no funds available for additional service. For this reason, the cities in the County of San Diego and the county itself have acted at SANDAG to unanimously support the implementation of this demonstration program.

(3) The grants will assist SANDAG, in cooperation with the Federal Transit Administration, the Federal Highways Administration, the Department of Transportation, the San Diego Metropolitan Transit Development Board, the North San Diego County Transit Development Board, and the Cities of San Diego and Poway to design and demonstrate the implementation of congestion pricing mechanisms on the I-15 high-occupancy vehicle expressway by authorizing single-occupant vehicles, for a fee, to use the excess capacity on the high-occupancy vehicle lanes during the peak period.

(4) The revenues available for, and generated by, the demonstration program will be used to support the development of a light rail equivalent transit system along the I-15 corridor to benefit lower income communities and transit dependent individuals.

(5) The demonstration program is designed to demonstrate the feasibility of low and high technology congestion pricing mechanisms, such as a simple monthly pass, automated vehicle identification, and automated toll collection, and to improve the region's air quality and reduce traffic congestion.

(6) In order to conduct the demonstration program, it is necessary to authorize the use of high-occupancy vehicle lanes by single-occupant vehicles, for a fee.

(b) The Legislature further finds and declares that the demonstration program authorized in this section is unique and is not intended to be expanded to include other highways or other areas of the state.

(c) It is the Legislature's intent that the demonstration program be conducted in such a manner as not to reduce the use of or access to high-occupancy vehicle lanes by high-occupancy vehicles.

SEC. 2. Section 149.1 is added to the Streets and Highways Code, to read:

149.1. (a) Notwithstanding Sections 149 and 30800 of this code, and Section 21655.5 of the Vehicle Code, the San Diego Association of Governments (SANDAG) may conduct, administer, and operate a congestion pricing and transit development demonstration program on the Interstate Highway Route 15 (I-15) high-occupancy vehicle expressway. The program may, under the circumstances described in subdivision (b), direct and authorize the entry and use of the I-15 high-occupancy vehicle lanes by single-occupant vehicles during peak periods, as defined by SANDAG, for a fee. The amount of the fee shall be established from time to time by SANDAG, and collected in a manner determined by SANDAG.

(b) Implementation of the demonstration program is subject to each of the following mandatory conditions:

(1) Approval of the program by the United States Department of Transportation shall be obtained before the project is implemented.

(2) Level of Service B, as measured by the most recent issue of the Highway Capacity Manual, as adopted by the Transportation Research Board, or the level of service of a high-occupancy vehicle lane without single-occupant vehicles, shall be maintained at all times in the high-occupancy vehicle lanes. Unrestricted access to the lanes by high-occupancy vehicles shall be available at all times. At least annually, the department shall audit the level of service during peak traffic hours.

(c) Single-occupant vehicles that are certified or authorized by SANDAG for entry into and use of the I-15 high-occupancy vehicle lanes are exempt from Section 21655.5 of the Vehicle Code, and the driver shall not be in violation of the Vehicle Code because of that entry and use.

(d) SANDAG shall carry out the program in cooperation with the department, and shall consult the department in the operation of the project and on matters related to highway design and construction. With the assistance of the department, SANDAG shall establish appropriate traffic flow guidelines for the purpose of ensuring optimal use of the express lanes by high-occupancy vehicles.

(e) (1) Agreements between SANDAG, the department, and the Department of the California Highway Patrol shall identify the respective obligations and liabilities of those entities and assign them responsibilities relating to the demonstration program, including clear and concise procedures for enforcement by the Department of the California Highway Patrol of laws prohibiting the unauthorized use of the high-occupancy vehicle lanes. The agreements shall provide for reimbursement of state agencies, from revenues generated by the program, federal funds specifically allocated to SANDAG for the program by the federal government, or other

funding sources that are not otherwise available to state agencies for transportation related projects, for costs incurred in connection with the implementation or operation of the demonstration program. Reimbursement for SANDAG's program-related planning and administrative costs in the first year of operation of the program shall not exceed 5 percent of the revenues generated, and shall not exceed 3 percent of revenues for any year thereafter.

(2) All remaining revenue shall be used in the I-15 corridor exclusively for (A) the improvement of transit service, including, but not limited to, support for transit operations, and (B) high-occupancy vehicle facilities and shall not be used for any other purpose.

(f) SANDAG, the San Diego Metropolitan Transit Development Board, and the department shall cooperatively develop a single transit capital improvement plan for the I-15 corridor.

(g) Upon completion of the demonstration program, SANDAG shall submit a report to the Legislature on its findings, conclusions, and recommendations concerning the demonstration program.

(h) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

CHAPTER 963

An act to add Article 16 (commencing with Section 13161) to Chapter 2 of Division 7 of the Food and Agricultural Code, relating to economic poisons.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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 in the best, long-term interests of California's economic vitality to promote a vigorous, competitive agricultural industry.

(b) It is also in the best, long-term interests of protecting California's environment and public health to maintain the high standards of data requirements and review for the registration of pesticides for use in the state.

(c) To preserve the productivity and competitiveness of California's agricultural industry while also preserving California's environment and the health of her citizens, effective and affordable pest management systems must be developed and implemented that encourage the sustainable use of resources and reduce the risk of adverse effects on public health and the environment.

(d) To achieve a safe and workable balance between the

environmental and economic interests of California, the director should be vested with the authority to grant California interim registrations to pesticides that can be identified as an important and safe component of a pest management system, but do not yet meet all of the data requirements for registration in the state.

SEC. 2. Article 16 (commencing with Section 13161) is added to Chapter 2 of Division 7 of the Food and Agricultural Code, to read:

Article 16. The Interim Data Gap Exemption for Qualified Federally Registered Pesticides

13161. For the purposes of this article, the following definitions apply:

(a) "Feasible alternative" means other chemical or nonchemical procedures that can reasonably accomplish the same pest control function as existing procedures with comparable effectiveness and reliability, taking into account economic, environmental, sociological, technological, and ecological factors, including impact on beneficial and other nontarget organisms, pest resistance to pesticides, and timeliness of control.

(b) "Pest management system" means a systematic approach to pest control that stresses the application of biological and cultural pest control techniques with the selective use of pesticides when necessary to achieve acceptable levels of control with the least possible harm to nontarget organisms and the environment as described in subdivision (f) of Section 11501.

13162. The director may issue a certificate of interim registration allowing the sale and use of a pesticide that otherwise meets the requirements of this chapter if all of the following conditions are met:

(a) The certificate stipulates which of the California data requirements listed in Section 13163 are being deferred for completion during the time of interim registration.

(b) The certificate stipulates a period of time, not to exceed three years, for each deferral determined by the director as reasonably sufficient for the generation, submission, and review of the data.

(c) The certificate stipulates any limitations on the use of the pesticide that the director may deem appropriate pursuant to Section 13166 or on the sale of the pesticide.

13163. In granting a certificate of interim registration, the director may defer no more than three of the following registration data requirements:

(a) Efficacy studies pursuant to Section 12824.

(b) KOW (octanol water partition coefficient) pursuant to paragraph (3) of subdivision (a) of Section 13143.

(c) Soil photolysis pursuant to paragraph (6) of subdivision (a) of Section 13143.

(d) A field dissipation study pursuant to paragraph (6) of subdivision (a) of Section 13143.

(e) A study pursuant to subdivision (a) of Section 13143 that will

be redone to correct errors or a study conducted under California conditions or guidelines, if the weight of evidence from all other submitted data support a scientific judgment in favor of interim registration.

13164. Consistent with the limitations of Section 13163, a registrant or a user group of any pesticide registered by the United States Environmental Protection Agency may apply for a California certificate of interim registration if the applicant does all of the following:

(a) The applicant provides information that the product would fill a need and significantly enhance a systems approach to pest management during the period the applicant completes requirements for a full California registration. Additionally, the information supporting an interim registration shall be based upon one or more of the following conclusions that the product will:

(1) Reduce risks to the public health, the pesticide workplace, or the environment by reducing the overall use of chemical controls within a pest management system.

(2) Reduce risks to the public health, the pesticide workplace, or the environment by providing a more benign alternative to an existing use pattern.

(3) Reduce risks of pest resistance problems such as loss of economic efficacy and increased amounts or frequency of chemical applications by providing better integrated management of a pest or pest complex.

(4) Reduce a substantial economic hardship to a segment of California's agricultural industry due to a pest infestation for which there is no other feasible alternative.

(b) The applicant provides the director with all data that is required to support the federal and California registrations of the pesticide product, except the data which may be deferred pursuant to Section 13163, and any other available data that the director may deem appropriate.

(c) The applicant makes a commitment to generate all data required in California for a full certificate of registration within a reasonable period of time to be determined by the director and reflected in the certificate of interim registration. The written commitment shall identify the developing party or parties for each deferred data requirement within 90 days of the issuance of the certificate of interim registration and identify a schedule of quarterly progress reports that will be submitted.

13165. Notwithstanding Section 13163, the director shall not grant a certificate of interim registration unless he or she consults with the Pesticide Registration and Evaluation Committee on the proposed interim registration, and makes a written finding, after consultation, declaring all of the following:

(a) That the pesticide is needed and will be a significant component of a pest management system as demonstrated by the applicant pursuant to subdivision (a) of Section 13164.

(b) That the interim use of the pesticide, in conformance with the limitations established by the director pursuant to Section 13166, is not expected to cause any significant adverse effect on the public health, the safety of the pesticide workplace, or the environment, including a finding that the pesticide does not threaten to pollute the groundwater of the state.

(c) That the weight of evidence supports a scientific judgment in favor of interim registration.

13166. The director shall limit the use of any pesticide granted a certificate of interim registration to specific uses within a pest management system meeting the requirements of subdivision (a) of Section 13164. The director may place additional restrictions on the use of any pesticide granted a certificate of interim registration, including, but not limited to, requiring a restricted material permit or the written recommendation of a specially trained pest control advisor or specially trained certified private applicator, or limiting the quantity, area, and manner of application.

13167. The director shall revoke or refuse to renew a certificate of interim registration at any time that he or she finds that the interim registration no longer meets all the requirements of this article, including the registrant's failure to submit a progress report for any deferred study, a failure to show in the report that a good faith effort to complete an acceptable study is making satisfactory progress, or the period of time from the issuance of the certificate has exceeded the three year limit set forth in Section 13162. The director shall provide the registrant with the basis for the decision in writing.

13168. The director may adopt regulations to carry out this article.

13169. To the extent that this article conflicts with other provisions in Article 15 of this chapter, this article shall prevail. Unless otherwise specified in this article, a certificate of interim registration shall be subject to all other provisions governing certificates of registration in Division 6 (commencing with Section 11401) and this division.

13170. The department shall impose a fee in an amount sufficient to cover the department's costs of reviewing and processing the application on any person who applies for a certificate of interim registration pursuant to this article. Fee revenue shall be deposited in the Department of Pesticide Regulation Fund and shall be available, upon appropriation by the Legislature, to offset the department's costs to process and review these applications.

CHAPTER 964

An act to amend Sections 4650.1 and 6211 of the Public Resources Code, relating to timber.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 4650.1 of the Public Resources Code is amended to read:

4650.1. (a) Notwithstanding any other provision of law, timber from state forests shall not be sold to any California division of a primary manufacturer, or to any person for resale to a primary manufacturer, who does either of the following:

(1) Uses that timber at any plant not located within the United States unless it is sawn on four sides to dimensions not greater than 4 inches by 12 inches.

(2) Within one year prior to the bid date and one year after the termination of the contract, sells unprocessed timber, which is harvested from private timberlands and is exported into foreign commerce from this state.

(b) Any purchaser of timber from state forests who makes use of timber in violation of paragraph (1) of subdivision (a) is prohibited from purchasing state forest timber for a period of five years and may have his or her license suspended for a period of up to one year.

(c) The department may adopt appropriate regulations to prevent the substitution of timber from state forests for timber exported from private timberlands.

(d) For purposes of this section, "unprocessed timber" means trees or portions of trees or other roundwood not processed to standards and specifications suitable for end product use, but does not include timber processed into any of the following:

(1) Lumber or construction timbers, except Western Red Cedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list grades, sawn on four sides, not intended for remanufacture.

(2) Lumber, construction timbers, or cants for remanufacture, except Western Red Cedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list clear grades, sawn on four sides, not to exceed 12 inches in thickness.

(3) Lumber, construction timbers, or cants for remanufacture, except Western Red Cedar, that do not meet the grades referred to in paragraph (2) and are sawn on four sides, with wane less than ¼ of any face, not exceeding 8¾ inches in thickness.

(4) Chips, pulp, or pulp products.

(5) Veneer or plywood.

(6) Poles, posts, or piling cut or treated with preservatives for use as such.

(7) Shakes or shingles.

(8) Aspen or other pulpwood bolts, not exceeding 100 inches in length, exported for processing into pulp.

(9) Pulp logs or cull logs processed at domestic pulp mills, domestic chip plants, or other domestic operations for the purpose of conversion of the logs into chips.

SEC. 2. Section 6211 of the Public Resources Code is amended to read:

6211. (a) Whenever a parcel of timbered land under the jurisdiction of the commission is totally surrounded by, or is contiguous to, a national forest or a state forest, the commission may, if it is in the best interests of the state to do so, and after 10 days' prior notice to the Secretary of the Resources Agency for the receipt of comments, provide for the harvesting of timber from that land at the same time as the orderly harvesting of the surrounding or adjacent federal-owned or state-owned timber is conducted. In carrying out this section, the commission may enter into agreements with the United States or the Department of Forestry and Fire Protection for the inclusion of timbered lands under the jurisdiction of the commission within a total parcel to be offered for timber harvesting contracts. On or before December 1 of each year, the commission shall report to the Legislature a summary of any actions taken pursuant to this section during the preceding 12 months, including any comments made by interested state agencies.

(b) Notwithstanding any other provision of law, timber from lands under the jurisdiction of the commission shall not be sold to any California division of a primary manufacturer, or to any person for resale to a primary manufacturer, who does either of the following:

(1) Uses that timber at any plant not located within the United States, unless it is sawn on four sides to dimensions not greater than 4 inches by 12 inches.

(2) Within one year prior to the bid date and one year after the termination of the contract, sells unprocessed timber which is harvested from private timberlands and is exported into foreign commerce. For the purposes of this section, "unprocessed timber" has the same meaning as set forth in subdivision (d) of Section 4650.1.

(c) Any purchaser of timber from lands under the jurisdiction of the commission who makes use of the timber in violation of paragraph (1) of subdivision (b) is prohibited from making any further purchases of timber from any such lands for a period of five years.

(d) The commission may adopt appropriate regulations to prevent the substitution of timber from lands under its jurisdiction for timber exported from private timberlands.

CHAPTER 965

An act to add Section 14009 to the Government Code, relating to state agencies.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. The Legislature finds and declares that the state's budget is limited and funding for all agencies is at risk of being reduced. A technologically advanced computer information base could reduce costs associated with time and the availability of information necessary to make decisions.

SEC. 2. Section 14009 is added to the Government Code, to read:

14009. (a) Not later than June 30, 1994, the department shall apply for federal funding to be used for a comprehensive, rapid conversion of data pertaining to the state highway system from paper storage to intelligent computer information.

(b) Within six months of having its application for federal funding approved, the department shall commence implementation of the conversion process.

SEC. 3. Following completion of the conversion referred to in Section 14009 of the Government Code by the Department of Transportation; the Multi/Agency Information Management Authority (MIMA) shall coordinate the availability of an online information data base for state agencies and departments.

CHAPTER 966

An act to add Part 5.5 (commencing with Section 11151) to Division 2 of the Revenue and Taxation Code, and to add Section 9250.12 to the Vehicle Code, relating to vehicles.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Part 5.5 (commencing with Section 11151) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 5.5. LOCAL VEHICLE LICENSE FEE SURCHARGE

11151. (a) For purposes of this part, "department" means the Department of Motor Vehicles.

(b) For purposes of this part, "county" means the City and

County of San Francisco.

11152. The county may impose a local vehicle license fee surcharge if both of the following occur:

(a) The board of supervisors finds both of the following:

(1) That there is traffic congestion within the county that can be alleviated by the operation of public transit and that the cost of funding public transit exceeds the revenues to be collected from a vehicle license fee surcharge.

(2) That the imposition of the vehicle license fee surcharge will reduce the need for any public transit fare increases during the period that the vehicle license fee surcharge is in effect.

(b) The ordinance or resolution proposing the surcharge is adopted by two-thirds of the voters of the county voting on the issue.

11152.5. If public transit fares are increased at any time while the vehicle license fee surcharge authorized by this part is in effect, the surcharge may not continue to be imposed.

This part shall become inoperative on the date those fares are increased and shall be repealed on January 1 next following that date. The board of supervisors shall notify the department of any increase in public transit fares occurring while the surcharge is in effect.

11153. A vehicle license fee surcharge ordinance or resolution adopted pursuant to this part shall be operative on January 1 of the year following adoption of the ordinance or resolution. A local vehicle license fee surcharge shall apply to any original registration occurring on or after that January 1, and to any renewal of registration with an expiration date on or after that January 1.

11154. The local vehicle license fee surcharge shall be imposed for the privilege of operating upon the public highways in the county any vehicle of a type that is subject to registration under the Vehicle Code, except those vehicles expressly exempted from payment of vehicle registration fees and commercial vehicles weighing more than 4,000 pounds, unladen, and shall include provisions in substance as follows:

(a) A provision that the annual amount of the local vehicle license fee surcharge shall be a sum equal to not more than 15 percent of the vehicle license fee imposed pursuant to Part 5 (commencing with Section 10701).

(b) A provision that the county contract prior to the effective date of the local vehicle license fee surcharge ordinance or resolution with the department to perform all functions incident to the administration or operation of the local vehicle license fee surcharge ordinance or resolution of the county.

(c) A provision that the revenue derived from any vehicle license fee surcharge ordinance or resolution imposed pursuant to this part shall be distributed to the county for use exclusively for the provision of public transit, including capital outlay, security, and maintenance costs, and including, but not limited to, removal of graffiti from public transit vehicles and facilities, and to pay the costs of compliance with subdivision (b) of Section 11152.

11155. All local vehicle license fee surcharge revenues, less refunds, collected by the department pursuant to a contract with a county, after deduction of the administrative costs incurred by the department in carrying out this part, shall be paid to that county.

11156. A person shall, for the purposes provided for in Section 11154, be presumed to be operating a vehicle on the public highways only in the county in which he or she resides, or, in the case of other than a natural person, only in the county in which the vehicle is principally garaged, and he or she shall be subject to a local vehicle license fee surcharge only in that county.

SEC. 2. Section 9250.12 is added to the Vehicle Code, to read:

9250.12. (a) For purposes of this section, "county" means the City and County of San Francisco.

(b) In addition to any other fees specified in this code and the Revenue and Taxation Code, a fee of four dollars ($4) shall be paid at the time of registration or renewal of registration of every vehicle registered to an address within a county, except those vehicles expressly exempted from payment of registration fees and commercial vehicles weighing more than 4,000 pounds, unladen, if all of the following occur:

(1) The county board of supervisors finds both of the following:

(A) That there is traffic congestion within the county that can be alleviated by the operation of public transit and that the cost of funding public transit exceeds the revenues to be collected from a service fee imposed on vehicles.

(B) That the imposition of the additional registration fee will reduce the need for any public transit fare increases during the period that the fee is in effect.

(2) The county board of supervisors adopts an ordinance or resolution imposing the additional registration fee.

(3) The ordinance or resolution adopted pursuant to paragraph (2) is approved by two-thirds of the voters in the county who voted on the measure.

(c) The fee imposed pursuant to this section shall apply to any original registration occurring on or after the January 1 following the adoption of the ordinance pursuant to paragraph (3) of subdivision (b) and to any renewal of registration with an expiration date on or after that January 1.

(d) After deducting all costs incurred pursuant to this section, the department shall distribute the revenues to the county. The amount of revenues distributed by the department to the county shall be equal to the net amount of revenues received from that county that were derived from the imposition of the additional fees.

(e) Money allocated to the county pursuant to this section shall be expended only to fund programs for the provision of public transit, including capital outlay, security, and maintenance costs, and including, but not limited to, removal of graffiti from public transit vehicles and facilities, and to pay the costs of compliance with paragraph (3) of subdivision (b).

(f) If public transit fees are increased at any time the additional registration fee authorized by the section is in effect, the fee may not continue to be imposed. This section shall become inoperative on the date those fares are increased and shall be repealed on January 1 next following that date. The board of supervisors shall notify the department of any increase in public transit fares occurring while the additional registration fee is in effect.

CHAPTER 967

An act to add Section 294 to the Penal Code, relating to crimes, and making an appropriation therefor.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 294 is added to the Penal Code, to read:

294. (a) Upon conviction of any person for a violation of Section 273a, 273d, 288.5, 311.2, 311.3, or 647.6, the court may, in addition to any other penalty or restitution fine imposed, order the defendant to pay a restitution fine based on the defendant's ability to pay not to exceed five thousand dollars ($5,000), upon a felony conviction, or one thousand dollars ($1,000), upon a misdemeanor conviction, to be deposited in the Restitution Fund to be transferred to the county children's trust fund for the purposes of child abuse prevention.

(b) Upon conviction of any person for a violation of Section 261, 264.1, 285, 286, 288a, or 289 where the violation is with a minor under the age of 14 years, the court may, in addition to any other penalty or restitution fine imposed, order the defendant to pay a restitution fine based on the defendant's ability to pay not to exceed five thousand dollars ($5,000), upon a felony conviction, or one thousand dollars ($1,000), upon a misdemeanor conviction, to be deposited in the Restitution Fund to be transferred to the county children's trust fund for the purpose of child abuse prevention.

(c) If the perpetrator is a member of the immediate family of the victim, the court shall consider in its decision to impose a fine under this section any hardship that may impact the victim from the imposition of the fine.

(d) If the court orders a fine to be imposed pursuant to this section, the actual administrative cost of collecting that fine, not to exceed 2 percent of the total amount paid, may be paid into the general fund of the county treasury for the use and benefit of the county.

CHAPTER 968

An act to amend Section 33320.5 of the Health and Safety Code, relating to redevelopment.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 33320.5 of the Health and Safety Code is amended to read:

33320.5. (a) Notwithstanding Section 33320.1, the requirement that privately owned land within a project area be "predominantly urbanized," as that term is defined in subdivision (b) of Section 33320.1, shall not apply to privately owned land within a project area, if the privately owned land is adjacent or in proximity to a military facility or installation which is proposed to be closed pursuant to Public Law 100-526 and the inclusion of the privately owned land is found by an entity formed pursuant to subdivision (b) to be necessary for the effective redevelopment of the military facility or installation and the adjacent area.

(b) The legislative bodies for communities having territory within, adjacent to or in proximity to a military facility or installation described in subdivision (a) may create a separate joint powers agency pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, which shall have and exclusively exercise powers of an agency in furtherance of the redevelopment of a project area approved by the joint powers agency. The joint powers agency so formed shall include as one of its members the county in which the project area is located. In addition to the powers of an agency, the joint powers agency so formed shall also act as the legislative body and planning commission for all approvals and actions required by this part of legislative bodies and planning commissions for the adoption and implementation of a redevelopment plan. However, all land use, planning, and development decisions with regard to the land within the project area shall continue to be under the control and jurisdiction of each of the respective local legislative bodies or planning commissions, as applicable.

(c) The territory included within the project and project area may be contiguous or noncontiguous, and any project area may be located in whole or in part within one or more of the communities impacted by the closure of the military facility or installation, and the land to be included within the project area within the community or communities in proximity to the military facility or installation shall be found necessary for the effective redevelopment of the military facility or installation and the adjacent area. A project area shall not include territory outside the jurisdiction of the communities that are

parties to the joint powers agency without the consent of the legislative body having jurisdiction over the territory proposed to be included within the project area.

(d) A redevelopment plan for the project area shall contain all of the provisions required by this part. However, if the agency finds, based on substantial evidence on the record, that compliance with the requirements of Sections 33333.2 and 33334.1 would make it impracticable to achieve the policies of this section, the agency may eliminate or modify the requirements of Sections 33333.2 and 33334.1.

(e) The redevelopment plan shall provide for either of the following:

(1) A Low- and Moderate-Income Housing Fund, as required by Section 33334.2.

(2) A deferral for depositing all or part of the 20 percent of taxes allocated to the agency pursuant to Section 33670 in the Low- and Moderate-Income Housing Fund if the agency, after conducting a noticed public hearing, makes, and the executive committee of the Southern California Association of Governments reviews and approves, findings supported by substantial evidence that all of the following apply:

(A) The military facility or installation cannot be acquired or developed by private enterprise without the assistance of the agency.

(B) There are no feasible alternative means of financing the acquisition or development of the military facility or installation other than by utilizing the low- and moderate-income housing portion of the taxes which are allocated to the agency pursuant to subdivision (b) of Section 33670.

(C) Failure of the agency to finance the acquisition or development of the military facility or installation would lead to serious economic hardship and job loss.

(D) The redevelopment plan shall specify the period during which less than 20 percent of the taxes which are allocated to the agency pursuant to subdivision (b) of Section 33670, is to be deposited in the Low- and Moderate-Income Housing Fund. The redevelopment plan shall also contain a repayment plan which specifies a date at which time the agency will have made up the deficit created by the deferral, including repayment of the interest at the highest rate received by the agency on funds it deposits during the period of deferral. The repayment plan shall reduce the deficit in the shortest feasible time consistent with the needs of the agency, as specified in the agency's findings.

(f) The joint powers agency acting as the agency, the legislative body or the planning commission, shall follow all procedures under this part applicable to the adoption and amendment of redevelopment plans, except with respect to Sections 33347.5, 33353 to 33353.6, inclusive, Sections 33354.4 to 33354.6, inclusive, and Section 33385.

(g) The agency shall create a fiscal advisory group to consult with

each affected taxing agency and to advise and report to the agency in the manner required of a fiscal review committee by Section 33353.5 on any potential fiscal impact upon affected taxing agencies within the project area. The fiscal advisory group shall consist of the financial officer or treasurer of each city and each county which created the joint powers authority.

(h) The agency shall prepare and distribute to each affected taxing agency a report which includes the information required by Section 33328. The agency shall also prepare an analysis of the report required of a fiscal review committee pursuant to subdivision (m) of Section 33352 and an analysis of the report required of the fiscal advisory group pursuant to subdivision (g).

(i) As used in this section, "in proximity to" means within three miles of the boundary of Norton Air Force Base and within eight miles of George Air Force Base.

(j) The Legislature finds and declares that the closure of two or more military facilities or installations within the County of San Bernardino will cause serious economic hardship in that county, including loss of jobs, increased unemployment, deterioration of properties and land utilization and undue disruption of the lives and activities of the people. Therefore, the Legislature finds and declares that to avoid serious economic hardship and accompanying blight, it is necessary to enact this act which shall apply only within the County of San Bernardino. In enacting this act, it is the policy of the Legislature to assist communities within the County of San Bernardino in their attempt to preserve the military facilities and installations for their continued use as airports and aviation-related purposes.

It is the intent of the Legislature and the commitment of the local authorities to ensure that the existing airfields at both Norton Air Force Base and George Air Force Base are protected, developed, and enhanced as civil aviation public use airports. Therefore, the joint powers authorities authorized by this section should make every reasonable effort to guarantee that these vital airport facilities are retained for general aviation use now and into the future.

(k) Any joint powers agreement entered into pursuant to this section shall provide that the financial needs of each of the parties shall be considered prior to adoption of a redevelopment plan, and may provide that the number of years shall be limited during which bonded indebtedness may be paid using taxes which are allocated to the agency pursuant to subdivision (b) of Section 33670.

(l) A joint powers agency operating within the area of Norton Air Force Base shall appoint a project area citizens committee for the purpose of consultation and advice regarding policy matters that relate to planning and programs affecting the residents, businesses, and educational institutions within the project area, implementation of the redevelopment plan, and the development and implementation of amendments to the redevelopment plan.

(2) The committee shall be comprised of residential owners,

residential tenants, business owners, small business owners, business tenants, educational institution representatives, and community groups currently operating, living, or working within the project area. The membership of the Project Area Citizens Committee shall be appointed by the legislative body of the agency and shall be representative, both racially and ethnically, of the people who live and work within the project area.

(3) For the purposes described above the committee shall meet at lease once quarterly or more often to review policy matters and implementation issues as determined necessary by the legislative body.

(*l*) Amendments to any redevelopment plans adopted pursuant to this section shall not be required to comply with the provisions of Section 33452, provided that notice of the public hearing for any amendment adopted pursuant to Section 33540, and following, is published pursuant to Section 6063 of the Government Code and mailed by regular mail to the governing body of each of the taxing agencies which levies taxes upon any property in the project area designated in the redevelopment plan as proposed to be amended.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances faced by the County of San Bernardino.

SEC. 3. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law. 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 Section 65863.4 to the Government Code, relating to land use.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 65863.4 is added to the Government Code, to read:

65863.4. (a) Prior to noticing a public hearing on a proposed zoning ordinance or amendment to a zoning ordinance reducing the density permitted on property authorized for multifamily dwelling uses, the planning commission and legislative body shall approve a nonconforming use ordinance for multifamily dwellings that are involuntarily damaged or destroyed, which may be conditioned on the approval of an ordinance or amendment to a zoning ordinance reducing the density permitted on property authorized for multifamily dwelling uses.

(b) The planning commission and legislative body shall hold a public hearing on the proposed nonconforming use ordinance. Notice of the public hearing shall be given pursuant to Section 65090. If this hearing is held at the same time as a hearing under Section 65353 or 65854, notice for the hearings may be combined.

(c) A nonconforming multifamily dwelling ordinance need not apply to multifamily dwellings which have been abandoned for a specified period prior to being involuntarily damaged or destroyed, or to multifamily dwellings constituting a public nuisance prior to being involuntarily damaged or destroyed.

(d) For purposes of this section, "multifamily dwelling" means any structure designed for human habitation that has been divided into two or more legally created independent living quarters.

(e) This section shall not apply to either of the following:

(1) A city, county, or city and county that has adopted a nonconforming use ordinance that applies to multifamily dwellings that are involuntarily damaged or destroyed.

(2) A proposed zoning ordinance or amendment to a zoning ordinance reducing the density permitted on property authorized for multifamily dwelling uses, that has been requested by the owner of the property authorized for multifamily dwelling uses.

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 970

An act to amend Section 881.5 of, and to add Chapter 12.95 (commencing with Section 18986.50) to Part 6 of Division 9 of, the Welfare and Institutions Code, relating to youth services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 881.5 of the Welfare and Institutions Code is amended to read:

881.5. (a) (1) If a county receives funds pursuant to Section 17602, the county reduces the capacity of its juvenile homes, ranches, camps, or forestry camps below the capacity for those facilities during the 1990–91 fiscal year, and if during the 12-month period subsequent to the month of reduction, there is an increase in the rate of commitments from the county's juvenile court to the Department of the Youth Authority above the commitments per 100,000 of the county's juvenile population, aged 12 to 17 years, during the 1990–91 fiscal year, the county shall contribute to the Department of the Youth Authority an amount equivalent to the actual cost, as determined by the Department of the Youth Authority.

(2) Paragraph (1) shall not apply to a county of the fifth class, for reductions in the capacity of its juvenile homes, ranches, camps, or forestry camps that were made prior to January 1, 1993, if the reductions were due to fiscal constraints.

(b) Any county that provides juvenile home, ranch, or camp space to another county pursuant to contract shall contribute to the Department of the Youth Authority an amount equivalent to the actual costs associated with any increase in the rate of commitments to which subdivision (a) applies, per 100,000, by the county's juvenile court to the Department of the Youth Authority above the rate of commitments during the 1991–92 fiscal year that are not attributable to a reduced capacity in juvenile homes, ranches, camps, or forestry camps.

(c) The Department of the Youth Authority may notify the Controller of any county or counties that have experienced an increase in the rate of commitments for purposes of recovering the costs associated with that increase. Upon receiving this notice, the Controller shall redirect, from the funds that are provided to that county or counties pursuant to Section 17602, an amount equal to the costs associated with the increased commitments. Within 30 days of the notification of the Controller the Department of the Youth Authority shall also notify each county from which they are seeking reimbursement pursuant to subdivision (b).

SEC. 2. Chapter 12.95 (commencing with Section 18986.50) is

added to Part 6 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 12.95. INTERAGENCY DAY CARE PROGRAM

18986.50. (a) (1) It is the intent of the Legislature, in enacting this chapter, to encourage the development of programs and services, in keeping with Chapter 12.8 (commencing with Section 18986) and Chapter 12.9 (commencing with Section 18986.40), that enhance the successful development of children and reduce the incidence of juvenile crime and delinquency in the community.

(2) The San Bernardino County Youth Justice Center shall provide all available evaluative and operational studies related to its program to any county that requests that information in order to replicate the model or implement a similar program.

(b) This chapter is intended to augment existing interagency collaborative efforts by proposing an additional model.

(c) Nothing in this chapter is intended to supersede or duplicate existing programs, services, or interagency agreements.

18986.53. (a) Any county may implement an interagency day care program for multiple needs youths who are either being served by, or are at risk of being served by, the juvenile justice system pursuant to Article 14 (commencing with Section 600) of Chapter 2 of Part 1 of Division 2. This program shall be based on the San Bernardino County Youth Justice Center model.

(b) The program shall include, but need not be limited to, all of the following:

(1) A day treatment center, for the provision of support services for juveniles referred by any of the interagency coordination council members, without the removal of the juvenile from his or her home.

(2) Case management services, coordinating the provision of support services by the participating agencies, including county agencies that provide probation services, health services, mental health services, social services, and educational services.

(3) Family support and preservation services, including support services for the parents and siblings of the juvenile and for the juvenile.

(4) A goal of positive community readjustment and personal responsibility for the juveniles and their families.

(5) A process for conflict resolution among agencies.

(6) An evaluation component, to track the outcome of treatment under this section and to evaluate effectiveness and cost effectiveness of the program in savings in the costs of incarceration of the juveniles, the costs of out-of-home placement, and other measures determined by the evaluator to be useful in the evaluation of the effectiveness of the program.

(c) Notwithstanding any other provision of law, any county may consolidate the functions of the coordinating body implementing the coordination of services for purposes of this chapter into a single

body that also includes all of the following:

(1) The interagency placement committee meeting the requirements of Section 4096.

(2) The interagency case management council established in compliance with Section 5866.

(3) The children's multidisciplinary services team defined in subdivision (b) of Section 18986.40.

(d) If a county develops, or is in the process of developing, an evaluation component to identify outcome, cost, and other measures to determine the effectiveness of the program and its cost-effectiveness in providing interagency services for children and adolescents, the evaluation requirements of this chapter shall be integrated with existing evaluation capabilities.

(e) The local agency or the department shall seek private funding for the program, particularly money to be used to augment the operation of the program and the support of the affected youth service agencies.

SEC. 3. Given the fiscal constraints facing counties and the State of California, it is the intent of the Legislature to encourage the counties to determine the cost savings that are likely to be engendered by not detaining, prosecuting, incarcerating, or placing youth affected by this act, and to direct the cost savings to interagency day care programs.

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. The Legislature finds and declares that a special law regarding Section 881.5 of the Welfare and Institutions Code is necessary and that a general law cannot be applicable within the meaning of Section 16 of Article IV of the California Constitution because, due to serious fiscal constraints, those counties subject to this act were forced to reduce bed capacity in order to keep other programs, for which funding is authorized under Section 17602 of the Welfare and Institutions Code, adequately funded.

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 timely relief to counties that would otherwise be forced to utilize resources that are needed to fund other juvenile

and social services programs to pay the Department of the Youth Authority cost, it is necessary that this act take effect immediately.

CHAPTER 971

An act to add Section 7073.9 to the Government Code, relating to enterprise zones.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 7073.9 is added to the Government Code, to read:

7073.9. (a) The department may accept and consider applications for designation of enterprise zones filed on or before June 30, 1994, by cities whose population on December 31, 1992, was less than 25,000.

(b) The department may assist the preparation of applications by those cities.

(c) The department may designate two enterprise zones from the applications submitted by those cities.

CHAPTER 972

An act to add Section 5164 to the Public Resources Code, relating to parks and recreation.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 5164 is added to the Public Resources Code, to read:

5164. A county or city or city and county or special district shall not hire a person for employment at, or hire a volunteer to perform services at, a county or city or city and county or special district operated park, playground, recreational center, or beach used for recreational purposes, in a position having supervisory or disciplinary authority over any minor, if the person has been convicted of any offense specified in paragraph (1) of subdivision (g) of Section 11105.3 of the Penal Code, or any offense specified in paragraph (3) of subdivision (g) of Section 11105.3 of the Penal Code. However, this section shall not apply to a misdemeanor conviction under paragraph (3) of subdivision (g) of Section 11105.3 of the

Penal Code, unless the person has a total of three or more misdemeanor or felony convictions specified in Section 11105.3 of the Penal Code within the immediately preceding 10-year period. To give effect to this section, a county or city or city and county or special district may screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer for their criminal background.

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 973

An act to amend Section 21151.1 of the Public Resources Code, relating to hazardous waste.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 21151.1 of the Public Resources Code is amended to read:

21151.1. (a) Notwithstanding paragraph (6) of subdivision (b) of Section 21080, or Section 21080.5 or 21084, or any other provision of law, except as provided in this section, a lead agency shall prepare or cause to be prepared by contract, and certify the completion of, an environmental impact report or, if appropriate, a modification, addendum, or supplement to an existing environmental impact report, for any project involving any of the following:

(1) (A) The burning of municipal wastes, hazardous waste, or refuse-derived fuel, including, but not limited to, tires, if the project is either of the following:

(i) The construction of a new facility.

(ii) The expansion of an existing facility which burns hazardous waste which would increase its permitted capacity by more than 10 percent.

(B) This paragraph does not apply to any project exclusively burning hazardous waste, for which a final determination under Section 21080.1 has been made prior to July 14, 1989.

(2) The initial issuance of a hazardous waste facilities permit to a land disposal facility, as defined in subdivision (d) of Section 25199.1 of the Health and Safety Code.

(3) The initial issuance of a hazardous waste facilities permit pursuant to Section 25200 of the Health and Safety Code to an offsite large treatment facility, as defined pursuant to subdivision (d) of Section 25205.1 of the Health and Safety Code.

(b) For purposes of clause (ii) of subparagraph (A) of subparagraph (B) of paragraph (1) of subdivision (a), the amount of expansion of an existing facility shall be calculated by comparing the proposed facility capacity with whichever of the following is applicable:

(1) The facility capacity authorized in the facility's hazardous waste facilities permit pursuant to Section 25200 of the Health and Safety Code or its grant of interim status pursuant to Section 25200.5 of the Health and Safety Code, or the facility capacity authorized in any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted before January 1, 1990.

(2) The facility capacity authorized in the facility's original hazardous waste facilities permit, grant of interim status, or any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted on or after January 1, 1990.

(c) Paragraph (1) of subdivision (a) does not apply to any project which does any of the following:

(1) Exclusively burns digester gas produced from manure or any other solid or semisolid animal waste.

(2) Exclusively burns methane gas produced from a disposal site, as defined in Section 40122, which is used only for the disposal of solid waste, as defined in Section 40191.

(3) Exclusively burns forest, agricultural, wood, or other biomass wastes.

(4) Exclusively burns hazardous waste in an incineration unit which is transportable and which is either at a site for not longer than three years or is part of a remedial or removal action. For purposes of this paragraph, "transportable" means any equipment which performs a "treatment" as defined in Section 66216 of Title 22 of the California Code of Regulations, and which is transported on a vehicle as defined in Section 66230 of Title 22 of the California Code of Regulations.

(5) Exclusively burns refinery waste in a flare on the site of generation.

(6) Exclusively burns in a flare methane gas produced at a municipal sewage treatment plant.

(7) Exclusively burns hazardous waste, or exclusively burns hazardous waste as a supplemental fuel, as part of a research, development, or demonstration project which, consistent with federal regulations implementing the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), has been determined to be innovative and experimental by the Department of Toxic Substances Control and which is limited in type

and quantity of waste to that necessary to determine the efficacy and performance capabilities of the technology or process; provided, however, that any facility which operated as a research, development, or demonstration project and for which an application is thereafter submitted for a hazardous waste facility permit for operation other than as a research, development, or demonstration project shall be considered a new facility for the burning of hazardous waste and shall be subject to subdivision (a) of Section 21151.1.

(8) Exclusively burns soils contaminated only with petroleum fuels or the vapors from these soils.

(9) Exclusively treats less than 3,000 pounds of hazardous waste per day in a thermal processing unit operated in the absence of open flame, and submits a worst-case health risk assessment of the technology to the Department of Toxic Substances Control for review and distribution to the interested public. This assessment shall be prepared in accordance with guidelines set forth in the Air Toxics Assessment Manual of the California Air Pollution Control Officers Association.

(10) Exclusively burns less than 1,200 pounds per day of medical waste, as defined in Section 25023.2 of the Health and Safety Code, on hospital sites.

(11) Exclusively burns chemicals and fuels as part of firefighter training.

(12) Exclusively conducts open burns of explosives subject to the requirements of the air pollution control district or air quality management district and in compliance with OSHA and Cal-OSHA regulations.

(13) Exclusively conducts onsite burning of less than 3,000 pounds per day of fumes directly from a manufacturing or commercial process.

(14) Exclusively conducts onsite burning of hazardous waste in an industrial furnace that recovers hydrogen chloride from the flue gas if the hydrogen chloride is subsequently sold, distributed in commerce, or used in a manufacturing process at the site where the hydrogen chloride is recovered, and the burning is in compliance with the requirements of the air pollution control district or air quality management district and the Department of Toxic Substances Control.

(d) Paragraph (1) of subdivision (a) does not apply to any project for which the State Energy Resources Conservation and Development Commission has assumed jurisdiction under Chapter 6 (commencing with Section 25500) of Division 15.

(e) Paragraphs (2) and (3) of subdivision (a) shall not apply if the facility only manages hazardous waste which is identified or listed pursuant to Section 25140 or 25141 on or after January 1, 1992, but not before that date, or only conducts activities which are regulated pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code on or after January 1, 1992,

but not before that date.

(f) This section does not exempt any project from any other requirement of this division.

(g) For purposes of this section, offsite facility means a facility that serves more than one generator of hazardous waste.

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 974

An act to amend Sections 1021, 1025.5, 1033, 1035.5, 1067.02, 1067.04, 1152, 1215, 1215.4, 1215.5, 10530, 12380, 12382.2, and 12382.5 of, to add Chapter 6.5 (commencing with Section 10550) to Part 2 of Division 2 of, to repeal and add Article 14.7 (commencing with Section 1067) of Chapter 1 of Part 2 of Division 1 of, to repeal Section 12465 of, to repeal Article 14.6 (commencing with Section 1066) of Chapter 1 of Part 2 of Division 1 of, and to repeal Chapter 3 (commencing with Section 3010) of Part 1 of Division 2 of, the Insurance Code, relating to insurance.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 1021 of the Insurance Code is amended to read:

1021. (a) Upon the making of an order to liquidate the business of such person, the commissioner shall cause to be published notice to its policyholders, creditors, shareholders, and all other persons interested in its assets. Such notice shall require claimants to file their claims with the commissioner, together with proper proofs thereof, within six months after the date of first publication of such notice, in the manner specified in this article.

(b) The six-month period specified in subdivision (a) shall not apply to the California Insurance Guarantee Association or the California Life and Health Insurance Guarantee Association provided it files with the commissioner a notice of possible claim within such six-month period and files actual claim or claims within such periods of time as may be permitted by order of court.

SEC. 1.2. Section 1025.5 of the Insurance Code is amended to read:

1025.5. Notwithstanding the provisions of Sections 1021 to 1025, inclusive, the commissioner may, in lieu of requiring claimants to file separate claims:

(a) File a claim himself or herself on behalf of all claimants for return premiums.

(b) Permit any assignee of the right of the insured to a return premium by virtue of a valid assignment, as security or otherwise, made prior to an order under Section 1011 or a seizure under Section 1013, whichever is earlier in time in the particular case, to file one claim as assignee on behalf of all insureds having assigned rights to the assignee, which shall set forth such information as may be required under Section 1023.

(c) Permit the California Insurance Guarantee Association under subdivision (b) of Section 1063.4, or the California Life and Health Insurance Guarantee Association under paragraph (1) of subdivision (m) of Section 1067.07 to file one claim, for its association, combining all assigned claims and setting forth the information that the commissioner may require under Section 1023.

SEC. 1.3. Section 1033 of the Insurance Code is amended to read:

1033. (a) Claims allowed in a proceeding under this article shall be given preference in the following order:

(1) Expense of administration.

(2) Unpaid charges due under the provisions of Section 736.

(3) Taxes due to the State of California.

(4) Claims having preference by the laws of the United States and by laws of this state.

(5) All claims of the California Insurance Guarantee Association, the California Life and Health Insurance Guarantee Association, and associations or entities performing a similar function in other states, together with claims for refund of unearned premiums and all claims of policyholders of an insolvent insurer that are not covered claims.

Claims excluded by paragraphs (3) (except claims for refund of unearned premiums), (4), (5), (7), and (8) of subdivision (c) of Section 1063.1, and subdivisions (h) and (i) of Section 1063.2, shall be excluded from this priority.

(6) All other claims.

(b) Upon the issuance of an order appointing a conservator or liquidator for any person under the provisions of either Section 1011 or 1016 or both such sections, the lien of taxes due to the State of California imposed by Article 4 (commencing with Section 12491) of Chapter 4 of Part 7 of Division 2 of the Revenue and Taxation Code shall become subordinate to the reasonable administrative expenses of the proceeding under the order.

SEC. 1.4. Section 1035.5 of the Insurance Code is amended to read:

1035.5. Notwithstanding the provisions of Article 14 (commencing with Section 1010), with regard only to those insurers subject to this article:

(a) Within 120 days of the issuance of an order directing the

winding up and liquidation of the business of an insolvent insurer under Section 1016, the commissioner shall make application to the court for approval of a proposal to disburse the insurer's assets, from time to time as such assets become available, to the California Insurance Guarantee Association, or the California Life and Health Insurance Guarantee Association, and to any entity or person performing a similar function in another state.

(b) The proposal shall at least include the following provisions for:

(1) Reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors (to the extent of the value of the security held) and claims falling within the priorities established in paragraphs (1) to (4), inclusive, of subdivision (a) of Section 1033.

(2) Disbursement of the assets marshaled to date and subsequent disbursements of assets as they become available.

(3) Equitable allocation of disbursements to each of the associations entitled thereto.

(4) The securing by the commissioner from each of the associations entitled to disbursements pursuant to this section of an agreement to return to the commissioner such assets previously disbursed as may be required to pay claims of secured creditors and claims falling within the priorities established in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 1033 in accordance with the priorities. No bond shall be required of any association.

(5) A full report to be made by the association to the commissioner accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on the assets, and any other matter as the court may direct.

(c) The commissioner's proposal shall provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made by the associations for which such associations could assert a claim against the commissioner, and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of the claim payments made or to be made by the associations, then disbursements shall be in the amount of available assets. The reserves of the insolvent insurer on the date of the order of liquidation shall be used for purposes of determining the pro rata allocation of funds among eligible associations.

(d) The commissioner shall offset the amount disbursed to any entity or person performing a function in any other state similar to that function performed by the California Insurance Guarantee Association, or the California Life and Health Insurance Guarantee Association, by the amount of any statutory deposit, premiums, or any other asset of the insolvent insurer held in that state.

(e) Notice of such application shall be given to the associations in and to the commissioners of insurance of each of the states. Any such notice shall be deemed to have been given when deposited in the

United States certified mails, first-class postage prepaid, at least 30 days prior to submission of such application to the court. Action on the application may be taken by the court provided the above required notice has been given and provided further that the commissioner's proposal complies with paragraphs (1) and (4) of subdivision (b).

SEC. 1.5. Article 14.6 (commencing with Section 1066) of Chapter 1 of Part 2 of Division 1 of the Insurance Code is repealed.

SEC. 1.6. Article 14.7 (commencing with Section 1067) of Chapter 1 of Part 2 of Division 1 of the Insurance Code is repealed.

SEC. 1.7. Article 14.7 (commencing with Section 1067) is added to Chapter 1 of Part 2 of Division 1 of the Insurance Code, to read:

Article 14.7. California Life and Health Insurance Guarantee Association

1067. This article shall be known and may be cited as the California Life and Health Insurance Guarantee Association Act.

1067.01. (a) The purpose of this article is to protect, subject to certain limitations, the persons specified in Section 1067.02 against failure in the performance of contractual obligations, under life and health insurance policies and annuity contracts specified in Section 1067.02, 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 created to pay benefits and to continue coverages as limited herein, and members of the association are subject to assessment to provide funds to carry out the purposes of this article.

1067.02. (a) This article shall provide coverage for the policies and contracts specified in subdivision (b) to all of the following:

(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 of this state.

(B) Are not residents, but only under all of the following conditions:

(i) The insurers that issued the policies or contracts are domiciled in this state.

(ii) The insurers never held a license or certificate of authority in the states in which the persons reside.

(iii) The states in which the persons reside have associations similar to the association created by this article.

(iv) The persons are not eligible for coverage by those associations.

(b) (1) This article shall provide coverage to the persons specified in subdivision (a) for direct, nongroup life, health, annuity,

and supplemental policies or contracts and for certificates under direct group life, health, annuity, and supplemental policies and contracts, except as limited by this article. Annuity contracts and certificates under group annuity contracts include, but are not limited to, structured settlement agreements, allocated annuity contracts, and any immediate or deferred annuity contracts.

(2) This article shall not provide coverage for any of the following:

(A) Any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policyholder or contractholder.

(B) Any policy or contract of reinsurance, unless assumption certificates have been issued.

(C) Any portion of a policy or contract to the extent that the rate of interest on which it is based exceeds either or both of the following:

(i) The extent to which the rate of interest, averaged over the period of four years prior to the date on which the association becomes obligated with respect to the policy or contract, exceeds a rate of interest determined by subtracting six percentage points from Moody's Corporate Bond Yield Average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the association became obligated, not to go below a minimum of 0 percent.

(ii) The extent to which the rate of interest, on and after the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting six percentage points from Moody's Corporate Bond Yield Average as most recently available, not to go below a minimum of 3 percent.

(D) Guaranteed investment contracts, guaranteed interest contracts, funding agreements, deposit administration contracts, and all other unallocated annuity contracts.

(E) Any plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent that the plan or program is self-funded or uninsured, including, but not limited to, benefits payable by an employer, association, or similar entity under any of the following:

(i) A multiple employer welfare arrangement as defined in Section 514 of the federal 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.

(F) 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 policyholder or contractholder, in connection with the service to or administration of the policy or contract.

(G) 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 the policy or contract in this state.

(H) Any annuity issued by a charitable organization that is duly qualified as such under applicable provisions of the Internal Revenue Code.

(c) The benefits for which the association may become liable for life insurance and annuity policies shall in no event exceed the lesser of the following:

(1) Eighty percent of the contractual obligations for each policy or contract as modified pursuant to subparagraph (C) of paragraph (2) of subdivision (b), for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer.

(2) (A) With respect to any one life, regardless of the number of policies or contracts:

(i) Two hundred fifty thousand dollars ($250,000) in life insurance death benefits, but not more than one hundred thousand dollars ($100,000) in net cash surrender and net cash withdrawal values for life insurance.

(ii) One hundred thousand dollars ($100,000) in the present value of annuity benefits, including net cash surrender and net cash withdrawal values.

(B) However, in no event shall the association be liable to expend more than two hundred fifty thousand dollars ($250,000) in the aggregate with respect to any one individual under subparagraph (A).

(C) With respect to any one owner of multiple policies of individual life insurance, whether the policyowner is an individual, firm, corporation, or other legal entity, and whether the persons insured are officers, employees, or other persons in whose lives the policyowner has an insurable interest, five million dollars ($5,000,000) in benefits regardless of the number of the policies and contracts held by the owner.

(d) The health insurance benefits for which the association may become liable shall in no event exceed the lesser of the following:

(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.

(2) Two hundred thousand dollars ($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.

1067.03. This article shall be liberally construed to effect the purpose under Section 1067.01 which shall constitute an aid and guide to interpretation.

1067.04. As used in this article:

(a) "Account" means any of the three accounts created under Section 1067.05.

(b) "Association" means the California Life and Health Insurance Guarantee Association created pursuant to Section 1067.05.

(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 1067.02.

(e) "Covered policy" means any policy or contract within the scope of this article under Section 1067.02.

(f) "Impaired insurer" means a member insurer which, after the effective date of this article, 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) "Health insurance" means the class of insurance described as disability insurance in Section 106.

(h) "Insolvent insurer" means a member insurer which, after the effective date of this article, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

(i) "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 1067.02 and includes any insurer whose license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does not include any of the following:

(1) A fraternal benefit society.

(2) A mandatory state pooling plan.

(3) A mutual assessment company or any entity that operates on an assessment basis.

(4) An insurance exchange.

(5) A nonprofit hospital service plan.

(6) A health care service plan.

(7) A grants and annuities society holding a certificate of authority under Section 11520.

(8) Any entity similar to any of the above.

(j) "Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto.

(k) "Person" means any individual, corporation, partnership, association, or voluntary organization.

(*l*) "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 1067.02 except that assessable premium shall not be reduced on account of paragraph (2) of subdivision (c) of Section 1067.02 relating to limitations with respect to any one individual, any one participant, and any one contractholder; provided that "premiums" shall not include any premiums in excess of five million dollars ($5,000,000) with respect to multiple policies of individual life insurance issued to any one owner, whether the policyowner is an individual, firm,

corporation, or other legal entity, and whether the persons insured are officers, employees, or other persons in whose lives the policyowner has an insurable interest, regardless of the number of policies held by the owner.

(m) "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.

(n) "Supplemental contract" means any agreement entered into for the distribution of policy or contract proceeds.

(o) "Unallocated annuity contract" means any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under that contract or certificate.

1067.05. (a) There is created a nonprofit legal entity to be known as the California Life and Health Insurance Guarantee 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 1067.09 and shall exercise its powers through a board of directors established under Section 1067.06. For purposes of administration and assessment, the association shall maintain the following three accounts:

(1) The life insurance account.

(2) The annuity account.

(3) The health insurance account.

(b) The association shall come under the immediate supervision of the commissioner and shall be subject to the applicable provisions of the insurance laws of this state. Meetings or records of the association may be opened to the public upon majority vote of the board of directors of the association.

1067.06. (a) The board of directors of the association shall consist of not less than nine nor more than 13 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.

1067.07. (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, do any of the following:

(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, periodic annuity benefit payments, death benefits, supplemental benefits, and cash withdrawals 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 subparagraphs (A) and (B) apply:

(A) The laws of the state of domicile of the impaired member insurer provide that until all payments of or on account of the impaired insurer's contractual obligations by all guarantee associations, along with all expenses thereof and interest on all of those payments and expenses, shall have been repaid to the guarantee associations or a plan of repayment by the impaired insurer shall have been approved by the guarantee associations, all of the following apply:

(i) The delinquency, rehabilitation, or conservation 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) Either clause (i) or (ii) applies:

(i) The impaired insurer is a domestic insurer, and it has been placed under an order of conservation or rehabilitation by a court of competent jurisdiction in this state.

(ii) The impaired insurer is a foreign or alien insurer, and all of the following apply:

(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 conservation, 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 do those things described in paragraph (1) or in paragraph (2):

(1) (A) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed or reinsured, the policies or contracts of the insolvent insurer; or

(B) Assure payment of the contractual obligations of the insolvent insurer; and

(C) Provide those moneys, pledges, guarantees, or other means as are reasonably necessary to discharge the duties.

(2) With respect only to life and health insurance policies, provide benefits and coverages in accordance with subdivision (d).

(d) When proceeding under subparagraph (B) of paragraph (1) of subdivision (b), or paragraph (2) of subdivision (c), the association shall, with respect to only life and health insurance policies:

(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 life insurance policies, not later than the earlier of the next renewal date under the policies or contracts or 45 days, but in no event less than 30 days, after the date on which the association becomes obligated with respect to the policies.

(B) With respect to group health insurance policies, individual health insurance policies and individual life insurance policies, not later than the earlier of the next renewal date, if any, under the policies or contracts or one year, but in no event less than 30 days, from the date on which the association becomes obligated with respect to such 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 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 may offer either to reissue the terminated coverage or to issue an alternative policy and 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) When proceeding under subparagraph (B) of paragraph (1) of subdivision (b) or under subdivision (c) with respect to any policy or contract carrying guaranteed minimum interest rates, the

association shall assure the payment or crediting of a rate of interest consistent with subparagraph (C) of paragraph (2) of subdivision (b) of Section 1067.02.

(f) 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 under this article with respect to that policy or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of this article.

(g) 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 that order.

(h) The protection provided by this article shall not apply where any guarantee 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.

(i) In carrying out its duties under subdivisions (b) and (c), the association may, subject to approval by the court, do either of the following:

(1) 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 the permanent policy or contract liens, to be in the public interest.

(2) Impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value.

(j) If the association fails to act within a reasonable period of time as provided in subparagraph (B) of paragraph (1) of subdivision (b), and subdivisions (c) and (d), with respect to an impaired or insolvent insurer, the commissioner shall have the powers and duties of the association under this article with respect to the impaired or insolvent insurer.

(k) 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.

(*l*) 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. That 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.

(m) (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 provision 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 owner, beneficiary, insured, or annuitant 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.

(n) The association may do any 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 1067.08 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 an executive director and other persons necessary to handle the financial transactions of the association, and to perform other functions necessary or proper under this article provided that the executive director shall be subject to the approval of the commissioner.

(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 domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform its

obligations under this article.

(o) The association may join an organization of one or more other state associations of similar purposes, to further the purposes and administer the powers and duties of the association.

(p) There shall be no liability on the part of and no cause of action shall arise against the association or against any transferee from the association in connection with the transfer by reinsurance or otherwise of all or any part of an impaired or insolvent insurer's business by reason of any action taken or any failure to take any action by the impaired or insolvent insurer at any time.

(q) With respect to covered policies for which the association becomes obligated after an entry of an order or liquidation or rehabilitation, the association may elect to succeed to the rights of the insolvent insurer arising after the date of the order of liquidation or rehabilitation under any contract of reinsurance to which the insolvent insurer was a party, to the extent that such contract provides coverage for losses occurring after the date of the order of liquidation or rehabilitation. As a condition to making this election, the association must pay premiums for coverage relating to periods after the date of the order of liquidation or rehabilitation.

1067.08. (a) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of director shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments shall be due not more than 30 days after prior written notice to the member insurers and shall accrue interest at the rate of 10 percent per annum 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 1067.11. 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 1067.07 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 non-pro rata basis. If pro rata, the board may provide that it be credited against future class B assessments. A non-pro rata assessment shall not exceed two hundred fifty dollars ($250) 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 premiums 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 for each account shall be in the proportion that the premiums received on business in

this state by each assessed member insurer on 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 such 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 subdivision 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 that 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 assessments upon a member insurer for any account shall not in any one calendar year exceed one 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 the 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 that 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 an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that 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 any 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 and policyowner dividends as to life or annuity 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 certificate 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 date 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 as the commissioner may approve.

(i) (1) Subject to the provisions of paragraph (3), the plan of operation adopted pursuant to Section 1067.09 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 with respect to the health insurance account paid by the member insurer under this article by way of a surcharge on premiums charged for health 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 assessments paid pursuant to this section for an insolvent insurer shall remit the excess to the association as an additional assessment within 120 days after the end of the collection period as determined by the association. The excess shall be applied to reduce future health insurance account assessments for that insurer.

(3) The plan of operation may permit a member insurer to omit the collection of the surcharge from its insureds when it determines the amount of the surcharge collectible from each insured would be unreasonably small in relation to the potential confusion of or objection by the insureds even if the aggregate surcharges collectible from all insureds exceeds the expense of collection.

(j) Any statement of the amount of surcharge required to be provided by the association shall include a description of, and purpose for, the California Life and Health Insurance Guarantee Association, as follows:

"Companies writing health insurance business in California are required to participate in the California Life and Health Insurance Guarantee Association. If a company writing health insurance becomes insolvent, the California Life and Health Insurance Guarantee 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."

1067.09. (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 within 120 days following the effective date of this article 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 those reasonable rules necessary or advisable to effectuate the provisions of this article. The 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 enumerated elsewhere in 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 1067.06.

(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 the procedure whereby selections for the board of directors will be made and submitted to the commissioner.

(6) Establish any additional procedures for assessments under Section 1067.08.

(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 (n) of Section 1067.07 and Section 1067.08, 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. That 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 under this subdivision 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 by this article.

1067.10. In addition to the duties and powers enumerated elsewhere in this article:

(a) 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 no 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 the 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 or insolvent insurer may notify all interested persons of the effect of this article.

1067.11. To aid in the detection and prevention of insurer insolvencies or impairments:

(a) It shall be the duty of the commissioner to do 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 license.

(B) Suspension of license.

(C) Makes any formal order that the 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 the company may be an impaired or insolvent insurer.

(4) To furnish to the board of directors the NAIC Insurance Regulatory Information System (IRIS) ratios and listings of companies not included in the ratios developed by the National Association of Insurance Commissioners, and the board may use the information contained therein in carrying out its duties and responsibilities under this section. The report and the information contained therein shall be kept confidential by the board of directors until that time as it is made public by the commissioner or other lawful authority.

(b) The commissioner may seek the advice and recommendations 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 the 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 that the commissioner designates. The cost of the examination 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 the information that it may have in its possession bearing on the history and causes of the insolvency. The board shall cooperate with the boards of directors 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 the other associations.

(h) Reports, information, and recommendations from the board to the commissioner and from the commissioner to the board under this Section 1067.11 shall be treated as confidential and shall not be considered public documents except as otherwise specifically provided in this section or by specific action of the board or commissioner.

1067.12. (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 1067.07. Records of the 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 1067.13.

(c) For the purpose of carrying out its 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 Section 1067.07. 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, as used in this subdivision, 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 policy owners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insolvent insurer. In the 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 1067.07 with respect to the 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 the order shall have a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of 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 such 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 or she received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared, shall be liable up to the amount of distributions he or she 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.

1067.13. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner, the Governor, 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.

1067.14. 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.

1067.15. 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. The immunity shall extend to the participation in any organization of one or more other state associations of similar purposes and to that organization and its agents or employees.

1067.16. All proceedings in which the insolvent insurer is a party in any court in this state shall be stayed not less than 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 the judgment set aside by the same court that made the judgment and shall be permitted to defend against the suit on the merits.

1067.17. (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 California Life and Health Insurance Guarantee Association for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the California Life and Health Insurance Guarantee Association Act. Provided, however, that this section shall not apply to the California Life and Health Insurance Guarantee Association or any other entity which does not sell or solicit insurance.

(b) The association shall prepare a summary document describing the general purposes and current limitations of the article and complying with subdivision (c). This document shall be submitted to the commissioner for approval. Sixty days after receiving approval, no insurer may deliver a policy or contract described in paragraph (1) of subdivision (b) of Section 1067.02 to a policyholder or contractholder 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 the policyholder. The distribution, delivery, or contents or interpretation of this document shall not mean that either the policy or the contract or the holder thereof would 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 the article may require. Failure to receive this document does 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 life and health insurance guarantee association and insurance department.

(2) Prominently warn the policyholder or contractholder that the California Life and Health Insurance Guarantee 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 California Life and Health Insurance Guarantee Association for the purpose of sales, solicitation, or inducement to purchase any form of insurance.

(4) Emphasize that the policyholder or contractholder should not rely on coverage under the California Life and Health Insurance Guarantee 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 1067.02, and excluded under subparagraph (A) of paragraph (2) of subdivision (b) of Section 1067.02 from coverage under this article unless the insurer or agent, prior to or at the time of delivery, gives the policyholder or contractholder a separate written notice which clearly and conspicuously discloses that the policy or contract is not covered by the California Life and Health Insurance Guarantee Association. The commissioner shall by rule specify the form and content of the notice.

1067.18. This article shall not apply to any insurer that was declared to be insolvent or impaired, or as to which delinquency proceedings had been commenced, on or before October 1, 1990.

SEC. 1.71. Section 1067.02 of the Insurance Code, as added by Section 1.7 of this act, is amended to read:

1067.02. (a) This article shall provide coverage for the policies and contracts specified in subdivision (b) to all of the following:

(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 of this state.

(B) Are not residents, but only under all of the following conditions:

(i) The insurers that issued the policies or contracts are domiciled in this state.

(ii) The insurers never held a license or certificate of authority in the states in which the persons reside.

(iii) The states in which the persons reside have associations similar to the association created by this article.

(iv) The persons are not eligible for coverage by those

associations.

(b) (1) This article shall provide coverage to the persons specified in subdivision (a) for direct, nongroup life, health, annuity, and supplemental policies or contracts and for certificates under direct group life, health, annuity, and supplemental policies and contracts, except as limited by this article. Annuity contracts and certificates under group annuity contracts include, but are not limited to, structured settlement agreements, allocated annuity contracts, and any immediate or deferred annuity contracts, and unallocated annuity contracts except those expressly excluded pursuant to subparagraph (D) of paragraph (2) of this subdivision.

(2) This article shall not provide coverage for any of the following:

(A) Any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policyholder or contractholder.

(B) Any policy or contract of reinsurance, unless assumption certificates have been issued.

(C) Any portion of a policy or contract to the extent that the rate of interest on which it is based exceeds either or both of the following:

(i) The extent to which the rate of interest, averaged over the period of four years prior to the date on which the association becomes obligated with respect to the policy or contract, exceeds a rate of interest determined by subtracting six percentage points from Moody's Corporate Bond Yield Average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the association became obligated, not to go below a minimum of 0 percent.

(ii) The extent to which the rate of interest, on and after the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting six percentage points from Moody's Corporate Bond Yield Average as most recently available, not to go below a minimum of 3 percent.

(D) Guaranteed investment contracts, guaranteed interest contracts, funding agreements, deposit administration contracts, and all other unallocated annuity contracts; provided however, coverage may be provided for unallocated annuity contracts sold by an insurer as to which an order of liquidation, which contained a finding of insolvency and which later became final, was entered by a court of competent jurisdiction in the state of its domicile, after December 20, 1991, but prior to December 20, 1992, and sold to an employer prior to December 20, 1992, for purposes of providing the employees of the employer with deferred compensation or pension benefits and (i) the individual employees have an option to participate or not participate in the contract, and (ii) the individual employee contributes from his or her wages some portion of the funds paid into the plan provided by the contract.

(E) Any plan or program of an employer, association, or similar

entity to provide life, health, or annuity benefits to its employees or members to the extent that the plan or program is self-funded or uninsured, including, but not limited to, benefits payable by an employer, association, or similar entity under any of the following:

(i) A multiple employer welfare arrangement as defined in Section 514 of the federal 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.

(F) 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 policyholder or contractholder, in connection with the service to or administration of the policy or contract.

(G) 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 the policy or contract in this state.

(H) Any annuity issued by a charitable organization that is duly qualified as such under applicable provisions of the Internal Revenue Code, and that is not engaged in the business of insurance as its primary business.

(c) The benefits for which the association may become liable for life insurance and annuity policies shall in no event exceed the lesser of the following:

(1) Eighty percent of the contractual obligations for each policy or contract as modified pursuant to subparagraph (C) of paragraph (2) of subdivision (b), for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer.

(2) (A) With respect to any one life, regardless of the number of policies or contracts:

(i) Two hundred fifty thousand dollars ($250,000) in life insurance death benefits, but not more than one hundred thousand dollars ($100,000) in net cash surrender and net cash withdrawal values for life insurance.

(ii) One hundred thousand dollars ($100,000) in the present value of annuity benefits, including net cash surrender and net cash withdrawal values.

(B) However, in no event shall the association be liable to expend more than two hundred fifty thousand dollars ($250,000) in the aggregate with respect to any one individual under subparagraph (A).

(C) With respect to any one owner of multiple policies of individual life insurance, whether the policyowner is an individual, firm, corporation, or other legal entity, and whether the persons insured are officers, employees, or other persons in whose lives the policyowner has an insurable interest, five million dollars ($5,000,000) in benefits regardless of the number of the policies and contracts held by the owner.

(d) The health insurance benefits for which the association may become liable shall in no event exceed the lesser of the following:

(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.

(2) Two hundred thousand dollars ($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.

(e) No unallocated annuity contract that is not covered by the association may be offered to an employer after January 1, 1994, unless prior to being offered to the employer, or the participation by the employee, the insurer or agent has disclosed to the employer and employee in writing in a conspicuous manner that the contract is not covered by the association.

SEC. 1.72. Section 1067.04 of the Insurance Code, as added by Section 1.7 of this act, is amended to read:

1067.04. As used in this article:

(a) "Account" means any of the three accounts created under Section 1067.05.

(b) "Association" means the California Life and Health Insurance Guarantee Association created pursuant to Section 1067.05.

(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 1067.02.

(e) "Covered policy" means any policy or contract within the scope of this article under Section 1067.02.

(f) "Impaired insurer" means a member insurer which, after the effective date of this article, 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) "Health insurance" means the class of insurance described as disability insurance in Section 106.

(h) "Insolvent insurer" means a member insurer which, after the effective date of this article, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

(i) "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 1067.02 and includes any insurer whose license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does not include any of the following:

(1) A fraternal benefit society.

(2) A mandatory state pooling plan.

(3) A mutual assessment company or any entity that operates on an assessment basis.

(4) An insurance exchange.

(5) A nonprofit hospital service plan.

(6) A health care service plan.

(7) A grants and annuities society holding a certificate of authority under Section 11520.

(8) Any entity similar to any of the above.

(j) "Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto.

(k) "Person" means any individual, corporation, partnership, association, or voluntary organization.

(*l*) "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 1067.02 except that assessable premium shall not be reduced on account of paragraph (2) of subdivision (c) of Section 1067.02 relating to limitations with respect to any one individual, any one participant, and any one contractholder; provided that "premiums" shall not include any premiums in excess of five million dollars ($5,000,000) with respect to multiple policies of individual life insurance issued to any one owner, whether the policyowner is an individual, firm, corporation, or other legal entity, and whether the persons insured are officers, employees, or other persons in whose lives the policyowner has an insurable interest, regardless of the number of policies held by the owner.

(m) "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.

(n) "Supplemental contract" means any agreement entered into for the distribution of policy or contract proceeds.

(o) "Unallocated annuity contract" means any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under that contract or certificate and except to the extent allowed in subparagraph (D) of paragraph (2) of subdivision (b) of Section 1067.02.

SEC. 1.8. Section 1152 of the Insurance Code is amended to read:

1152. (a) Domestic incorporated stock insurers, except those governed by Sections 10530, 12373, and 12640.06, shall be governed by the provisions of this section and, if the insurer is subject to registration pursuant to Sections 1215.4 and 1215.5, as to payment or distribution of dividends to stockholders. Such insurers may make dividends only from earned surplus.

(b) No dividends shall be declared out of earned surplus derived from the mere net appreciation in the value of assets not yet realized, nor shall any dividends be declared from any part of such earned

surplus derived from an exchange of assets, unless and until such earned surplus have been realized or unless the assets received are currently realizable in cash.

(c) An insurer may declare and distribute a dividend otherwise prohibited by this section if (1) following payment of the dividend the insurer's surplus as regards policyholders is (A) reasonable in relation to its outstanding liabilities and (B) adequate to its financial needs as prescribed in Section 1215.5, and (2) the commissioner has given approval for the dividend prior to payment.

(d) For purposes of this section, "earned surplus" means unassigned funds, as required to be reported on the insurer's annual statement.

SEC. 1.9. Section 1215 of the Insurance Code is amended to read:

1215. As used in this article, the following terms shall have the respective meanings hereinafter set forth, unless the context shall otherwise require:

(a) An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(b) The term "control" includes the terms "controlling," "controlled by," and "under common control with," and means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, more than 10 percent of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact in accordance with subdivision (i) of Section 1215.4. The commissioner may, after furnishing all persons in interest notice and opportunity to be heard, determine that control exists in fact, notwithstanding the absence of a presumption to that effect.

(c) An "insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer.

(d) "Insurer" shall have the same meaning as set forth in Section 826 of this code, excluding subdivisions (e) and (f) of such section.

(e) "Person" is an individual, a corporation, a partnership, an association, a joint stock company, a business trust, an unincorporated organization, or any similar entity, or any combination thereof acting in concert.

(f) A "subsidiary" of a specified person is an affiliate controlled by such person directly, or indirectly through one or more intermediaries.

(g) "Business day" is any day other than Saturday, Sunday, and any other day that is specified or provided for as a holiday in the

Government Code.

SEC. 2. Section 1215.4 of the Insurance Code is amended to read:

1215.4. (a) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. Such exemption from registration for such foreign insurers shall not apply to any commercially domiciled insurer within this state, as provided in Section 1215.13. Any insurer which is subject to registration under this section shall register within 60 days after the effective date of this article or 15 days after it becomes subject to registration, whichever is later, unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

(b) Every insurer subject to registration shall file a registration statement on a form provided by the commissioner, which shall contain current information about the following:

(1) The capital structure, general financial condition, ownership, and management of the insurer and any person controlling such insurer;

(2) The following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its affiliates:

(i) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) Purchases, sales, or exchanges of assets;

(iii) Transactions not in the ordinary course of business;

(iv) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) All management and service contracts and all cost-sharing arrangements, other than cost-allocation arrangements based upon generally accepted accounting principles;

(vi) Reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company.

(3) Other matters as may be included in registration forms adopted by the National Association of Insurance Commissioners, to the extent required by the commissioner.

(c) No information need be disclosed on the registration statement filed pursuant to subdivision (b) of this section if such information is not material for the purposes of this article.

(1) Unless the commissioner by rule, regulation, or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments made within the immediately preceding 12 months involving, in the net aggregate, one-half of 1 percent or less of an insurer's admitted assets, or 5 percent or less of an insurer's surplus as to policyholders, determined by whichever is greater, as of the 31st day of December next preceding, shall not be deemed material for purposes of this section.

(2) Unless the commissioner by rule, regulation, or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments made within the immediately preceding 12 months involving in the net aggregate more than either 5 percent of the insurer's admitted assets or 25 percent of the insurer's surplus as to policyholders, determined by whichever is the lesser, as of the 31st day of December next preceding shall be deemed material transactions of an extraordinary type.

(d) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within 15 days after the end of the month in which it learns of each such change or addition. However, subject to this subdivision, each registered insurer shall so report all dividends and other distributions to shareholders within five business days following declaration. No dividend or other distribution to shareholders may be paid until at least 10 business days after receipt by the commissioner, at the office of the department prescribed by the commissioner by notice to all insurers, of a notice of the declaration of the dividend or other distribution. Material transactions that are of the extraordinary type, as defined in paragraph (2) of subdivision (c), shall not be consummated without prior approval of the commissioner. The commissioner shall require the payment of one thousand one hundred eighty dollars ($1,180), as a fee for the approval of the forms filed pursuant to this subdivision. The payment shall accompany the filing of the form.

(e) The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(f) The commissioner may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(g) The commissioner may allow any insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subdivision (a) of this section and to file all information and material required to be filed under this article.

(h) The provisions of this section shall not apply to any insurer, information, or transaction if and to the extent that the commissioner by rule, regulation, or order shall exempt the same from the

provisions of this section as not comprehended within the purposes of this section.

(i) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer, as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

(j) The failure to file a registration statement or any amendment thereto required by this section within the time specified for such filing shall be a violation of this article.

SEC. 3. Section 1215.5 of the Insurance Code is amended to read:

1215.5. (a) Material transactions by registered insurers with their affiliates shall be subject to each of the following standards:

(1) The terms shall be fair and reasonable;

(2) The books, accounts, and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions;

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

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

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

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

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

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

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

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

(7) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(8) The surplus as regards policyholders maintained by other, comparable insurers;

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

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

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

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

For purposes of this section, an extraordinary dividend or distribution is any dividend or distribution which, together with other dividends or distributions made within the preceding 12 months, exceeds the greater of (1) 10 percent of such insurer's surplus as regards policyholders as of the 31st day of December next preceding, or (2) the net gain from operations of such insurer, if such insurer is a life insurer or the net income, if such insurer is not a life insurer, for the 12-month period ending the 31st day of December next preceding.

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

SEC. 4. Chapter 3 (commencing with Section 3010) of Part 1 of Division 2 of the Insurance Code is repealed.

SEC. 5. Section 10530 of the Insurance Code is amended to read:

10530. (a) A domestic incorporated life insurer issuing policies on the reserve plan shall not make any dividends, except from earned surplus.

(b) No dividends shall be declared out of earned surplus derived from the mere appreciation in the value of assets not yet realized, nor shall any dividends be declared from any part of earned surplus derived from an exchange of assets, unless and until earned surplus has been realized, or unless the assets received are currently realizable in cash.

(c) An insurer may declare and distribute a dividend otherwise prohibited by this section if (1) following payment of the dividend the insurer's surplus as regards policyholders is (A) reasonable in relation to its outstanding liabilities and (B) adequate to its financial needs as prescribed in Section 1215.5, and (2) the commissioner has given approval for the dividend prior to payment.

(d) For purposes of this section, "earned surplus" means unassigned funds, as required to be reported on the insurer's annual

statement.

SEC. 6. Chapter 6.5 (commencing with Section 10550) is added to Part 2 of Division 2 of the Insurance Code, to read:

CHAPTER 6.5. RISK-BASED CAPITAL FOR LIFE INSURERS

10550. As used in this chapter, these terms shall have the following meanings:

(a) "Adjusted RBC Report" means a Risk-Based Capital (RBC) report that has been adjusted by the commissioner in accordance with subdivision (c) of Section 10552.

(b) "Corrective Order" means an order issued by the commissioner specifying corrective actions that the commissioner has determined are required.

(c) "Domestic insurer" means any life insurer organized in this state.

(d) "Foreign insurer" means any life insurer that is licensed to do business in this state but is not domiciled in this state.

(e) "NAIC" means the National Association of Insurance Commissioners.

(f) "Negative Trend" means a negative trend over a period of time, as determined in accordance with the "Trend Test Calculation" included in the RBC Instructions defined in subdivision (g).

(g) "RBC Instructions" means the RBC Report including risk-based capital instructions adopted by the NAIC, as such RBC Instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(h) "RBC Level" means an insurer's Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC, or Mandatory Control Level RBC where:

(1) "Company Action Level RBC" means, with respect to any insurer, the product of 2.0 and its Authorized Control Level RBC.

(2) "Regulatory Action Level RBC" means the product of 1.5 and its Authorized Control Level RBC.

(3) "Authorized Control Level RBC" means the number determined under the risk-based capital formula in accordance with the RBC Instructions.

(4) "Mandatory Control Level RBC" means the product of .70 and the Authorized Control Level RBC.

(i) "RBC Plan" means a comprehensive financial plan containing the elements specified in subdivision (b) of Section 10553. If the commissioner rejects the RBC Plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan shall be called the "Revised RBC Plan."

(j) "RBC Report" means the report required in Section 10552.

(k) "Total Adjusted Capital" means the sum of:

(1) An insurer's statutory capital and surplus.

(2) Such other items, if any, as the RBC Instructions may provide.

10552. (a) Every domestic insurer shall, on or prior to each March 15 (the "filing date"), prepare and submit to the commissioner a report of its RBC Levels as of the end of the calendar year just ended, in a form and containing such information as is required by the RBC Instructions. In addition, every domestic insurer shall file its RBC Report:

(1) With the NAIC in accordance with the RBC Instructions.

(2) With the insurance commissioner in any state in which the insurer is authorized to do business, if the insurance commissioner has notified the insurer of its request in writing, in which case the insurer shall file its RBC Report not later than the later of:

(A) Fifteen days from the receipt of notice to file its RBC Report with that state.

(B) The filing date.

(b) An insurer's RBC shall be determined in accordance with the formula set forth in the RBC Instructions. The formula shall take into account, and may adjust for the covariance between, the following:

(1) The risk with respect to the insurer's assets.

(2) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations.

(3) The interest rate risk with respect to the insurer's business.

(4) All other business risks and such other relevant risks as are set forth in the RBC Instructions.

In each case, these shall be determined by applying the factors in the manner set forth in the RBC Instructions.

(c) If a domestic insurer files an RBC Report that in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the RBC Report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC Report as so adjusted is referred to as an Adjusted RBC Report.

10553. (a) "Company Action Level Event" means any of the following events:

(1) The filing of an RBC Report by an insurer that indicates either of the following:

(A) The insurer's Total Adjusted Capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC.

(B) The insurer has Total Adjusted Capital that is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 2.5 and has a negative trend.

(2) The notification by the commissioner to the insurer of an Adjusted RBC Report that indicates the event in subparagraph (A) or (B) of paragraph (1), provided the insurer does not challenge the Adjusted RBC Report under Section 10557.

(3) If the insurer challenges an Adjusted RBC Report that indicates the event in subparagraph (A) or (B) of paragraph (1) under Section 10557, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the

insurer's challenge.

(b) In the event of a Company Action Level Event, the insurer shall prepare and submit to the commissioner a comprehensive financial plan which shall do all of the following:

(1) Identify the conditions in the insurer that contribute to the Company Action Level Event.

(2) Contain proposals of corrective actions that the insurer intends to take and would be expected to result in the elimination of the Company Action Level Event.

(3) Provide projections of the insurer's financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital, or surplus, or a combination. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component.

(4) Identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions.

(5) Identify the quality of, and problems associated with, the insurer's business, including, but not limited to, its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance in each case, if any.

(c) The RBC Plan shall be submitted as follows:

(1) Within 45 days of the Company Action Level Event.

(2) If the insurer challenges an Adjusted RBC Report pursuant to Section 10557, within 45 days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(d) Within 60 days after the submission by an insurer of an RBC Plan to the commissioner, the commissioner shall notify the insurer whether the RBC Plan shall be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the RBC Plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions that will render the RBC Plan satisfactory, in the judgment of the commissioner. Upon notification from the commissioner, the insurer shall prepare a Revised RBC Plan, which may incorporate by reference any revisions proposed by the commissioner, and shall submit the Revised RBC Plan to the commissioner as follows:

(1) Within 45 days after the notification from the commissioner.

(2) If the insurer challenges the notification from the commissioner under Section 10557, within 45 days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(e) In the event of a notification by the commissioner to an insurer that the insurer's RBC Plan or Revised RBC Plan is unsatisfactory, the commissioner may at the commissioner's discretion, subject to the insurer's right to a hearing under Section

10557, specify in the notification that the notification constitutes a Regulatory Action Level Event.

(f) Every domestic insurer that files an RBC Plan or Revised RBC Plan with the commissioner shall file a copy of the RBC Plan or Revised RBC Plan with the insurance commissioner in any state in which the insurer is authorized to do business if the following apply:

(1) That state has an RBC provision substantially similar to subdivision (a) of Section 10555.

(2) The insurance commissioner of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the RBC Plan or Revised RBC Plan in that state no later than the later of:

(A) Fifteen days after the receipt of notice to file a copy of its RBC Plan or Revised RBC Plan with the state.

(B) The date on which the RBC Plan or Revised RBC Plan is filed under subdivision (c) of Section 10557.

10554. (a) "Regulatory Action Level Event" means, with respect to any insurer, any of the following events:

(1) The filing of an RBC Report by the insurer that indicates that the insurer's Total Adjusted Capital is greater than or equal to its Authorized Control Level RBC but less than its Regulatory Action Level RBC.

(2) The notification by the commissioner to an insurer of an Adjusted RBC Report that indicates the event in paragraph (1), provided the insurer does not challenge the Adjusted RBC Report under Section 10557.

(3) If the insurer challenges an Adjusted RBC Report that indicates the event in paragraph (1) under Section 10557, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(4) The failure of the insurer to file an RBC Report by the filing date, unless the insurer has provided an explanation for such failure that is satisfactory to the commissioner and has cured the failure within 10 days after the filing date.

(5) The failure of the insurer to submit an RBC Plan to the commissioner within the time period set forth in subdivision (c) of Section 10553.

(6) Notification by the commissioner to the insurer of the following:

(A) The RBC Plan or revised RBC Plan submitted by the insurer is, in the judgment of the commissioner, unsatisfactory.

(B) That notification constitutes a Regulatory Action Level Event with respect to the insurer, provided the insurer has not challenged the determination under Section 10557.

(7) If the insurer challenges a determination by the commissioner under paragraph (6) pursuant to Section 10557, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected such challenge.

(8) Notification by the commissioner to the insurer that the

insurer has failed to adhere to its RBC Plan or Revised RBC Plan, but only if such failure has a substantial adverse effect on the ability of the insurer to eliminate the Regulatory Action Level Event in accordance with its RBC Plan or Revised RBC Plan and the commissioner has so stated in the notification, provided the insurer has not challenged the determination under Section 10557.

(9) If the insurer challenges a determination by the commissioner under paragraph (8) pursuant to Section 10557, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge, unless the failure of the insurer to adhere to its RBC Plan or Revised RBC Plan has no substantial adverse effect on the ability of the insurer to eliminate the Regulatory Action Level Event with respect to the insurer.

(b) In the event of a Regulatory Action Level Event the commissioner shall do all of the following:

(1) Require the insurer to prepare and submit an RBC Plan or, if applicable, a Revised RBC Plan.

(2) Perform such examination or analysis as the commissioner deems necessary of the assets, liabilities, and operations of the insurer, including a review of its RBC Plan or Revised RBC Plan.

(3) Subsequent to the examination or analysis, issue a corrective order specifying such corrective actions as the commissioner shall determine are required.

(c) In determining corrective actions, the commissioner may take into account such factors as are deemed relevant with respect to the insurer based upon the commissioner's examination or analysis of the assets, liabilities, and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the RBC Instructions. The RBC Plan or Revised RBC Plan shall be submitted as follows:

(1) Within 45 days after the occurrence of the Regulatory Action Level Event.

(2) If the insurer challenges an Adjusted RBC Report pursuant to Section 10557 and the challenge is not in the judgment of the commissioner frivolous, within 45 days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(3) If the insurer challenges a Revised RBC Plan under Section 10557, within 45 days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(d) The commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the commissioner to review the insurer's RBC Plan or Revised RBC Plan, examine or analyze the assets, liabilities, and operations of the insurer and formulate the Corrective Order with respect to the insurer. The fees, costs, and expenses relating to consultants shall be borne by the affected insurer or such other party as directed by the commissioner.

10555. (a) "Authorized Control Level Event" means any of the

following events:

(1) The filing of an RBC Report by the insurer that indicates that the insurer's Total Adjusted Capital is greater than or equal to its Mandatory Control Level RBC but less than its Authorized Control Level RBC.

(2) The notification by the commissioner to the insurer of an Adjusted RBC Report that indicates the event in paragraph (1), provided the insurer does not challenge the Adjusted RBC Report under Section 10557.

(3) If the insurer challenges an Adjusted RBC Report that indicates the event in paragraph (1) under Section 10557, notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(4) The failure of the insurer to respond, in a manner satisfactory to the commissioner, to a Corrective Order, provided the insurer has not challenged the Corrective Order under Section 10557.

(5) If the insurer has challenged a Corrective Order under Section 10557 and the commissioner has, after a hearing, rejected the challenge or modified the Corrective Order, the failure of the insurer to respond, in a manner satisfactory to the commissioner, to the Corrective Order subsequent to rejection or modification by the commissioner.

(b) In the event of an Authorized Control Level Event with respect to an insurer, the commissioner shall do the following:

(1) Take such actions as are required under Section 10557 regarding an insurer with respect to which a Regulatory Action Level Event has occurred.

(2) If the commissioner deems it to be in the best interests of the policyholders and creditors of the insurer and of the public, take such actions as are necessary to cause the insurer to be placed under regulatory control under Article 14 (commencing with Section 1010), Article 14.3 (commencing with Section 1064.1), Article 14.5 (commencing with Section 1065.1), and Article 15.5 (commencing with Section 1077). In the event the commissioner takes such actions, the Authorized Control Level Event shall be deemed sufficient grounds for the commissioner to take that action, and the commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in those provisions. In the event the commissioner takes actions under this paragraph pursuant to an Adjusted RBC Report, the insurer shall be entitled to such protections as are afforded to insurers under the provisions pertaining to summary proceedings.

10556. (a) "Mandatory Control Level Event" means any of the following events:

(1) The filing of an RBC Report that indicates that the insurer's Total Adjusted Capital is less than its Mandatory Control Level RBC.

(2) Notification by the commissioner to the insurer of an Adjusted RBC Report that indicates the event in paragraph (1), provided the insurer does not challenge the Adjusted RBC Report under Section

10557.

(3) If the insurer challenges an Adjusted RBC Report that indicates the event in paragraph (1) under Section 10557, notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(b) In the event of a Mandatory Control Level Event, the commissioner shall take actions as are necessary to cause the insurer to be placed under regulatory control under Article 14 (commencing with Section 1010), Article 14.3 (commencing with Section 1064.1), Article 14.5 (commencing with Section 1065.1), and Article 15.5 (commencing with Section 1077). In that event, the Mandatory Control Level Event shall be deemed sufficient grounds for the commissioner to take action under those acts, and the commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth therein. In the event the commissioner takes actions pursuant to an Adjusted RBC Report, the insurer shall be entitled to such protections as are afforded to insurers under those provisions. Notwithstanding any of the foregoing, the commissioner may forego action for up to 90 days after the Mandatory Control Level Event if he or she finds there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the 90-day period.

10557. Upon any of the events described in subdivision (a), (b), (c), or (d), the insurer shall have the right to a departmental hearing, on the record, at which the insurer may challenge any determination or action by the commissioner. The insurer shall notify the commissioner of its request for a hearing within five days after the notification by the commissioner under subdivision (a), (b), (c), or (d). Upon receipt of the insurer's request for a hearing, the commissioner shall set a date for the hearing, which date shall be no less than 10 nor more than 30 days after the date of the insurer's request.

(a) Notification to an insurer by the commissioner of an Adjusted RBC Report.

(b) Notification to an insurer by the commissioner that:

(1) The insurer's RBC Plan or Revised RBC Plan is unsatisfactory.

(2) Such notification constitutes a Regulatory Action Level Event with respect to such insurer.

(c) Notification to any insurer by the commissioner that the insurer has failed to adhere to its RBC Plan or Revised RBC Plan and that such failure has a substantial adverse effect on the ability of the insurer to eliminate the Company Action Level Event with respect to the insurer in accordance with its RBC Plan or Revised RBC Plan.

(d) Notification to an insurer by the commissioner of a Corrective Order with respect to the insurer.

10558. (a) All RBC Reports, to the extent the information therein is not required to be set forth in a publicly available annual statement schedule, and RBC Plans, including the results or report of any examination or analysis of an insurer performed pursuant hereto, and any Corrective Order issued by the commissioner

pursuant to examination or analysis, with respect to any domestic insurer or foreign insurer, that are filed with the commissioner constitute information that might be damaging to the insurer if made available to its competitors, and therefore shall be kept confidential by the commissioner. This information shall not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner pursuant to this chapter or any other provision of the insurance laws of this state.

(b) It is the judgment of the Legislature that the comparison of an insurer's Total Adjusted Capital to any of its RBC Levels is a regulatory tool that may indicate the need for possible corrective action with respect to the insurer, and is not intended as a means to rank insurers generally. Therefore, except as otherwise required under the provisions of this chapter, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the RBC Levels of any insurer, or of any component derived in the calculation, by any insurer, agent, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided, however, that if any materially false statement with respect to the comparison regarding an insurer's Total Adjusted Capital to its RBC Levels (or any of them) or an inappropriate comparison of any other amount to the insurers' RBC Levels is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

10559. The provisions of this chapter are supplemental to any other provisions of the laws of this state, and shall not preclude or limit any other powers or duties of the commissioner under such laws.

10560. (a) Any foreign insurer shall, upon the written request of the commissioner, submit to the commissioner an RBC Report as of the end of the calendar year just ended the later of:

(1) The date an RBC Report would be required to be filed by a domestic insurer under this chapter.

(2) Fifteen days after the request is received by the foreign insurer.

Any foreign insurer shall, at the written request of the commissioner, promptly submit to the commissioner a copy of any RBC Plan that is filed with the insurance commissioner of any other

state.

(b) In the event of a Company Action Level Event or Regulatory Action Level Event with respect to any foreign insurer as determined under the RBC statute applicable in the state of domicile of the insurer, or, if no RBC provision is in force in that state, under the provisions of this chapter, if the insurance commissioner of the state of domicile of the foreign insurer fails to require the foreign insurer to file an RBC Plan in the manner specified under the RBC statute, or, if no RBC provision is in force in the state, under Section 10553, the commissioner may require the foreign insurer to file an RBC Plan with the commissioner. In such event, the failure of the foreign insurer to file an RBC Plan with the commissioner shall be grounds to order the insurer to cease and desist from writing new insurance business in this state.

(c) In the event of a Mandatory Control Level Event with respect to any foreign insurer, if no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer, the commissioner may make application to the superior with respect to the liquidation of property of foreign insurers found in this state, and the occurrence of the Mandatory Control Level Event shall be considered adequate grounds for the application.

10561. If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect the provisions or applications of this chapter that can be given effect without the invalid provision or application, and to that end the provisions of this chapter are severable.

10562. All notices by the commissioner to an insurer that may result in regulatory action hereunder shall be effective upon dispatch if transmitted by registered or certified mail, or in the case of any other transmission shall be effective upon the insurer's receipt of such notice.

10563. For RBC Reports required to be filed with respect to 1993, the following requirements shall apply in lieu of the provisions of Section 10553:

(a) In the event of a Company Action Level Event with respect to a domestic insurer, the commissioner shall take no regulatory action hereunder.

(b) In the event of an Regulatory Action Level Event under paragraph (1), (2), or (3) of subdivision (a) of Section 10554, the commissioner shall take the actions required under Section 10553.

(c) In the event of an Regulatory Action Level Event under paragraph (4), (5), (6), (7), (8), or (9) of subdivision (a) of Section 10554 or an Authorized Control Level Event, the commissioner shall take the actions required under Section 10554 with respect to the insurer.

(d) In the event of a Mandatory Control Level Event with respect to an insurer, the commissioner shall take the actions required under Section 10555 with respect to the insurer.

SEC. 7. Section 12380 of the Insurance Code is amended to read:

12380. Unless the provision or context otherwise requires, the following definitions govern the construction of this article:

(a) "Total charges for policies of title insurance" means (i) the total of fees and charges as shown on policies, as required by Section 12412, less any amount paid for coinsurance of such policy to any coinsuring title insurer and (ii) the total sum charged by any coinsuring title insurer for acting as a coinsurer in respect to any policy of title insurance.

(b) "Ceding company" means a title insurer which shall have purchased a policy or contract of reinsurance from a reinsuring company.

(c) "Reinsuring company" means a title insurer which shall have sold a policy or contract of reinsurance to a ceding company.

(d) "Unearned premium reserve" means that reserve that is generally known as the statutory premium reserve.

SEC. 8. Section 12382.2 of the Insurance Code is amended to read:

12382.2. (a) Out of total charges for policies of title insurance, a title insurer shall add to and set aside in its unearned premium reserve commencing as of January 1, 1965, an amount equal to 2 percent of those total charges for policies of title insurance, which amount shall be deemed and shall constitute the unearned premiums due or received from all such policies or contracts. Except as otherwise provided in Section 12382.6, if any policy of title insurance shall be reinsured, the reinsuring company shall be required to set aside in its unearned premium reserve only that portion, if any, of that 2 percent as shall have not theretofore been set aside by the ceding company. This subdivision shall apply to policies issued and reinsured prior to January 1, 1988.

(b) Out of total charges for policies of title insurance, a title insurer shall add to and set aside in its unearned premium reserve, an amount equal to 2½ percent of those total charges for policies of title insurance, which amount shall be deemed and shall constitute the unearned premiums due or received from all such policies or contracts. Except as otherwise provided in Section 12382.6, if any policy of title insurance shall be reinsured, the reinsurer shall be required to set aside in its unearned premium reserve only that portion, if any, of the 2½ percent as shall have not theretofore been set aside by the ceding company. This subdivision shall apply to policies issued and reinsured on and after January 1, 1988, and prior to January 1, 1994.

(c) Commencing January 1, 1994, a title insurer shall add to and set aside in its unearned premium reserve an amount equal to 4½ percent of the sum of the following items, for all jurisdictions where the title insurer operates, set forth in the title insurer's annual statement filed in this state:

(1) "Direct premiums written" as set forth in Schedule T.

(2) "Other income" as set forth in Schedule T.

(3) "Premiums written during year - reinsurance assumed" less "Premiums for reinsurance ceded during year."

(d) The insurer shall calculate an adjusted unearned premium reserve as of December 31, 1993. The adjusted unearned premium reserve shall be calculated as if subdivision (c) of this section and subdivision (c) of Section 12382.5 had been in effect for all years beginning on or after January 1, 1974. For purposes of this calculation, the balance of the unearned premium reserve as of December 31, 1973, shall be deemed to be zero. If the adjusted unearned premium reserve so calculated exceeds the aggregate amount set aside for unearned premiums in the insurer's December 31, 1993, Annual Statement (Form 9), the insurer shall increase its unearned premium reserve by an amount that is not less than one-sixth of that excess in each of the succeeding six years, commencing no later than the year beginning January 1, 1994, until the entire excess has been added.

SEC. 9. Section 12382.5 of the Insurance Code is amended to read:

12382.5. (a) The aggregate of the amounts set aside in unearned premium reserve in any calendar year pursuant to subdivision (a) of Section 12382.2 shall be released from that reserve and restored to net profits pursuant to the following formula: one-tenth of that aggregate sum on July 1 of each of the five years next succeeding the year of addition to the reserve and one-thirtieth of that aggregate sum on July 1 of each succeeding year thereafter until the entire sum shall have been so released and restored to net profits. The aggregate of the amounts set aside in unearned premium reserve pursuant to subdivision (a) of Section 12382 shall be released from the reserve and restored to net profits and surplus pursuant to the foregoing formula, provided that the amounts so set aside shall be treated as if subdivision (a) of Section 12382 and this section had been effective during the calendar years 1962, 1963, and 1964.

(b) The aggregate of the amounts set aside in unearned premium reserve in any calendar year pursuant to subdivision (b) of Section 12382.2 shall be released from the reserve and restored to net profits pursuant to the following formula: one-tenth of the aggregate sum on July 1 of each of the 10 years next succeeding the year of addition to the reserve until the entire sum shall have been so released and restored to net profits.

(c) The aggregate of the amounts set aside in unearned premium reserve in any calendar year pursuant to subdivision (c) of Section 12382.2 shall be released from the reserve and restored to net profits over a period of 20 years pursuant to the following formula: 10 percent of the aggregate sum on July 1 of each of the five years next succeeding the year of addition; 9 percent of the aggregate sum on July 1 of each of the next succeeding five years; and one-half of 1 percent of the aggregate sum on July 1 of each of the last 10 years.

(d) The aggregate of the amounts set aside in unearned premium reserve in any calendar year as adjustments to the insurer's unearned

premium reserve pursuant to subdivision (d) of Section 12382.2 shall be released from the reserve and restored to net profits, or equity if the additions required by subdivision (d) of Section 12382.2 reduced equity directly, over a period not exceeding 10 years pursuant to the following table:

Year of addition	Release
1994	Equally over 10 years
1995	Equally over 9 years
1996	Equally over 8 years
1997	Equally over 7 years
1998	Equally over 6 years
1999	Equally over 5 years

SEC. 10. Section 12465 of the Insurance Code is repealed.

SEC. 11. Section 1.71 of this bill incorporates changes to Section 1067.02 of the Insurance Code proposed by both this bill and SB 435. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) SB 435 amends Section 1067.02 of the Insurance Code and this bill repeals and adds Section 1067.02 of the Insurance Code, and (3) this bill is enacted after SB 435, in which case Section 1067.02 of the Insurance Code, as amended by Section 1.71 shall supersede Section 1067.02 as added by Section 1.7.

SEC. 9. Section 1.72 of this bill incorporates changes to Section 1067.04 of the Insurance Code proposed by both this bill and SB 435. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) SB 435 amends Section 1067.04 of the Insurance Code and this bill repeals and adds Section 1067.04 of the Insurance Code, and (3) this bill is enacted after SB 435, in which case Section 1067.04 of the Insurance Code, as amended by Section 1.72 shall supersede Section 1067.04 as added by Section 1.7.

CHAPTER 975

An act to amend Sections 1067.02, 1067.04, and 1067.18 of the Insurance Code, relating to insurance.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 1067.02 of the Insurance Code is amended to read:

1067.02. (a) This article shall provide coverage for the policies and contracts specified in subdivision (b) to the following:

(1) 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 of this state.

(B) Are not residents, but only under all of the following conditions:

(i) The insurers that issued the policies or contracts are domiciled in this state.

(ii) The insurers never held a license or certificate of authority in the states in which the persons reside.

(iii) The states in which the persons reside have associations similar to the association created by this article.

(iv) The persons are not eligible for coverage by those associations.

(b) (1) This article shall provide coverage to the persons specified in subdivision (a) for direct, nongroup life, annuity, and supplemental policies or contracts and for certificates under direct group policies and contracts, except as limited by this article. Annuity contracts and certificates under group annuity contracts include, but are not limited to, structured settlement agreements, allocated annuity contracts, any immediate or deferred annuity contracts, and unallocated annuity contracts except those expressly excluded pursuant to subparagraph (D) of paragraph (2) of this subdivision.

(2) This article shall not provide coverage for any of the following:

(A) Any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policyholder or contractholder.

(B) Any policy or contract of reinsurance, unless assumption certificates have been issued.

(C) Any portion of a policy or contract to the extent that the rate of interest on which it is based exceeds either or both of the following:

(i) The extent to which the rate of interest, averaged over the period of four years prior to the date on which the association becomes obligated with respect to the policy or contract, exceeds a rate of interest determined by subtracting six percentage points from Moody's Corporate Bond Yield Average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the association became obligated.

(ii) The extent to which the rate of interest, on and after the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting six percentage points from Moody's Corporate Bond Yield Average as most recently available, not to go below a minimum of three percentage points.

(D) Guaranteed investment contracts, guaranteed interest contracts, funding agreements, deposit administration contracts, and all other unallocated annuity contracts; provided however, coverage may be provided for unallocated annuity contracts sold by an insurer as to which an order of liquidation, which contained a finding of insolvency and which later became final, was entered by a court of competent jurisdiction in the state of its domicile, after December 20, 1991, but prior to December 20, 1992, and sold to an employer prior to December 20, 1992, for purposes of providing the employees of the employer with deferred compensation or pension benefits and (i) the individual employees have an option to participate or not participate in the contract, and (ii) the individual employee contributes from his or her wages some portion of the funds paid into the plan provided by the contract.

(E) Any plan or program of an employer, association, or similar entity to provide life or annuity benefits to its employees or members to the extent that the plan or program is self-funded or uninsured, including, but not limited to, benefits payable by an employer, association, or similar entity under any of 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.

(F) 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 policyholder or contractholder, in connection with the service to or administration of the policy or contract.

(G) 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 the policy or contract in this state.

(H) Any annuity issued by a charitable organization that is duly qualified as such under applicable provisions of the Internal Revenue Code.

(c) The benefits for which the association may become liable shall in no event exceed the lesser of the following:

(1) Eighty percent of the contractual obligations, as modified pursuant to subparagraph (C) of paragraph (2) of subdivision (b), the 80 percent of the contractual obligations measured on the basis of any one life, each individual participant, or any one owner in accordance with the provisions of subparagraphs (A), (B), and (C) of paragraph (2), for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer.

(2) (A) With respect to any one life, regardless of the number of policies or contracts:

(i) Two hundred fifty thousand dollars ($250,000) in life insurance death benefits, but not more than one hundred thousand dollars

($100,000) in net cash surrender and net cash withdrawal values for life insurance.

(ii) One hundred thousand dollars ($100,000) in the present value of annuity benefits, including net cash surrender and net cash withdrawal values.

(B) However, in no event shall the association be liable to expend more than two hundred fifty thousand dollars ($250,000) in the aggregate with respect to any one individual under subparagraph (A).

(C) With respect to any one owner of those policies or contracts, whether the policyowner is an individual, firm, corporation, or other legal entity, five million dollars ($5,000,000) in benefits, irrespective of the number of the policies and contracts held by the owner.

(d) No unallocated annuity contract that is not covered by the association may be offered to an employer after January 1, 1994, unless prior to being offered to the employer, or the participation by the employee, the insurer or agent has disclosed to the employer and employee in writing in a conspicuous manner that the contract is not covered by the association.

SEC. 1.5. Section 1067.02 of the Insurance Code, as added by Section 1.7 of Senate Bill 482, is amended to read:

1067.02. (a) This article shall provide coverage for the policies and contracts specified in subdivision (b) to all of the following:

(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 of this state.

(B) Are not residents, but only under all of the following conditions:

(i) The insurers that issued the policies or contracts are domiciled in this state.

(ii) The insurers never held a license or certificate of authority in the states in which the persons reside.

(iii) The states in which the persons reside have associations similar to the association created by this article.

(iv) The persons are not eligible for coverage by those associations.

(b) (1) This article shall provide coverage to the persons specified in subdivision (a) for direct, nongroup life, health, annuity, and supplemental policies or contracts and for certificates under direct group life, health, annuity, and supplemental policies and contracts, except as limited by this article. Annuity contracts and certificates under group annuity contracts include, but are not limited to, structured settlement agreements, allocated annuity contracts, and any immediate or deferred annuity contracts, and unallocated annuity contracts except those expressly excluded

pursuant to subparagraph (D) of paragraph (2) of this subdivision.

(2) This article shall not provide coverage for any of the following:

(A) Any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policyholder or contractholder.

(B) Any policy or contract of reinsurance, unless assumption certificates have been issued.

(C) Any portion of a policy or contract to the extent that the rate of interest on which it is based exceeds either or both of the following:

(i) The extent to which the rate of interest, averaged over the period of four years prior to the date on which the association becomes obligated with respect to the policy or contract, exceeds a rate of interest determined by subtracting six percentage points from Moody's Corporate Bond Yield Average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the association became obligated, not to go below a minimum of 0 percent.

(ii) The extent to which the rate of interest, on and after the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting six percentage points from Moody's Corporate Bond Yield Average as most recently available, not to go below a minimum of 3 percent.

(D) Guaranteed investment contracts, guaranteed interest contracts, funding agreements, deposit administration contracts, and all other unallocated annuity contracts; provided however, coverage may be provided for unallocated annuity contracts sold by an insurer as to which an order of liquidation, which contained a finding of insolvency and which later became final, was entered by a court of competent jurisdiction in the state of its domicile, after December 20, 1991, but prior to December 20, 1992, and sold to an employer prior to December 20, 1992, for purposes of providing the employees of the employer with deferred compensation or pension benefits and (i) the individual employees have an option to participate or not participate in the contract, and (ii) the individual employee contributes from his or her wages some portion of the funds paid into the plan provided by the contract.

(E) Any plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent that the plan or program is self-funded or uninsured, including, but not limited to, benefits payable by an employer, association, or similar entity under any of the following:

(i) A multiple employer welfare arrangement as defined in Section 514 of the federal 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.

(F) 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 policyholder or contractholder, in connection with the service to or administration of the policy or contract.

(G) 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 the policy or contract in this state.

(H) Any annuity issued by a charitable organization that is duly qualified as such under applicable provisions of the Internal Revenue Code, and that is not engaged in the business of insurance as its primary business.

(c) The benefits for which the association may become liable for life insurance and annuity policies shall in no event exceed the lesser of the following:

(1) Eighty percent of the contractual obligations for each policy or contract as modified pursuant to subparagraph (C) of paragraph (2) of subdivision (b), for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer.

(2) (A) With respect to any one life, regardless of the number of policies or contracts:

(i) Two hundred fifty thousand dollars ($250,000) in life insurance death benefits, but not more than one hundred thousand dollars ($100,000) in net cash surrender and net cash withdrawal values for life insurance.

(ii) One hundred thousand dollars ($100,000) in the present value of annuity benefits, including net cash surrender and net cash withdrawal values.

(B) However, in no event shall the association be liable to expend more than two hundred fifty thousand dollars ($250,000) in the aggregate with respect to any one individual under subparagraph (A).

(C) With respect to any one owner of multiple policies of individual life insurance, whether the policyowner is an individual, firm, corporation, or other legal entity, and whether the persons insured are officers, employees, or other persons in whose lives the policyowner has an insurable interest, five million dollars ($5,000,000) in benefits regardless of the number of the policies and contracts held by the owner.

(d) The health insurance benefits for which the association may become liable shall in no event exceed the lesser of the following:

(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.

(2) Two hundred thousand dollars ($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.

(e) No unallocated annuity contract that is not covered by the association may be offered to an employer after January 1, 1994,

unless prior to being offered to the employer, or the participation by the employee, the insurer or agent has disclosed to the employer and employee in writing in a conspicuous manner that the contract is not covered by the association.

SEC. 2. Section 1067.04 of the Insurance Code is amended to read:

1067.04. As used in this article:

(a) "Account" means either of the two accounts created under Section 1067.05.

(b) "Association" means the California Life Insurance Guaranty Association created under Section 1067.05.

(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 1067.02.

(e) "Covered policy" means any policy or contract within the scope of this article under Section 1067.02.

(f) "Impaired insurer" means a member insurer which, after the effective date of this article, 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 the effective date of this article, 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 1067.02 and includes any insurer whose license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does not include any of the following:

(1) A fraternal benefit society.

(2) A mandatory state pooling plan.

(3) A mutual assessment company or any entity that operates on an assessment basis.

(4) An insurance exchange.

(5) A grants and annuities society holding a certificate of authority under Section 11520.

(6) Any entity similar to any of the above.

(i) "Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto.

(j) "Person" means any individual, corporation, partnership, association, or voluntary organization.

(k) "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 1067.02 except that assessable premium shall not be reduced on account of paragraph (2) of subdivision (c) of Section 1067.02 relating to limitations with respect to any one individual, any one participant, and any one contractholder; provided that "premiums" shall not include any premiums in excess of five million dollars ($5,000,000) with respect to policies and contracts issued to any one owner, whether the policy owner is an individual, firm, corporation, or other legal entity, irrespective of the number of policies and contracts held by the owner.

(*l*) "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.

(m) "Supplemental contract" means any agreement entered into for the distribution of policy or contract proceeds.

(n) "Unallocated annuity contract" means any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under that contract or certificate, and except to the extent allowed in subparagraph (D) of paragraph (2) of subdivision (b) of Section 1067.02.

SEC. 2.5. Section 1067.04 of the Insurance Code, as added by Section 1.7 of Senate Bill 482, is amended to read:

1067.04. As used in this article:

(a) "Account" means any of the three accounts created under Section 1067.05.

(b) "Association" means the California Life and Health Insurance Guarantee Association created pursuant to Section 1067.05.

(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 1067.02.

(e) "Covered policy" means any policy or contract within the scope of this article under Section 1067.02.

(f) "Impaired insurer" means a member insurer which, after the effective date of this article, 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) "Health insurance" means the class of insurance described as disability insurance in Section 106.

(h) "Insolvent insurer" means a member insurer which, after the effective date of this article, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

(i) "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 1067.02 and includes

any insurer whose license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does not include any of the following:

(1) A fraternal benefit society.

(2) A mandatory state pooling plan.

(3) A mutual assessment company or any entity that operates on an assessment basis.

(4) An insurance exchange.

(5) A nonprofit hospital service plan.

(6) A health care service plan.

(7) A grants and annuities society holding a certificate of authority under Section 11520.

(8) Any entity similar to any of the above.

(j) "Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto.

(k) "Person" means any individual, corporation, partnership, association, or voluntary organization.

(*l*) "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 1067.02 except that assessable premium shall not be reduced on account of paragraph (2) of subdivision (c) of Section 1067.02 relating to limitations with respect to any one individual, any one participant, and any one contractholder; provided that "premiums" shall not include any premiums in excess of five million dollars ($5,000,000) with respect to multiple policies of individual life insurance issued to any one owner, whether the policyowner is an individual, firm, corporation, or other legal entity, and whether the persons insured are officers, employees, or other persons in whose lives the policyowner has an insurable interest, regardless of the number of policies held by the owner.

(m) "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.

(n) "Supplemental contract" means any agreement entered into for the distribution of policy or contract proceeds.

(o) "Unallocated annuity contract" means any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under that contract or certificate, and except to the extent allowed in subparagraph (D) of paragraph (2) of subdivision (b) of Section 1067.02.

SEC. 3. Section 1067.18 of the Insurance Code is amended to

read:

1067.18. This article shall not apply to any insurer that was declared to be insolvent or impaired, or as to which delinquency proceedings had been commenced, on or before October 1, 1990.

SEC. 4. The amendments to Sections 1067.02 and 1067.04 of the Insurance Code shall apply to any contract which was in force at the time of, and issued by, an insurer which was not subject to conservation or liquidation proceedings at the time of the effective date of the California Life Insurance Guaranty Association Act. However, Sections 1067.02 and 1067.04 of the Insurance Code, as amended by this act, shall also apply to contracts issued by any foreign insurer that was declared by a court of competent jurisdiction after October 1, 1990, but before January 1, 1991, to be insolvent or impaired.

SEC. 5. Section 1.5 of this bill incorporates changes to Section 1067.02 of the Insurance Code proposed by both this bill and SB 482. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) SB 482 repeals and adds Section 1067.02 to the Insurance Code and this bill amends Section 1067.02 of the Insurance Code, and (3) this bill is enacted after SB 482, in which case Section 1 of this bill shall not become operative.

SEC. 6. Section 2.5 of this bill incorporates changes to Section 1067.04 of the Insurance Code proposed by both this bill and SB 482. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) SB 482 repeals and adds Section 1067.04 to the Insurance Code and this bill amends Section 1067.04 of the Insurance Code, and (3) this bill is enacted after SB 482, in which case Section 2 of this bill shall not become operative.

CHAPTER 976

An act to amend Section 14672.15 of, and to add Section 14673.8 to, the Government Code, relating to public parks.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 14672.15 of the Government Code is amended to read:

14672.15. (a) Notwithstanding Section 14670, the Director of General Services, with the consent of the Department of Corrections, upon any terms and conditions as the director deems in the best interests of the state and without any monetary consideration, may let to the City of Chino real property not to

exceed 140 acres which belongs to the state and which is retained by the state primarily to provide a peripheral buffer area, or zone, between real property upon which is located the California Institution for Men and adjacent real property. The initial term of the lease authorized by this section shall expire not later than 25 years from the effective date of the amendments made to this section by Senate Bill No. 154 of the 1993–94 Regular Session of the Legislature provided that the lease may be renewed by the City of Chino for an additional term not to exceed 20 years. Permitted uses under the lease shall be for the development and maintenance of public park and recreational improvements and facilities, and shall include commercial enterprises which are incidental to or consistent with public park or recreational uses. The lease shall be nonassignable provided that the city shall have the right to sublease a portion or all of the premises for uses consistent with those permitted in the lease. The lease shall be subject to periodic review after the fifth anniversary of the lease. This review shall be made by the Director of General Services who shall ascertain whether the original purposes of the lease are being carried out. In the event the City of Chino subleases a portion of the premises, the review shall be conducted separately for the subleased portion of the premises, and in no event shall a default of a sublease with respect to one portion of the premises result in a termination of the lease with respect to any portion of the premises as to which the default does not exist.

(b) Notwithstanding Section 14670, the Director of General Services, with the consent of the Department of Corrections, upon any terms and conditions as the director deems in the best interest of the state and without any monetary consideration, may let to the City of Chino, for the purpose of expanding the park described in subdivision (a), real property that belongs to the state.

The real property may consist of up to 30 acres of land located in proximity to the California Department of Forestry and Fire Protection, Camp Prado.

SEC. 2. Section 14673.8 is added to the Government Code, to read:

14673.8. (a) The Director of General Services, with the concurrence of the Director of Parks and Recreation, may convey to, exchange, or lease for a term of longer than five years, with the City of Los Angeles, at less than fair market value, approximately 28 acres of property known as Pan Pacific Park, located in the City of Los Angeles. The city shall develop, maintain, operate, and preserve the park for the use and recreation of the public and shall succeed to the interests of the state in any contracts relating to the operation and maintenance of the park.

(b) The deed or other instrument of transfer shall provide that the property shall be used only for public park and recreation purposes, and if this condition is violated, the state shall have the right to reenter and take possession of the property, and, upon that reentry, title thereto shall revert to the State of California. The deed

or other instrument of transfer shall further provide for the property to revert to the state if, within a period not to exceed 10 years from the date of transfer, the property is not developed to provide for public recreational use and enjoyment. The Director of General Services may provide additional terms and conditions which he or she determines to be in the best interest of the state.

(c) Any costs incurred by the Department of General Services in administering the conveyance or exchange authorized in subdivision (a) shall be paid by the joint powers agency or entity receiving the property.

(d) A condition of state conveyance shall be a cooperative agreement between the City of Los Angeles and the County of Los Angeles that shall become effective upon the transfer or lease of the park and shall contain a provision making the transfer or lease subject to a right in the County of Los Angeles to place and operate a museum on the property. The agreement shall provide that the location, size, and shape of the museum as well as other park development projects proposed by the city shall be subject to the site plan diagram in the 1992 Pan Pacific Auditorium Site Development Plan or other mutual agreement of the City of Los Angeles and the County of Los Angeles. The exercise of the right by the County of Los Angeles to place and operate a museum shall be conditioned on the county's commitment of sufficient funds for construction and operation of the museum.

(e) The 1978 Operating Agreement between the state and the County of Los Angeles shall be terminated by operation of law upon the transfer or lease of the park to the City of Los Angeles.

SEC. 3. The Legislature hereby finds and declares that the conveyance or exchange of property authorized by this act serves a broad public benefit by allowing for the development of a public park and recreation area under administration and management of the City of Los Angeles.

CHAPTER 977

An act to amend and repeal Section 6355 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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 1042 of the Statutes of 1990, 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 that 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) (1) 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.

(2) The board shall adjust the one thousand dollar ($1,000) amount specified in paragraph (1) as follows:

(A) On or before September 1, 1994, and on or before each September 1 of each year thereafter, the board shall multiply the amount applicable for the current calendar year by the inflation factor adjustment determined by the Franchise Tax Board pursuant to subdivision (h) of Section 17041, the resulting amount to be the applicable amount for the succeeding calendar year. The applicable amount shall be operative as an adjustment of the amount specified in paragraph (1) only when the applicable amount computed is equal to or exceeds a new operative threshold, as defined in subparagraph (C).

(B) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (C), the resulting applicable amount, rounded to the nearest multiple of five hundred dollars ($500), shall be operative for purposes of paragraph (1) beginning January 1 of the succeeding calendar year.

(C) For purposes of this paragraph, "operative threshold" means an amount that exceeds by at least five hundred dollars ($500), the greater of either the amount specified in paragraph (1) or the amount computed pursuant to subparagraphs (A) and (B) as the operative adjustment to the amount specified in paragraph (1).

(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.

SEC. 2. Section 6355 of the Revenue and Taxation Code, as added by Section 3 of Chapter 1042 of the Statutes of 1990, is repealed.

SEC. 3. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 978

An act to amend Sections 2105, 2250, and 3611 of, and to add Section 1419.5 to, the Probate Code, relating to guardians and conservators.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 1419.5 is added to the Probate Code, to read:

1419.5. "Custodial parent" means the parent who either (a) has been awarded sole legal and physical custody of the child in another proceeding, or (b) with whom the child resides if there is currently no operative custody order. If the child resides with both parents, then they are jointly the custodial parent.

SEC. 2. Section 2105 of the Probate Code is amended to read:

2105. (a) The court, in its discretion, may appoint for a ward or conservatee:

(1) Two or more joint guardians or conservators of the person.

(2) Two or more joint guardians or conservators of the estate.

(3) Two or more joint guardians or conservators of the person and estate.

(b) When joint guardians or conservators are appointed, each shall qualify in the same manner as a sole guardian or conservator.

(c) Subject to subdivisions (d) and (e):

(1) Where there are two guardians or conservators, both must concur to exercise a power.

(2) Where there are more than two guardians or conservators, a majority must concur to exercise a power.

(d) If one of the joint guardians or conservators dies or is removed or resigns, the powers and duties continue in the remaining joint guardians or conservators until further appointment is made by the court.

(e) Where joint guardians or conservators have been appointed and one or more are (1) absent from the state and unable to act, (2) otherwise unable to act, or (3) legally disqualified from serving, the court may, by order made with or without notice, authorize the remaining joint guardians or conservators to act as to all matters embraced within its order.

(f) If a custodial parent has been diagnosed as having a terminal

condition, as evidenced by a declaration executed by a licensed physician, the court, in its discretion, may appoint the custodial parent and a person nominated by the custodial parent as joint guardians of the person of the minor. However, such an appointment shall not be made over the objection of a noncustodial parent without a finding that the noncustodial parent's custody would be detrimental to the minor, as provided in Section 3041 of the Family Code.

"Terminal condition," for purposes of this subdivision, means an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, within reasonable medical judgment, result in death within two years.

SEC. 3. Section 2250 of the Probate Code is amended to read:

2250. (a) On or after the filing of a petition for appointment of a guardian or conservator, any person entitled to petition for appointment of the guardian or conservator may file a petition for appointment of:

(1) A temporary guardian of the person or estate or both.

(2) A temporary conservator of the person or estate or both.

(b) The petition shall state facts which establish good cause for appointment of the temporary guardian or temporary conservator. The court, upon such petition or other showing as it may require, may appoint a temporary guardian of the person or estate or both, or a temporary conservator of the person or estate or both, to serve pending the final determination of the court upon the petition for the appointment of the guardian or conservator.

(c) Unless the court for good cause otherwise orders, not less than five days before the appointment of the temporary guardian or temporary conservator, notice of the proposed appointment shall be personally delivered to the proposed ward if 12 years of age or older or to the proposed conservatee, to the parent or parents if the proposed ward is a minor, and to any person having a valid visitation order with the proposed ward that was effective at the time of the filing of the petition. In a proceeding for temporary guardianship of the person, evidence that a custodial parent has died or become incapacitated and that the petitioner is the nominee of the custodial parent may constitute good cause for the court to order that this notice not be delivered.

(d) If a temporary guardianship is granted ex parte and the hearing on the general guardianship petition is not to be held within 30 days of the granting of the temporary guardianship, the court shall set a hearing within 30 days to reconsider the temporary guardianship. Notice of the hearing for reconsideration of the temporary guardianship shall be provided pursuant to Section 1511.

(e) Visitation orders with the proposed ward granted prior to the filing of a petition for temporary guardianship shall remain in effect, unless for good cause the court orders otherwise.

(f) One petition may request the appointment of a guardian or conservator and also the appointment of a temporary guardian or

conservator or these appointments may be requested in separate petitions.

(g) If the court suspends powers of the guardian or conservator under Section 2334 or 2654 or under any other provision of this division, the court may appoint a temporary guardian or conservator to exercise those powers until the powers are restored to the guardian or conservator or a new guardian or conservator is appointed.

(h) If for any reason a vacancy occurs in the office of guardian or conservator, the court, on a petition filed under subdivision (a) or on its own motion, may appoint a temporary guardian or conservator to exercise the powers of the guardian or conservator until a new guardian or conservator is appointed.

SEC. 4. Section 3611 of the Probate Code is amended to read:

3611. In any case described in Section 3610, the court making the order or giving the judgment referred to in Section 3600 shall order any one or more of the following:

(a) That a guardian of the estate or conservator of the estate be appointed and that the remaining balance of the money and other property be paid or delivered to the person so appointed.

(b) That the remaining balance of any money paid or to be paid be deposited with the county treasurer, provided that (1) the county treasurer has been authorized by the county board of supervisors to handle the deposits, (2) the county treasurer shall receive and safely keep all money deposited with the county treasurer pursuant to this subdivision, shall pay the money out only upon the order of the court, and shall credit each estate with the interest earned by the funds deposited less the county treasurer's actual cost authorized to be recovered under Section 27013 of the Government Code, (3) the county treasurer and sureties on the official bond of the county treasurer are responsible for the safekeeping and payment of the money, (4) the county treasurer shall ensure that the money deposited is to earn interest or dividends, or both, at the highest rate which the county can reasonably obtain as a prudent investor, and (5) funds so deposited with the county treasurer shall only be invested or deposited in compliance with the provisions governing the investment or deposit of state funds set forth in Chapter 5 (commencing with Section 16640) of Part 2 of Division 4 of Title 2 of the Government Code, the investment or deposit of county funds set forth in Chapter 4 (commencing with Section 53600) of Part 1 of Division 2 of Title 5 of the Government Code, or as authorized under Chapter 6 (commencing with Section 2400) of Part 4 of this code; or in an insured account in a financial institution in this state, or in a single-premium deferred annuity, subject to withdrawal only upon the authorization of the court, and that the remaining balance of any other property delivered or to be delivered be held on conditions the court determines to be in the best interest of the minor or incompetent person.

(c) After a hearing by the court, that the remaining balance of any

money be paid to a special needs trust established under Section 3604 for the benefit of the minor or incompetent person. Notice of the time and place of the hearing and a copy of the petition shall be mailed to the State Director of Health Services, the Director of Mental Health, and the Director of Developmental Services at the office of each director in Sacramento at least 15 days before the hearing.

(d) If the remaining balance of the money and other property to be paid or delivered does not exceed twenty thousand dollars ($20,000) in value, that all or any part of the money and other property be held on any other conditions the court in its discretion determines to be in the best interest of the minor or incompetent person.

(e) If the remaining balance of the money and other property to be paid or delivered does not exceed five thousand dollars ($5,000) in value and is to be paid or delivered for the benefit of a minor, that all or any part of the money and the other property be paid or delivered to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3400) of Chapter 2.

(f) If the remaining balance of the money or other property to be paid or delivered is to be paid or delivered for the benefit of the minor, that all or any part of the money and other property be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 979

An act to add Sections 196.61, 196.62, 196.63, 17208.4, and 24347.51 to the Revenue and Taxation Code, relating to taxation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 196.61 is added to the Revenue and Taxation Code, to read:

196.61. In the 1992–93 fiscal year, or as soon as possible thereafter, the county auditor of an eligible county, proclaimed by the Governor to be in a state of disaster as a result of storm, flooding, or any other related casualty that occurred in the Counties of Alpine, Contra Costa, Fresno, Humboldt, Imperial, Lassen, Los Angeles, Madera, Mendocino, Modoc, Monterey, Napa, Orange, Plumas, Riverside, San Bernardino, San Diego, Santa Barbara, Sierra, Siskiyou, Sonoma, Tehama, Trinity, and Tulare, and the City of Fillmore in January 1993, shall certify to the Director of Finance an estimate of the total amount of the reduction in property tax revenues on both the regular secured roll and the supplemental roll for that fiscal year resulting from the reassessment of eligible properties by the county assessor pursuant to Section 170, except that the amount certified shall not include any estimated property tax revenue reductions to school districts (other than basic state aid school districts), county offices of education, and community college districts. For purposes of this section, "basic state aid school district" means any school district that does not receive a state apportionment pursuant to subdivision (h) of Section 42238 of the Education Code, but receives from the state only a basic apportionment pursuant to Section 6 of Article IX of the California Constitution.

SEC. 2. Section 196.62 is added to the Revenue and Taxation Code, to read:

196.62. After the county auditor of an eligible county, as described in Section 196.61, has made the applicable certification to the Director of Finance pursuant to Section 196.61, the director shall, within 30 days after verification of the county auditor's estimate, certify this amount to the Controller for allocation to the county. Upon receipt of certification from the Director of Finance, the Controller shall make the appropriate allocation to the county within 10 working days thereafter.

SEC. 3. Section 196.63 is added to the Revenue and Taxation Code, to read:

196.63. On or before December 31, 1993, each eligible county, as described in Section 196.61, shall compute and remit to the

Controller for deposit in the General Fund an amount equal to the amount allocated to it by the Controller pursuant to Section 196.61, less the actual amount of its property tax revenue lost in the immediately preceding fiscal year on the regular secured and supplemental rolls with respect to eligible properties as a result of the reassessment of those properties pursuant to Section 170, excluding any property tax revenue lost by school districts (other than basic state aid school districts), county offices of education, and community college districts. For purposes of this section, "basic state aid school district" means any school district that does not receive a state apportionment pursuant to subdivision (h) of Section 42238 of the Education Code, but receives from the state only a basic apportionment pursuant to Section 6 of Article IX of the California Constitution. If the amount computed pursuant to this subdivision for an eligible county described in this subdivision is less than zero, the Controller shall allocate that amount to the county.

SEC. 4. Section 17208.4 is added to the Revenue and Taxation Code, to read:

17208.4. For taxable years beginning on or after January 1, 1993, in addition to the losses specified in Section 17207, the provisions of that section shall apply to any loss sustained as a result of storm, flooding, or any other related casualty that occurred in the Counties of Alpine, Contra Costa, Fresno, Humboldt, Imperial, Lassen, Los Angeles, Madera, Mendocino, Modoc, Monterey, Napa, Orange, Plumas, Riverside, San Bernardino, San Diego, Santa Barbara, Sierra, Siskiyou, Sonoma, Tehama, Trinity, and Tulare, and the City of Fillmore in January 1993.

SEC. 5. Section 24347.51 is added to the Revenue and Taxation Code, to read:

24347.51. For income years beginning on or after January 1, 1993, in addition to the losses specified in Section 24347.5, the provisions of that section shall apply to any loss sustained as a result of storm, flooding, or any other related casualty that occurred in the Counties of Alpine, Contra Costa, Fresno, Humboldt, Imperial, Lassen, Los Angeles, Madera, Mendocino, Modoc, Monterey, Napa, Orange, Plumas, Riverside, San Bernardino, San Diego, Santa Barbara, Sierra, Siskiyou, Sonoma, Tehama, Trinity, and Tulare, and the City of Fillmore in January 1993.

SEC. 6. The Legislature finds and declares that this act fulfills a statewide public purpose because of both of the following:

(a) The Governor of California has officially proclaimed that the flooding that occurred in the Counties of Alpine, Contra Costa, Fresno, Humboldt, Imperial, Lassen, Los Angeles, Madera, Mendocino, Modoc, Monterey, Napa, Orange, Plumas, Riverside, San Bernardino, San Diego, Santa Barbara, Sierra, Siskiyou, Sonoma, Tehama, Trinity, and Tulare, and the City of Fillmore in January 1993, were disasters, thus qualifying persons affected for various forms of governmental assistance and relief.

(b) This act is consistent with and supplements the proclaimed

disaster relief by providing necessary tax relief to affected taxpayers to allow them to repair damage to, and to restore, their homes and businesses.

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 promptly provide vitally necessary relief and facilitate recovery from the heavy damage to lives and property inflicted by the flooding that took place in California in January 1993, and to permit the more efficient operation of county government as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 980

An act to amend Section 13554.2 of, and to add Sections 13552.2, 13552.4, 13552.6, and 13552.8 to, the Water Code, relating to water.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 13552.2 is added to the Water Code, to read:

13552.2. (a) The Legislature hereby finds and declares that the use of potable domestic water for the irrigation of residential landscaping is a waste or an unreasonable use of water within the meaning of Section 2 of Article X of the California Constitution if reclaimed water, for this use, is available to the residents and meets the requirements set forth in Section 13550, as determined by the state board after notice and a hearing.

(b) The state board may require a public agency or person subject to this section to submit information that the state board determines may be relevant in making the determination required in subdivision (a).

SEC. 2. Section 13552.4 is added to the Water Code, to read:

13552.4. (a) Any public agency, including a state agency, city, county, city and county, district, or any other political subdivision of the state, may require the use of reclaimed water for irrigation of residential landscaping, if all of the following requirements are met:

(1) Reclaimed water, for this use, is available to the user and meets the requirements set forth in Section 13550, as determined by the state board after notice and a hearing.

(2) The use of reclaimed water does not cause any loss or diminution of any existing water right.

(3) The irrigation systems are constructed in accordance with Chapter 3 (commencing with Section 60301) of Division 4 of Title 22 of the California Code Regulations.

(b) This section applies to both of the following:

(1) New subdivisions for which the building permit is issued on or after March 15, 1994, or, if a building permit is not required, new structures for which construction begins on or after March 15, 1994, for which the State Department of Health Services has approved the use of reclaimed water.

(2) Any residence that is retrofitted to permit the use of reclaimed water for landscape irrigation and for which the State Department of Health Services has approved the use of reclaimed water.

(c) (1) Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to any project which only involves the repiping, redesign, or use of reclaimed water for irrigation of residential landscaping necessary to comply with a requirement prescribed by a public agency under subdivision (a).

(2) The exemption in paragraph (1) does not apply to any project to develop reclaimed water, to construct conveyance facilities for reclaimed water, or any other project not specified in this subdivision.

SEC. 3. Section 13552.6 is added to the Water Code, to read:

13552.6. (a) The Legislature hereby finds and declares that the use of potable domestic water for floor trap priming, cooling towers, and air-conditioning devices is a waste or an unreasonable use of water within the meaning of Section 2 of Article X of the California Constitution if reclaimed water, for these uses, is available to the user, and the water meets the requirements set forth in Section 13550, as determined by the state board after notice and a hearing.

(b) The state board may require a public agency or person subject to this section to submit information that the state board determines may be relevant in making the determination required in subdivision (a).

SEC. 4. Section 13552.8 is added to the Water Code, to read:

13552.8. (a) Any public agency, including a state agency, city, county, city and county, district, or any other political subdivision of the state, may require the use of reclaimed water in floor trap priming, cooling towers, and air-conditioning devices, if all of the following requirements are met:

(1) Reclaimed water, for these uses, is available to the user and meets the requirements set forth in Section 13550, as determined by the state board after notice and a hearing.

(2) The use of reclaimed water does not cause any loss or diminution of any existing water right.

(3) If public exposure to aerosols, mist, or spray may occur, appropriate mist mitigation or mist control is provided, such as the use of mist arrestors or the addition of biocides to the water in accordance with criteria established pursuant to Section 13521.

(4) The person intending to use reclaimed water has prepared an engineering report pursuant to Section 60323 of Title 22 of the California Code of Regulations that includes plumbing design,

cross-connection control, and monitoring requirements for the public agency, which are in compliance with criteria established pursuant to Section 13521.

(b) This section applies to both of the following:

(1) New industrial facilities and subdivisions for which the building permit is issued on or after March 15, 1994, or, if a building permit is not required, new structures for which construction begins on or after March 15, 1994, for which the State Department of Health Services has approved the use of reclaimed water.

(2) Any structure that is retrofitted to permit the use of reclaimed water for floor traps, cooling towers, or air-conditioning devices, for which the State Department of Health Services has approved the use of reclaimed water.

(c) (1) Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to any project which only involves the repiping, redesign, or use of reclaimed water for floor trap priming, cooling towers, or air-conditioning devices necessary to comply with a requirement prescribed by a public agency under subdivision (a).

(2) The exemption in paragraph (1) does not apply to any project to develop reclaimed water, to construct conveyance facilities for reclaimed water, or any other project not specified in this subdivision.

SEC. 5. Section 13554.2 of the Water Code is amended to read:

13554.2. (a) Any person who proposes the use of reclaimed water shall reimburse the State Department of Health Services for actual costs that the department incurs in carrying out its responsibilities pursuant to Sections 13552.2, 13552.4, 13552.6, 13552.8, 13553, and 13554.

(b) For purposes of implementing subdivision (a), the State Department of Health Services shall maintain a record of its costs. In determining those costs, the department may consider personnel requirements, materials, travel expenses, office overhead, and other relevant direct and indirect expenses.

CHAPTER 981

An act to add Section 14105.12 to the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 14105.12 is added to the Welfare and Institutions Code, to read:

14105.12. The department shall specify circumstances under

which requests shall be granted for authorization for services provided by a health facility licensed under subdivisions (c) and (d) of Section 1250 of the Health and Safety Code for periods of up to two years. This section shall be implemented not later than July 1, 1994. The department shall consult with nursing facility providers and appropriate health care professionals in the development of the criteria and process for granting two-year authorizations pursuant to this section.

CHAPTER 982

An act to amend Section 6079.1 of, to amend and repeal Section 6086.11 of, to amend, repeal, and add Sections 6147 and 6148 of, and to add Section 6086.14 to, the Business and Professions Code, to add and repeal Section 447 of the Code of Civil Procedure, and to add Section 956.5 to the Evidence Code, relating to attorneys.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 6079.1 of the Business and Professions Code is amended to read:

6079.1. (a) The Supreme Court shall appoint a presiding judge of the State Bar Court and no fewer than seven hearing judges, and any additional hearing judges as may be authorized by the Legislature, to efficiently decide any and all regulatory matters pending before the Hearing Department of the State Bar Court. The presiding judge and all other judges of that department shall be appointed for a term of six years and may be reappointed for additional six-year terms. Any judge appointed under this section shall be subject to admonition, censure, removal, or retirement by the Supreme Court upon the same grounds as provided for judges of courts of record of this state.

(b) Judges of the State Bar Court appointed under this section shall not engage in the private practice of law. The State Bar Court shall be broadly representative of the ethnic, sexual, and racial diversity of the population of California and composed in accordance with Sections 11140 and 11141 of the Government Code. Each judge:

(1) Shall have been a member of the State Bar for at least five years.

(2) Shall not have any record of the imposition of discipline as an attorney in California or any other jurisdiction.

(3) Shall meet such other requirements as may be established by subdivision (d) of Section 12011.5 of the Government Code.

(c) The board shall screen and rate all applicants for appointment or reappointment as a State Bar Court judge and submit its

nominations to the Supreme Court, unless otherwise directed by the Supreme Court. The board shall submit its initial nominations to the Supreme Court by April 1, 1989. The board shall hold hearings and allow public comment on the qualifications of nominees submitted to the Supreme Court. Written comment received by the board and any hearing record shall be transmitted to the Supreme Court together with the nominations. The board shall grant a preference to persons with prior judicial experience for all nominations other than that of the lay judge designated under subdivision (a) of Section 6086.65, and submit no fewer than three nominees for each available judicial position.

(d) For judges appointed pursuant to this section or Section 6086.65, the board shall fix and pay reasonable compensation and expenses and provide adequate supporting staff and facilities. Hearing judges shall be paid the same salary as municipal court judges. The presiding judge shall be paid the same salary as a superior court judge.

(e) From among the members of the State Bar or retired judges, the board may appoint pro tempore judges to decide matters in the Hearing Department of the State Bar Court when a judge of the State Bar is unavailable to serve without undue delay to the proceeding. The board may set the qualifications, terms, and conditions of service for pro tempore judges and may, in its discretion, compensate some or all of them out of funds appropriated by the board for this purpose.

(f) The board may fix a date no later than September 1, 1989, on which all proceedings pending before the Hearing Department of the State Bar Court shall be decided by a judge or pro tempore judge appointed under this section. From and after that date, a judge or pro tempore judge appointed under this section shall hear every regulatory matter pending in the Hearing Department of the State Bar Court as to which the taking of testimony or offering of evidence at trial has not commenced, and when so assigned, shall sit as the sole adjudicator, except for rulings which are to be made by the presiding judge of the State Bar Court or referees of other departments of the State Bar Court.

(g) Any judge or pro tempore judge of the State Bar Court as well as any employee of the State Bar assigned to the State Bar Court shall have the same immunity which attaches to judges in judicial proceedings in this state. Nothing in this subdivision limits or alters the immunities accorded the State Bar, its officers and employees, or any judge or referee of the State Bar Court as they existed prior to January 1, 1989. This subdivision does not constitute a change in, but is cumulative with, existing law.

(h) Nothing in this section shall be construed to prohibit the board from appointing persons to serve without compensation to arbitrate fee disputes under Article 13 (commencing with Section 6200) of this chapter or to monitor the probation of a member of the State Bar, whether those appointed under Section 6079, as added by Chapter

1114 of the Statutes of 1986, serve in the State Bar Court or otherwise.

(i) Any retired judge or referee appointed under Section 6079, as added by Chapter 1114 of the Statutes of 1986, prior to July 1, 1989, or any other authority may continue on or after July 1, 1989, to exercise the duties and powers authorized by that section or of the referee's appointment as to any matter assigned to him or her unless the matter has been reassigned under subdivision (f).

SEC. 2. Section 6086.11 of the Business and Professions Code is amended to read:

6086.11. (a) The board of governors shall establish a committee, known as the complainants' grievance panel. The panel shall exercise all of the following powers:

(1) Annually audit closures of complaints in lieu of disciplinary prosecution by the chief trial counsel, including the imposition of admonitions and the issuance of warning letters and agreements in lieu of discipline. The scope of the audit shall be to determine whether too many or too few cases are being closed, whether varying standards of closure are being used and whether the office of the chief trial counsel is applying its policies uniformly and consistently. The panel may order further investigation or recommend that the chief trial counsel file a notice to show cause, take other formal disciplinary action, or other action not involving formal disciplinary charges. The office of the chief trial counsel shall provide to the complainants' grievance panel the written policies concerning closure of complaints in lieu of disciplinary prosecution, including the imposition of admonitions and the issuance of warning letters and agreements in lieu of discipline.

(2) Upon request for review by complainants, review closures of complaints in lieu of disciplinary prosecution by the chief trial counsel, including the imposition of admonitions and the issuance of warning letters and agreements in lieu of discipline. The panel may order further investigation or recommend that the chief trial counsel file a notice to show cause, take other formal disciplinary action, or other action not involving formal disciplinary charges.

(A) Upon receipt of a request for review, the complainants' grievance panel shall inform the respondent it has received a request for review from the complaining witness in those matters in which the office of the chief trial counsel previously informed the respondent that the complaint had been closed. The complainants' grievance panel shall inform the complaining witness and also the respondent, if necessary, of its decision, order, or recommendation.

(B) In the event the request for review from the complaining witness includes new material evidence not previously received or new allegations not previously evaluated, the matter shall be returned directly to the appropriate disciplinary enforcement office for further evaluation. The complainants' grievance panel shall inform the complaining witness of this action and also the respondent in those matters in which the office of the chief trial counsel previously informed the respondent that the complaint had

been closed. The office of the chief trial counsel shall advise the complaining witness and respondent, if necessary, of the result of the evaluation of the new evidence or new allegations.

(C) The office of the chief trial counsel shall report to the complainants' grievance panel the results of the panel's orders for further investigation and, upon request of the panel, the results of its recommendations for formal disciplinary action other than the filing of a notice to show cause or for other action not involving formal disciplinary charges.

(D) In the event the office of the chief trial counsel, in the exercise of its prosecutorial discretion, elects not to file a notice to show cause, as recommended by the complainants' grievance panel, it shall provide a written response to the complainants' grievance panel stating its reasons for declining that action.

(3) Annually audit the alternative dispute resolution discipline mediation program to determine whether too many or too few complaints are being referred to the program; whether varying standards of referral and resolution are being used; and whether the policies of the program are uniformly and consistently applied; and to evaluate the operations of the program concerning priorities and policies including the responsiveness, fairness and courtesy to the public, and its coordination with other State Bar programs.

(b) The complainants' grievance panel shall consist of seven members. The panel shall elect one of their members to be chair of the complainants' grievance panel to preside over their deliberations. Four members of the panel shall consist of public members who have never been members of the State Bar or admitted to practice before any court in the United States. The Governor shall appoint two nonattorney members who shall serve for a term of four years, except that for the initial term after enactment of this section the first nonattorney members appointed shall serve for two years. The Senate Committee on Rules shall appoint one nonattorney member who shall serve for a term of four years. The Speaker of the Assembly shall appoint one nonattorney member who shall serve a term of four years, except that for the initial term after enactment of this section the first nonattorney shall serve for three years.

The board of governors shall appoint three members who shall be members of the State Bar and who shall serve for a term of four years, except that for the initial term after enactment of this section one attorney first appointed shall serve for two years, one for three years, and one for four years, as determined by lot.

Each respective appointing authority shall fill any vacancy in and make any reappointment to each respective office.

(c) The complainants' grievance panel shall provide a written report annually to the Discipline Committee of the Board of Governors of the State Bar as to its findings and recommendations concerning closed cases, including its findings as to whether too many or too few cases are being closed, and whether varying

standards of closure are being used.

(d) Within 60 days of the complainants' grievance panel's rendering a written report to the Discipline Committee of the Board of Governors of the State Bar, the office of the chief trial counsel shall provide a written response to that report and to each of the findings, recommendations, and conclusions set forth in that report. Upon receipt and evaluation of both the complainants' grievance panel report and office of the chief trial counsel response, the Discipline Committee shall direct the office of the chief trial counsel to take whatever action the committee deems appropriate. Copies of the complainants' grievance panel report, the office of the chief trial counsel response and the Discipline Committee direction shall be provided to the Governor, to the Senate Rules Committee, to the Senate and Assembly Judiciary Committees, and to the Chief Justice of the Supreme Court.

The office of the chief trial counsel shall designate a representative or representatives to appear at regularly scheduled meetings of the complainants' grievance panel to provide information concerning the disciplinary enforcement programs, and to respond to questions about specific requests for review or standards and policies of the office of the chief trial counsel.

The complainants' grievance panel shall not consider a request for review if received more than 60 days after written notice of the decision of the chief trial counsel concerning the complaint unless the panel specifically finds the failure of the complainant to request review was a result of mistake, inadvertence, surprise, or excusable neglect as defined in Section 473 of the Code of Civil Procedure, and in no event shall the panel take action on a request after one year from the written notice.

Where workload or other conditions require it, the panel may divide into two divisions of no less than three persons each, as designated by the chair, to consider and decide the applications for review before it. Where that designation has occurred, the decision of the division will constitute the decision of the panel, unless a majority of the panel affirmatively votes to consider a matter en banc.

(e) The public members of the complainants' grievance panel shall be entitled to receive a per diem at the same daily rate specified in Section 11564.5 of the Government Code for each day actually spent in the discharge of their official duties.

(f) This section shall only be in effect until January 1, 1999, and on that date is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1999, deletes or extends that date.

SEC. 3. Section 6086.14 is added to the Business and Professions Code, to read:

6086.14. (a) The Board of Governors of the State Bar is authorized to formulate and adopt rules and regulations necessary to establish an alternative dispute resolution discipline mediation program to resolve complaints against attorneys which do not

warrant the institution of formal investigation or prosecution. The program should identify sources of client dissatisfaction and provide a mediation process to resolve those complaints or disputes unless the client objects to mediation. The refusal of an attorney to participate in the State Bar's alternative dispute resolution discipline mediation program established pursuant to this section, or the failure of an attorney to comply with any agreement reached in the State Bar's alternative dispute resolution discipline mediation program may subject that attorney to discipline.

(b) The board of governors shall have the authority to formulate and adopt standards and guidelines to implement the alternative dispute resolution discipline mediation program. The standards and guidelines formulated and adopted by the board, as from time to time amended, shall be effective and binding on all members.

(c) It is the intent of the Legislature that the authorization of an alternative dispute resolution discipline mediation program not be construed as limiting or altering the powers of the Supreme Court of this state or the State Bar to disbar or discipline members of the State Bar. The records relating to the alternative dispute resolution discipline mediation program may be made available in any subsequent disciplinary action pursuant to any rule, standard, or guideline adopted by the Board of Governors of the State Bar.

SEC. 4. Section 6147 of the Business and Professions Code is amended to read:

6147. (a) An attorney who contracts to represent a plaintiff on a contingency fee basis shall, at the time the contract is entered into, provide a duplicate copy of the contract, signed by both the attorney and the plaintiff, or his or her guardian or representative, to the plaintiff, or to the plaintiff's guardian or representative. The contract shall be in writing and shall include, but is not limited to, all of the following:

(1) A statement of the contingency fee rate which the client and attorney have agreed upon.

(2) A statement as to how disbursements and costs incurred in connection with the prosecution or settlement of the claim will affect the contingency fee and the client's recovery.

(3) A statement as to what extent, if any, the plaintiff could be required to pay any compensation to the attorney for related matters that arise out of their relationship not covered by their contingency fee contract. This may include any amounts collected for the plaintiff by the attorney.

(4) Unless the claim is subject to the provisions of Section 6146, a statement that the fee is not set by law but is negotiable between attorney and client.

(5) If the claim is subject to the provisions of Section 6146, a statement that the rates set forth in that section are the maximum limits for the contingency fee agreement, and that the attorney and client may negotiate a lower rate.

(6) If the attorney does not meet any of the following criteria, a

statement disclosing that fact:

(A) Maintains errors and omissions insurance coverage.

(B) Has filed with the State Bar an executed copy of a written agreement guaranteeing payment of all claims established against the attorney by his or her clients for errors or omissions arising out of the practice of law by the attorney in the amount specified in paragraph (c) of subsection (1) of Section B of Rule IV of the Law Corporation Rules of the State Bar. The State Bar may charge a filing fee not to exceed five dollars ($5).

(C) If a law corporation, has filed with the State Bar an executed copy of the written agreement required pursuant to paragraph (a), (b), or (c) of subsection (1) of Section B of Rule IV of the Law Corporation Rules of the State Bar.

(b) Failure to comply with any provision of this section renders the agreement voidable at the option of the plaintiff, and the attorney shall thereupon be entitled to collect a reasonable fee.

(c) This section shall not apply to contingency fee contracts for the recovery of workers' compensation benefits.

(d) This section shall remain in effect only until January 1, 1997, and 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 6147 is added to the Business and Professions Code, to read:

6147. (a) An attorney who contracts to represent a plaintiff on a contingency fee basis shall, at the time the contract is entered into, provide a duplicate copy of the contract, signed by both the attorney and the plaintiff, or his or her guardian or representative, to the plaintiff, or to the plaintiff's guardian or representative. The contract shall be in writing and shall include, but is not limited to, all of the following:

(1) A statement of the contingency fee rate which the client and attorney have agreed upon.

(2) A statement as to how disbursements and costs incurred in connection with the prosecution or settlement of the claim will affect the contingency fee and the client's recovery.

(3) A statement as to what extent, if any, the plaintiff could be required to pay any compensation to the attorney for related matters that arise out of their relationship not covered by their contingency fee contract. This may include any amounts collected for the plaintiff by the attorney.

(4) Unless the claim is subject to the provisions of Section 6146, a statement that the fee is not set by law but is negotiable between attorney and client.

(5) If the claim is subject to the provisions of Section 6146, a statement that the rates set forth in that section are the maximum limits for the contingency fee agreement, and that the attorney and client may negotiate a lower rate.

(b) Failure to comply with any provision of this section renders the agreement voidable at the option of the plaintiff, and the

attorney shall thereupon be entitled to collect a reasonable fee.

(c) This section shall not apply to contingency fee contracts for the recovery of workers' compensation benefits.

(d) This section shall become operative on January 1, 1997.

SEC. 5.5. Section 6148 of the Business and Professions Code is amended to read:

6148. (a) In any case not coming within Section 6147 in which it is reasonably foreseeable that total expense to a client, including attorney fees will exceed one thousand dollars ($1,000), the contract for services in the case shall be in writing and shall contain all of the following:

(1) The hourly rate and other standard rates, fees, and charges applicable to the case.

(2) The general nature of the legal services to be provided to the client.

(3) The respective responsibilities of the attorney and the client as to the performance of the contract.

(4) If the attorney does not meet any of the following criteria, a statement disclosing that fact:

(A) Maintains errors and omissions insurance coverage.

(B) Has filed with the State Bar an executed copy of a written agreement guaranteeing payment of all claims established against the attorney by his or her clients for errors or omissions arising out of the practice of law by the attorney in the amount specified in paragraph (c) of subdivision (1) of Section B of Rule IV of the Law Corporation Rules of the State Bar. The State Bar may charge a filing a fee not to exceed five dollars ($5).

(C) If a law corporation, has filed with the State Bar an executed copy of the written agreement required pursuant to paragraph (a), (b), or (c) of subsection (1) of Section B of Rule IV of the Law Corporation Rules of the State Bar.

(b) All bills rendered by an attorney to a client shall clearly state the basis thereof. Bills for the fee portion of the bill shall include the amount, rate, basis for calculation, or other method of determination of the attorney's fees and costs. Bills for the cost and expense portion of the bill shall clearly identify the costs and expenses incurred and the amount of the costs and expenses. Upon request by the client, the attorney shall provide a bill to the client no later than 10 days following the request unless the attorney has provided a bill to the client within 31 days prior to the request, in which case the attorney may provide a bill to the client no later than 31 days following the date the most recent bill was provided. The client is entitled to make similar requests at intervals of no less than 30 days following the initial request. In providing responses to client requests for billing information, the attorney may use billing data that is currently effective on the date of the request, or, if any fees or costs to that date cannot be accurately determined, they shall be described and estimated.

(c) Failure to comply with any provision of this section renders

the agreement voidable at the option of the client, and the attorney shall, upon the agreement being voided, be entitled to collect a reasonable fee.

(d) This section shall not apply to any of the following:

(1) Services rendered in an emergency to avoid foreseeable prejudice to the rights or interests of the client or where a writing is otherwise impractical.

(2) An arrangement as to the fee implied by the fact that the attorney's services are of the same general kind as previously rendered to and paid for by the client.

(3) If the client knowingly states in writing, after full disclosure of this section, that a writing concerning fees is not required.

(4) If the client is a corporation.

(e) This section applies prospectively only to fee agreements following its operative date.

(f) 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. 6. Section 6148 is added to the Business and Professions Code, to read:

6148. (a) In any case not coming within Section 6147 in which it is reasonably foreseeable that total expense to a client, including attorney fees will exceed one thousand dollars ($1,000), the contract for services in the case shall be in writing and shall contain all of the following:

(1) The hourly rate and other standard rates, fees, and charges applicable to the case.

(2) The general nature of the legal services to be provided to the client.

(3) The respective responsibilities of the attorney and the client as to the performance of the contract.

(b) All bills rendered by an attorney to a client shall clearly state the basis thereof. Bills for the fee portion of the bill shall include the amount, rate, basis for calculation, or other method of determination of the attorney's fees and costs. Bills for the cost and expense portion of the bill shall clearly identify the costs and expenses incurred and the amount of the costs and expenses. Upon request by the client, the attorney shall provide a bill to the client no later than 10 days following the request unless the attorney has provided a bill to the client within 31 days prior to the request, in which case the attorney may provide a bill to the client no later than 31 days following the date the most recent bill was provided. The client is entitled to make similar requests at intervals of no less than 30 days following the initial request. In providing responses to client requests for billing information, the attorney may use billing data that is currently effective on the date of the request, or, if any fees or costs to that date cannot be accurately determined, they shall be described and estimated.

(c) Failure to comply with any provision of this section renders

the agreement voidable at the option of the client, and the attorney shall, upon the agreement being voided, be entitled to collect a reasonable fee.

(d) This section shall not apply to any of the following:

(1) Services rendered in an emergency to avoid foreseeable prejudice to the rights or interests of the client or where a writing is otherwise impractical.

(2) An arrangement as to the fee implied by the fact that the attorney's services are of the same general kind as previously rendered to and paid for by the client.

(3) If the client knowingly states in writing, after full disclosure of this section, that a writing concerning fees is not required.

(4) If the client is a corporation.

(e) This section applies prospectively only to fee agreements following its operative date.

(f) This section shall become operative on January 1, 1997.

SEC. 7. Section 447 is added to the Code of Civil Procedure, to read:

447. (a) Except in actions pertaining to personal injury or wrongful death, the signature of an attorney or party constitutes a certificate by him or her that he or she has read the pleading, motion, or other paper; that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this section, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee. Sanctions may be imposed only after notice and opportunity to be heard. An order imposing sanctions shall be in writing, and shall recite in detail the circumstances justifying sanctions.

(b) This section shall apply only in Riverside County. The Legislature finds and declares that, in order to assess the impact of this section on a limited basis before making it applicable on a statewide basis, it is necessary for this section to be applicable for a limited period of time in those counties.

(c) No sanction may be imposed pursuant to this section in any of the following instances:

(1) Against a party who is proceeding in forma pauperis or a party whom the court has found not to have the financial ability to pay fees or whom the court has found would suffer an unreasonable financial

hardship if ordered to pay fees.

(2) For or against any party with respect to any cause of action under which an award for reasonable attorney's fees is authorized or required by any other federal or California statute.

(3) For or against any party in any action in which one or more of the plaintiffs seek to proceed as a class under Section 382.

(d) This section shall only be in effect until January 1, 1998, and on that date is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1998, deletes or extends that date.

SEC. 8. Section 956.5 is added to the Evidence Code, to read:

956.5. There is no privilege under this article if the lawyer reasonably believes that disclosure of any confidential communication relating to representation of a client is necessary to prevent the client from committing a criminal act that the lawyer believes is likely to result in death or substantial bodily harm.

CHAPTER 983

An act to amend Section 25693 of, and to add and repeal Chapter 7.4 (commencing with Section 25645) of Division 15 of, the Public Resources Code, relating to energy resources.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Chapter 7.4 (commencing with Section 25645) is added to Division 15 of the Public Resources Code, to read:

CHAPTER 7.4. ENERGY RESEARCH, DEVELOPMENT, DEMONSTRATION, AND COMMERCIALIZATION PROGRAMS

25645. This chapter shall be known as, and may be cited as, the Energy Research, Development, Demonstration, and Commercialization Act of 1993.

25646. The Legislature hereby finds and declares all of the following:

(a) The state's growing population creates an increasing need to strengthen its infrastructure to achieve adequate economically and environmentally acceptable energy services systems.

(b) The condition of the state's economy makes it necessary to stretch the effective use of funds provided by state and federal government for energy research, development, demonstration, and commercialization projects by substituting loans for contract funding where possible, by requiring at least 50 percent cofunding of contract and grant-funded projects, and by requiring repayment of contract

and grant funds when the cofunded work has become financially rewarding for the recipient.

(c) The placement of provisions relating to the administration of energy research, development, demonstration, and commercialization projects not otherwise provided for by statute in one comprehensive chapter enhances the ability of the commission to use the funds available for those projects with the greatest effectiveness, administrative efficiency, and likelihood of repayment.

(d) California's continued leadership in new energy technology research, development, and demonstration projects is a business and employment asset to the state, and is encouraged through effective partnership between the public and private sectors. New energy technologies have inherent financial and technical risks which limit necessary and important progress without state involvement.

(e) Energy sources and efficiency devices can be developed and offered on the market which provide energy services at lower competitive cost to the energy user, increase energy independence and reliability, make sustainable use of California's indigenous resources, provide a healthier environment, and rebuild the state's economy through employment opportunities in new technology businesses.

(f) Loans are an efficient use of funds, allowing the state to recoup the loan funds, thus promoting continuity of the state's commitment to energy research, development, demonstration, and commercialization programs.

(g) Research contracts and grants to small businesses, with repayment features, allows the state to recoup and replenish funds from financially successful energy projects and inventions, thus providing for the recycling of funds for energy technology advancement.

(h) Grants and loans provide small businesses with access to energy research, development, demonstration, and commercialization cofunding, while providing the state with a mechanism to cofund and administer small business projects with efficiency.

25647. For purposes of this chapter:

(a) "Alternative source of energy" includes, but is not limited to, geothermal power, hydroelectric power equal to or less than 5 megawatts, photovoltaics, wind, biomass, cogeneration, solar thermal energy, fuel cells, alternative fuels, electric vehicles, low-emission vehicles, advanced energy storage, and energy efficiency and conservation measures.

(b) "Loan" means the contractual financing of a qualifying project under a program in which all of the following occur:

(1) The recipient of the loan repays the loan amount, plus accrued interest.

(2) The loan applicant is required to demonstrate the financial capability to repay the loan regardless of the commercial success of

the project.

(3) The loan is required to be secured by appropriate collateral regardless of the commercial success of the project.

(4) Loans are generally provided to those projects using energy technologies that are relatively close to full commercialization, include demonstration or commercialization of the technologies, and have a high probability of generating net positive cash-flow sufficient to repay the loan and the accrued interest within 10 years from the performance determination date of the contract.

(c) "Research contract" means a contractual award made to a qualifying project under a program in which all of the following occur:

(1) The recipient of the award is obligated to repay up to the full amount of the funds disbursed under the award, plus accrued interest, if the project or invention developed partially or completely as a result of the contract award results in the generation of net positive cash-flow, including the expense of repayment. Alternatively, at the commission's discretion, a royalty agreement may be used to obtain reimbursement of program funds.

(2) The contract specifies the method to be used by the commission in determining and establishing the terms of repayment.

(3) Research contracts are provided to those projects that have a moderate to low probability of generating net positive cash-flow sufficient to repay the funds disbursed under the award and the accrued interest within 10 years from the performance determination date of the contract.

(d) "Grant" means a grant award made to a small business certified by the Office of Small and Minority Business of the Department of General Services, or which meets the requirements of Part 121.601 of Title 13 of the Code of Federal Regulations, to cofund a qualifying project under a program in which all of the following occur:

(1) The award includes a royalty agreement. Alternatively, at the commission's discretion, the recipient of the award may be required to repay up to the full amount of the funds disbursed under the award, plus accrued interest if the project or invention developed partially or completely as a result of the grant award, results in the generation of net positive cash-flow, including the expense of repayment.

(2) The award agreement specifies the method to be used by the commission in determining and establishing the terms of repayment.

(e) "Royalty agreement" means a method used at the discretion of the commission to reimburse the commission for funds disbursed under awards and to provide for further awards under this chapter.

(f) "Accrued interest" means the cumulative interest on the outstanding balance of a loan, research contract, or grant. The commission shall specify in the terms of the award the manner in which the commission will compute the interest. The interest rate shall not exceed the average rate of return for money in the Pooled

Money Investment Account over the 90-day period prior to the notice of award, or 8 percent simple interest, whichever is less. Interest shall begin accruing upon the date of first drawdown of funds.

(g) "Performance determination date" means the date at which the commission renders a written decision on the success of the project in meeting the goals and objectives established in the loan, research contract, or grant.

25648. (a) The commission shall make loans, and research contract and grant awards, for purposes of making existing energy technologies more efficient, cost-effective, and environmentally acceptable, and to research, develop, demonstrate, and commercialize new, cost-effective alternative sources of energy, technologies which displace conventional fuels, and energy efficiency and conservation devices.

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

(c) The commission shall select the projects through competitive bid procedures, such as invitations for bids, requests for proposals, program opportunity notices, and multistep bids using preapplications, by demonstrating the need for sole source awards, or by evaluating small business grant and loan applications.

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

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

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

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

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

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

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

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

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

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

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

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

(12) The investment payback period for the project.

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

(14) The potential for stimulating small business competition in

the field of alternative energy development.

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

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

(17) The degree of innovation of the project.

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

(19) The cost of the project.

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

(f) Loans, research contracts, and grants entered into pursuant to this section are not subject to Article 4 (commencing with Section 10335) or Article 5 (commencing with Section 10355) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

25648.1. In selecting projects and types of technologies for funding, the commission shall actively solicit recommendations from interested parties, including, but not limited to, representatives of private industry, small businesses, research organizations, public utilities, independent energy producers, local governments, and the federal government.

25648.2. (a) Any loan that is made shall not be greater than 80 percent of the total project cost. The commission may provide a loan which exceeds that limit if it determines, through a four-fifths vote of the commission, that a major state contribution is essential to ensure project success.

(b) The commission's contribution to any research contract or grant funding shall not be greater than 50 percent of the total project cost.

25648.3. (a) Any royalty agreement shall specify that royalties be given to the commission when the award recipient or third party receives, through any kind of grant, equity, or license agreement, economic benefit from the project or invention developed in whole or in part as a result of the award.

(b) The royalty rate shall be determined by the commission and shall not be less than 1 percent nor more than 5 percent of the gross sales revenue derived from the project or invention.

(c) The commission shall determine the duration of the royalty agreement and may negotiate the collection schedule.

(d) The commission, for consideration, may negotiate an early termination of the royalty agreement.

(e) The royalty agreement shall specify the method to be used by the commission in determining and establishing the terms of payment of any royalty.

25648.4. The commission shall apply this chapter to research, development, demonstration, and commercialization projects that are not subject to Chapter 6 (commencing with Section 3800) of Division 3, Chapter 7.8 (commencing with Section 25680) of this division, or Section 1 of Chapter 1338 of the Statutes of 1986.

25648.5. The commission shall include a summary of projects financed under this chapter in its biennial report, or one of the subsidiary documents to the biennial report.

25648.6. This chapter shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2005, deletes or extends that date.

SEC. 2. Section 25693 of the Public Resources Code is amended to read:

25693. This chapter shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2005, deletes or extends that date.

CHAPTER 984

An act to add Section 56370 to the Education Code, relating to special education.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 56370 is added to the Education Code, to read:

56370. In addition to the requirements in Section 56828, a transfer of special education programs from a school district to the county superintendent of schools or to other school districts, or from the county superintendent of schools to school districts, shall not be approved by the Superintendent of Public Instruction if the transfer would result in diminishing the level of services or the opportunity of the affected pupils to interact with the general school population, as required in the individualized education programs of the affected pupils.

CHAPTER 985

An act to add Section 34217 to the Health and Safety Code, and to add Section 10850.5 to the Welfare and Institutions Code, relating to records.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 34217 is added to the Health and Safety Code, to read:

34217. A housing authority created pursuant to this part may, without the need to provide written documentation that consent has been obtained from a client, provide information to a county welfare department in order to aid that department in the administration of public social services programs provided for pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code. This section may be implemented either through an automated data exchange system or through a manual system. Any housing authority maintaining and providing information pursuant to this section shall comply with confidentiality and privacy laws concerning the collection, maintenance, and dissemination of information, as contained in Section 10850 of the Welfare and Institutions Code and the federal Privacy Act of 1974 contained in Section 552a of Title 5 of the United States Code. The authority shall provide a written form to each person about whom information is to be provided to a county welfare department pursuant to this section. The form shall notify the person that the information exchanges may occur. A copy of the form may be retained by the person and the authority. The form shall specify the purpose for which the information has been solicited, the entities to which the information may be provided, the uses that may be made of the information, as set forth in Section 552a(e)(3) of Title 5 of the United States Code, and the right of the client to request review of the information that has been provided to the county welfare department. The authority may provide only information that is necessary to determine eligibility for county welfare department programs or services for which the client has applied or which he or she is receiving. The authority shall allow the client to review the information it has provided to a county welfare department, upon request of the client. This section is not intended to eliminate any other legal obligation of the authority to obtain consent from a client before releasing information to another entity.

SEC. 2. Section 10850.5 is added to the Welfare and Institutions Code, to read:

10850.5. A county welfare department may, without the need to provide written documentation that consent has been obtained from a client, provide information to a housing authority created pursuant to Part 2 (commencing with Section 34200) of Division 24 of the Health and Safety Code, in order to aid the housing authority in the administration of that part. This section may be implemented either through an automated data exchange system or through a manual system. Any housing authority receiving and maintaining information pursuant to this section shall comply with confidentiality and privacy laws concerning the collection, maintenance, and dissemination of information, as contained in Section 10850 and the federal Privacy Act of 1974, contained in Section 552a of Title 5 of the United States Code. The county welfare department shall provide a written form to each person about whom information is to be provided to a housing authority pursuant to this section. The form

shall notify the person that the information exchanges may occur. A copy of the form may be retained by the person and the county welfare department. The form shall specify the purpose for which the information has been solicited, the entities to which the information may be provided, the uses that may be made of the information, as set forth in Section 552a (e) (3) of Title 5 of the United States Code, and the right of the client to request review of the information that has been provided to the authority. The county welfare department may provide only information that is necessary to determine eligibility for housing authority programs or services for which the client has applied or which he or she is receiving. The county welfare department shall allow the client to review the information it has provided to a housing authority, upon request of the client. This section is not intended to eliminate any other legal obligation of the county welfare department to obtain consent from a client before releasing information to another entity.

CHAPTER 986

An act to add and repeal Section 11329.7 of the Welfare and Institutions Code, relating to public assistance.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 11329.7 is added to the Welfare and Institutions Code, to read:

11329.7. (a) The Director of Social Services shall authorize the County of Fresno to operate a pilot project pursuant to this section, for a three-year period, but not to extend beyond January 1, 1997. The purpose of the pilot project shall be to test whether requiring recipients of aid under this chapter who work between 15 hours and 30 hours per week to participate in the GAIN program will increase hours of employment or earnings.

(b) (1) At the option of the County of Fresno, individuals who are employed but are not exempt from registration pursuant to paragraph (8) of subdivision (b) of Section 11310 and who do not have primary responsibility for personally providing care to a child under the age of six years may be required to participate in an appropriate program component as provided in Sections 11322.6 and 11322.8, to the extent that other component activities are available outside the individual's work schedule. Total hours of employment and program participation shall not exceed 30 hours per week. Any individual who, in addition to his or her part-time employment of 15 hours or more per week, attends an education or training program that leads to a degree or certificate shall not be subject to this section.

For individuals subject to this section who are employed and participating in a program component activity, the total level of activity shall be considered with regard to applying Sections 11327.4 and 11327.5.

(2) The county shall notify the department of its adoption of the option to provide for participation in a program component activity pursuant to this section as part of its county plan required under Sections 11320.6 and 11320.8. The county shall implement this section in a manner that does not jeopardize regular or enhanced federal funding.

(c) (1) Within six months after the termination of this pilot project, but no later than June 30, 1997, the department, together with the County of Fresno, shall submit an evaluation of the pilot project to the relevant policy and fiscal committees of the Legislature. The director shall determine the standardized data that the county is required to collect for the pilot project. However, the data and the evaluation shall distinguish between AFDC-FG and AFDC-U families.

(2) The evaluation shall include, but not be limited to, any increased or decreased hours of work and earnings; the number of families whose increased earnings resulted in loss of AFDC benefits; any increased or decreased cost of supportive services; and any displacement of potential GAIN participants who are members of a target population, as defined in subdivision (d) of Section 11322.4, if this information is available and accessible.

(3) The director and the County of Fresno shall consult with the United States Department of Health and Human Services and with the contractor designing the evaluation of the pilot project that eliminates the 100-hour rule, known as the LINK-UP project, to develop an evaluation design that distinguishes the effects of the LINK-UP project from the pilot project described in this section. If the evaluator determines that the effects of the pilot projects cannot be distinguished from each other, this pilot project shall not be implemented.

(d) This section shall become inoperative on June 30, 1997, and, as of January 1, 1998, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1998, 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 Greater Avenues for Independence program in the County of Fresno.

CHAPTER 987

An act to amend Sections 1370 and 1373 of, to add Article 5.6 (commencing with Section 1374.60) to Chapter 2.2 of Division 2 of, and to repeal Section 1374.70 of, the Health and Safety Code, relating to health coverage.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 1370 of the Health and Safety Code is amended to read:

1370. Every plan shall establish procedures in accordance with department regulations for continuously reviewing the quality of care, performance of medical personnel, utilization of services and facilities, and costs. Notwithstanding any other provision of law, there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person who participates in plan or provider quality of care or utilization reviews by peer review committees which are composed chiefly of physicians and surgeons or dentists, psychologists, or optometrists, or any of the above, for any act performed during the reviews if the person acts without malice, has made a reasonable effort to obtain the facts of the matter, and believes that the action taken is warranted by the facts, and neither the proceedings nor the records of the reviews shall be subject to discovery, nor shall any person in attendance at the reviews be required to testify as to what transpired thereat. Disclosure of the proceedings or records to the governing body of a plan or to any person or entity designated by the plan to review activities of the plan or provider committees shall not alter the status of the records or of the proceedings as privileged communications.

The above prohibition relating to discovery or testimony shall not apply to the statements made by any person in attendance at a review who is a party to an action or proceeding the subject matter of which was reviewed, or to any person requesting hospital staff privileges, or in any action against an insurance carrier alleging bad faith by the carrier in refusing to accept a settlement offer within the policy limits, or to the commissioner in conducting surveys pursuant to Section 1380.

This section shall not be construed to confer immunity from liability on any health care service plan. In any case in which, but for the enactment of the preceding provisions of this section, a cause of action would arise against a health care service plan, the cause of action shall exist notwithstanding the provisions of this section.

SEC. 2. Section 1373 of the Health and Safety Code is amended to read:

1373. (a) A plan contract may not provide an exception for other

coverage where the other coverage is entitlement to Medi-Cal benefits under Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code.

Each plan contract shall be interpreted not to provide an exception for the Medi-Cal benefits.

A plan contract may not provide that the benefits payable thereunder are subject to reduction if the individual insured has entitlement to the Medi-Cal benefits.

(b) A plan contract that provides coverage, whether by specific benefit or by the effect of general wording, for sterilization operations or procedures shall not impose any disclaimer, restriction on, or limitation of, coverage relative to the covered individual's reason for sterilization.

As used in this section, "sterilization operations or procedures" shall have the same meaning as that specified in Section 10120 of the Insurance Code.

(c) Every plan contract that provides coverage to the spouse or dependents of the subscriber or spouse shall grant immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any subscriber or spouse covered and to each minor child placed for adoption from and after the date on which the adoptive child's birth parent or other appropriate legal authority signs a written document, including, but not limited to, a health facility minor release report, a medical authorization form, or a relinquishment form, granting the subscriber or spouse the right to control health care for the adoptive child or, absent this written document, on the date there exists evidence of the subscriber's or spouse's right to control the health care of the child placed for adoption. No such plan may be entered into or amended if it contains any disclaimer, waiver, or other limitation of coverage relative to the coverage or insurability of newborn infants of, or children placed for adoption with, a subscriber or spouse covered as required by this subdivision.

(d) Every plan contract that provides that coverage of a dependent child of a subscriber shall terminate upon attainment of the limiting age for dependent children specified in the plan, shall also provide in substance that attainment of the limiting age shall not operate to terminate the coverage of the child while the child is and continues to be both (1) incapable of self-sustaining employment by reason of mental retardation or physical handicap and (2) chiefly dependent upon the subscriber for support and maintenance, provided proof of the incapacity and dependency is furnished to the plan by the member within 31 days of the request for the information by the plan or group plan contractholder and subsequently as may be required by the plan or group plan contractholder, but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

(e) A plan contract which provides coverage, whether by specific

benefit or by the effect of general wording, for both an employee and one or more covered persons dependent upon the employee and provides for an extension of the coverage for any period following a termination of employment of the employee shall also provide that this extension of coverage shall apply to dependents upon the same terms and conditions precedent as applied to the covered employee, for the same period of time, subject to payment of premiums, if any, as required by the terms of the policy and subject to any applicable collective bargaining agreement.

(f) A group contract shall not discriminate against handicapped persons or against groups containing handicapped persons. Nothing in this subdivision shall preclude reasonable provisions in a plan contract against liability for services or reimbursement of the handicap condition or conditions relating thereto, as may be allowed by rules of the commissioner.

(g) Every group contract shall set forth the terms and conditions under which subscribers and enrollees may remain in the plan in the event the group ceases to exist, the group contract is terminated or an individual subscriber leaves the group, or the enrollees' eligibility status changes.

(h) (1) A health care service plan or specialized health care service plan may provide for coverage of, or for payment for, professional mental health services, or vision care services, or for the exclusion of these services. If the terms and conditions include coverage for services provided in a general acute care hospital or an acute psychiatric hospital as defined in Section 1250 and do not restrict or modify the choice of providers, the coverage shall extend to care provided by a psychiatric health facility as defined in Section 1250.2 operating pursuant to licensure by the State Department of Mental Health. A health care service plan that offers outpatient mental health services but does not cover these services in all of its group contracts shall communicate to prospective group contractholders as to the availability of outpatient coverage for the treatment of mental or nervous disorders.

(2) No plan shall prohibit the member from selecting any psychologist who is licensed pursuant to the Psychology Licensing Law (Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code), any optometrist who is the holder of a certificate issued pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code or, upon referral by a physician and surgeon licensed pursuant to the Medical Practice Act (Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code), (i) any marriage, family, and child counselor who is the holder of a license under Section 4980.50 of the Business and Professions Code, (ii) any licensed clinical social worker who is the holder of a license under Section 4996 of the Business and Professions Code, or (iii) any registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code who

possesses a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, at the time that the State Board of Registered Nurses produces and maintains a list of those psychiatric-mental health nurses who possess a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, to perform the particular services covered under the terms of the plan, and the certificate holder is expressly authorized by law to perform these services.

(3) Nothing in this section shall be construed to allow any certificate holder or licensee enumerated in this section to perform professional mental health services beyond his or her field or fields of competence as established by his or her education, training and experience.

(4) For the purposes of this section, "marriage, family, and child counselor" means a licensed marriage, family, and child counselor who has received specific instruction in assessment, diagnosis, prognosis, and counseling, and psychotherapeutic treatment of premarital, marriage, family, and child relationship dysfunctions which is equivalent to the instruction required for licensure on January 1, 1981.

(5) Nothing in this section shall be construed to allow a member to select and obtain mental health or psychological or vision care services from a certificate or license holder who is not directly affiliated with or under contract to the health care service plan or specialized health care service plan to which the member belongs. All health care service plans and individual practice associations that offer mental health benefits shall make reasonable efforts to make available to their members the services of licensed psychologists. However, a failure of a plan or association to comply with the requirements of the preceding sentence shall not constitute a misdemeanor.

(6) As used in this subdivision, "individual practice association" means an entity as defined in subsection (5) of Section 1307 of the federal Public Health Service Act (42 U.S.C. Sec. 300e-1, subsec. (5)).

(7) Health care service plan coverage for professional mental health services may include community residential treatment services that are alternatives to inpatient care and which are directly affiliated with the plan or to which enrollees are referred by providers affiliated with the plan.

(i) If the plan utilizes arbitration to settle disputes, the plan contracts shall set forth the type of disputes subject to arbitration, the process to be utilized, and how it is to be initiated.

(j) A plan contract which provides benefits that accrue after a certain time of confinement in a health care facility shall specify what constitutes a day of confinement or the number of consecutive hours of confinement that are requisite to the commencement of benefits.

SEC. 3. Article 5.6 (commencing with Section 1374.60) is added

to Chapter 2.2 of Division 2 of the Health and Safety Code, to read:

Article 5.6. Point-of-Service Health Care Service Plan Contracts

1374.60. For purpose of this article, the following definitions shall apply:

(a) A "point-of-service plan contract" means any plan contract offered by a health care service plan whereby the health care service plan assumes financial risk for both "in-network coverage or services" and "out-of-network coverage or services."

The term "point-of-service plan contract" shall not apply to a plan contract where the out-of-network coverage or service is underwritten by an insurance company admitted in this state or is provided by a self-insured employer and is offered in conjunction with in-network coverage or services provided pursuant to a health care service plan contract.

(b) "Out-of-network coverage or services" means health care services received either from (1) providers who are not employed by, under contract with, or otherwise affiliated with the health care service plan, except for health care services received from these providers in an emergency or when referred or authorized by the plan under procedures specifically reviewed and approved by the commissioner or (2) providers who are employed by, under contract with, or otherwise affiliated with a health care service plan in instances when the "in-network coverage or services" requirements for care set forth in the health care service plan's approved evidence of coverage are not met.

(c) "In-network coverage or services" means all of the following:

(1) All the health care services provided or offered under the requirements of this chapter that are received from a provider employed by, under contract with, or otherwise affiliated with the health care service plan and in accordance with the procedures set forth in the plan's approved evidence of coverage.

(2) Health care services received from a provider not affiliated with the health care service plan when the plan arranges for the enrollee to receive services from that provider.

(3) Out-of-area emergency care provided in accordance with the procedures set by the health care service plan to be followed in securing these services.

1374.62. A point-of-service plan contract, in which any risk for out-of-network coverage or services is transferred from a health care service plan through reinsurance, shall be subject to this article.

1374.64. (a) Only a plan that has been licensed under this chapter and in operation in this state for a period of five years or more, or a plan licensed under this chapter and operating in this state for a period of five or more years under a combination of (1) licensure under this chapter and (2) pursuant to a certificate of authority issued by the Department of Insurance may offer a point-of-service contract. A specialized health care service plan shall

not offer a point-of-service plan contract unless this plan was formerly registered under the Knox-Mills Health Plan Act (Article 2.5 (commencing with Section 12530) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code), as repealed by Chapter 941 of the Statutes of 1975, and offered point-of-service plan contracts previously approved by the commissioner on July 1, 1976, and on September 1, 1993.

(b) A plan may offer a point-of-service plan contract only if the commissioner has not found the plan to be in violation of any requirements, including administrative capacity, under this chapter or the rules adopted thereunder and the plan meets, at a minimum, the following financial criteria:

(1) The minimum financial criteria for a plan that maintains a minimum net worth of at least five million dollars ($5,000,000) shall be:

(A) (i) Initial tangible net equity so that the plan is not required to file monthly reports with the commissioner as required by Section 1300.84.3(d) (1) (G) of Title 10 of the California Code of Regulations and then have and maintain adjusted tangible net equity to be determined pursuant to either of the following:

(I) In the case of a plan that is required to have and maintain a tangible net equity as required by Section 1300.76(a) (1) or (2) of Title 10 of the California Code of Regulations, multiply 130 percent times the sum resulting from the addition of the plan's tangible net equity required by Section 1300.76(a) (1) or (2) of Title 10 of the California Code of Regulations and the number that equals 10 percent of the plan's annualized health care expenditures for out-of-network services for point-of-service enrollees.

(II) In the case of a plan that is required to have and maintain a tangible net equity as required by Section 1300.76(a) (3) of Title 10 of the California Code of Regulations, recalculate the plan's tangible net equity under Section 1300.76(a) (3) of Title 10 of the California Code of Regulations excluding the plan's annualized health care expenditures for out-of-network services for point-of-service enrollees, add together the number resulting from this recalculation and the number that equals 10 percent of the plan's annualized health care expenditures for out-of-network services for point of services enrollees, and multiply this sum times 130 percent, provided that the product of this multiplication must exceed 130 percent of the tangible net equity required by Section 1300.76(a) (3) of Title 10 of the California Code of Regulations so that the plan is not required to file monthly reports to the commissioner as required by Section 1300.84.3(d) (1) (G) of Title 10 of the California Code of Regulations.

(ii) The failure of a plan offering a point-of-service plan contract under this article to maintain adjusted tangible net equity as determined by this subdivision shall require the filing of monthly reports with the commissioner pursuant to Section 1300.84.3(d) of Title 10 of the California Code of Regulations, in addition to any other requirements that may be imposed by the commissioner on a

plan under this article and chapter.

(iii) The calculation of tangible net equity under any report to be filed by a plan offering a point-of-service plan contract under this article and required of a plan pursuant to Section 1384, and the regulations adopted thereunder, shall be on the basis of adjusted tangible net equity as determined under this subdivision.

(B) Demonstrates adequate working capital, including (i) a current ratio (current assets divided by current liabilities) of at least 1:1, after excluding obligations of officers, directors, owners, or affiliates, or (ii) evidence that the plan is now meeting its obligations on a timely basis and has been doing so for at least the preceding two years. Short-term obligations of affiliates for goods or services arising in the normal course of business that are payable on the same terms as equivalent transactions with nonaffiliates shall not be excluded. For purposes of this subdivision, an obligation is considered short term if the repayment schedule is 30 days or fewer.

(C) Demonstrates a trend of positive earnings over the previous eight fiscal quarters.

(2) The minimum financial criteria for a plan that maintains a minimum net worth of at least one million five hundred thousand dollars ($1,500,000) but less than five million dollars ($5,000,000) shall be:

(A) (i) Initial tangible net equity so that the plan is not required to file monthly reports with the commissioner as required by Section 1300.84.3(d) (1) (G) of Title 10 of the California Code of Regulations and then have and maintain adjusted tangible net equity to be determined pursuant to either of the following:

(I) In the case of a plan that is required to have and maintain a tangible net equity as required by Section 1300.76(a) (1) or (2) of Title 10 of the California Code of Regulations, multiply 130 percent times the sum resulting from the addition of the plan's tangible net equity required by Section 1300.76(a) (1) or (2) of Title 10 of the California Code of Regulations and the number that equals 10 percent of the plan's annualized health care expenditures for out-of-network services for point-of-service enrollees.

(II) In the case of a plan that is required to have and maintain a tangible net equity as required by Section 1300.76(a) (3) of Title 10 of the California Code of Regulations, recalculate the plan's tangible net equity under Section 1300.76(a) (3) excluding the plan's annualized health care expenditures for out-of-network services for point-of-service enrollees, add together the number resulting from this recalculation and the number that equals 10 percent of the plan's annualized health care expenditures for out-of-network services for point-of-services enrollees, and multiply this sum times 130 percent, provided that the product of this multiplication must exceed 130 percent of the tangible net equity required by Section 1300.76(a) (3) of Title 10 of the California Code of Regulations so that the plan is not required to file monthly reports to the commissioner as required by Section 1300.84.3(d) (1) (G) of Title 10 of the California Code of

Regulations.

(ii) The failure of a plan offering a point-of-service plan contract under this article to maintain adjusted tangible net equity as determined by this subdivision shall require the filing of monthly reports with the commissioner pursuant to Section 1300.84.3(d) of Title 10 of the California Code of Regulations, in addition to any other requirements that may be imposed by the commissioner on a plan under this article and chapter.

(iii) The calculation of tangible net equity under any report to be filed by a plan offering a point-of-service plan contract under this article and required of a plan pursuant to Section 1384, and the regulations adopted thereunder, shall be on the basis of adjusted tangible net equity as determined under this subdivision.

(B) Demonstrates adequate working capital, including (i) a current ratio (current assets divided by current liabilities) of at least 1:1, after excluding obligations of officers, directors, owners, or affiliates or (ii) evidence that the plan is now meeting its obligations on a timely basis and has been doing so for at least the preceding two years. Short-term obligations of affiliates for goods or services arising in the normal course of business that are payable on the same terms as equivalent transactions with nonaffiliates shall not be excluded. For purposes of this subdivision, an obligation is considered short term if the repayment schedule is 30 days or fewer.

(C) Demonstrates a trend of positive earnings over the previous eight fiscal quarters.

(D) Demonstrates to the commissioner that it has obtained insurance for the cost of providing any point-of-service enrollee with out-of-network covered health care services, the aggregate value of which exceeds five thousand dollars ($5,000) in any year. This insurance shall obligate the insurer to continue to provide care for the period in which a premium was paid in the event a plan becomes insolvent. Where a plan cannot obtain insurance as required by this subparagraph, then a plan may demonstrate to the commissioner that it has made other arrangements, acceptable to the commissioner, for the cost of providing enrollees out-of-network health care services; but in this case the expenditure for total out-of-network costs for all enrollees in all point-of-service contracts shall be limited to a percentage, acceptable to the commissioner, not to exceed 5 percent of total health care expenditures for all its enrollees.

(c) Within 30 days of the close of each month a plan offering point-of-service plan contracts under paragraph (2) of subdivision (b) shall file with the commissioner a monthly financial report consisting of a balance sheet and statement of operations of the plan, which need not be certified, and a calculation of the adjusted tangible net equity required under subparagraph (A). The financial statements shall be prepared on a basis consistent with the financial statements furnished by the plan pursuant to Section 1300.84.2 of Title 10 of the California Code of Regulations. A plan shall also make

special reports to the commissioner as the commissioner may from time to time require. Each report to be filed by a plan pursuant to this subdivision shall be verified by a principal officer of the plan as set forth in Section 1300.84.2(e) of Title 10 of the California Code of Regulations.

(d) If it appears to the commissioner that a plan does not have sufficient financial viability, or organizational and administrative capacity to assure the delivery of health care services to its enrollees, the commissioner may, by written order, direct the plan to discontinue the offering of a point-of-service plan contract. The order shall be effective immediately.

1374.65. Point-of-service plan contracts shall:

(a) Provide incentives, including financial incentives, for enrollees to use in-network coverage or services.

(b) Only offer coverage or services obtained out-of-network if it also provides coverage or services on an in-network basis.

(c) Shall not consider the following to be out-of-network coverage or services:

(1) Health care services received from a provider not affiliated with the health care service plan when the plan arranges for the enrollee to receive services from that provider.

(2) Out-of-area emergency care provided in accordance with the procedures set by the health care service plan to be followed in securing these services.

1374.66. Any health care service plan that offers a point-of-service plan contract may do all of the following:

(a) Limit or exclude coverage for specific types of services or conditions when obtained out-of-plan.

(b) Include annual out-of-pocket limits, copayments, and annual and lifetime maximum benefit limits for out-of-network coverage or services that are different or separate from any amounts or limits applied to in-network coverage or services, and may impose a deductible on coverage for out-of-network coverage or services.

(c) To the extent permitted under this chapter, may limit the groups to which a point-of-service plan contract is offered, and may adopt nondiscriminatory renewal guidelines under which one or more point-of-service plan contracts would be replaced with other than point-of-service plan contracts. If a point-of-service plan contract is sold to a group, then the group shall offer it to all members of that group who are eligible for coverage by the health care service plan.

(d) Treat as out-of-network services those services that an enrollee obtains from a provider affiliated with the plan, but not in accordance with the authorization procedures set forth in the health care service plan's approved evidence of coverage.

(e) Contracts between health care service plans and medical providers, for the purpose of providing medical services under point-of-service contracts, may include risk-sharing arrangements for out-of-network services, but only if the risk sharing arrangements

meet all of the following conditions:

(1) The contracting medical provider agrees to participate in risk-sharing arrangements applicable to out-of-network services.

(2) If the medical provider is reimbursed on a capitated or prepaid basis, the contract shall clearly disclose the capitation or prepayment amount to be paid to the medical provider for in-network services received by enrollees under point-of-service contracts.

(3) Any capitation or prepayment amounts paid to the medical provider shall not place the medical provider directly at risk for or directly transfer liability for out-of-network services received by enrollees under point-of-service contracts.

(4) The risk-sharing arrangements for out-of-network services may provide a bonus or incentive to the medical provider to attempt to reduce the utilization of out-of-network services, but shall not place the medical provider at risk for any amounts in excess of the amounts used by the plan to budget for or fund the risk-sharing pool for out-of-network services.

(5) The contract between the medical provider and the plan shall clearly disclose the mathematical method by which funding for the risk-sharing arrangement is established, the mathematical method by which and the extent to which payments for out-of-network services are debited against the risk-sharing funds, and the method by which the risk-sharing arrangement is reconciled on no less than an annual basis.

(6) The contract is approved by the commissioner.

1374.67. A health care service plan offering a point-of-service plan contract is subject to the following limitations:

(a) A health care service plan shall limit its offering of point-of-service plan contracts so that no more than 25 percent of the plan's total premium revenue in any fiscal quarter is earned from point-of-service plan contracts.

(b) A health care service plan offering a point-of-service plan contract shall not expend in any fiscal-year quarter more than 8 percent of its total health care expenditures for all its enrollees for out-of-network services for point-of-service enrollees.

(c) If the amount specified in subdivision (a) or (b) is exceeded by 2 percent in any quarter, the health care service plan shall come into compliance with subdivisions (a) and (b) by the end of the next following quarter. If compliance with the amount specified in subdivisions (a) and (b) is not demonstrated in the health care service plan's next quarterly report, the commissioner may prohibit the health care service plan from offering a point-of-service plan contract to new groups, or may require the health care service plan to amend one or more of its point-of-service contracts at the time of renewal to delete some or all of the out-of-network coverage or services as may be necessary for the plan to demonstrate compliance to the commissioner's satisfaction.

(d) The limitation imposed by this section shall not apply to a plan

which in substantial part indemnified subscribers and enrollees pursuant to contracts issued under such plan's former registration under the Knox-Mills Health Plan Act in 1975 and as of that date, and on September 1, 1993, was offering point-of-service plan contracts previously approved by the commissioner.

1374.68. A health care service plan that offers a point-of-service plan contract shall do all of the following:

(a) Deposit with the commissioner or, at the discretion of the commissioner, with any organization or trustee acceptable to the commissioner through which a custodial or controlled account is maintained, cash, securities, or any combination of these, which is acceptable to the commissioner, that at all times have a fair market value equal to the greater of either one of the following:

(1) Two hundred thousand dollars ($200,000).

(2) One hundred twenty percent of the plan's current monthly claims payable plus incurred but not reported balance for coverage out-of-network coverage or services provided under point-of-service contracts.

(b) Track out-of-network point-of-service utilization separately from in-network utilization.

(c) Record point-of-service utilization in a manner that will permit utilization and cost reporting as the commissioner may require.

(d) Demonstrate to the satisfaction of the commissioner that the health care service plan has the fiscal, administrative, and marketing capacity to control its point-of-service plan contract enrollment, utilization, and costs so as not to jeopardize the financial viability or organizational and administrative capacity of the health care service plan.

(e) Maintain the deposit required under subdivision (a) in a manner agreed to by the commissioner, subject to subdivision (a) of Section 1377 and any regulations adopted thereunder.

(f) Any deposit made pursuant to this section shall be a credit against any deposit required by subdivision (a) of Section 1377.

1374.69. At least 20 business days prior to offering a point-of-service plan contract, a health care service plan shall file a notice of material modification in accordance with Section 1352. The notice of material modification shall include, but not be limited to, provisions specifying how the health care service plan shall accomplish all of the following:

(a) Design the benefit levels and conditions of coverage for in-network coverage and services and out-of-network point-of-service utilization.

(b) Provide or arrange for the provision of adequate systems to do all of the following:

(1) Process and pay claims for all out-of-network coverage and services.

(2) Generate accurate financial and utilization data and reports on a timely basis, so that it and any authorized regulatory agency can

evaluate the health care service plan's experience with point-of-service plan contracts and monitor compliance with point-of-service plan contract projections established by the health care service plan and regulatory requirements.

(3) Track and monitor the quality of health care obtained out-of-network by plan enrollees to the extent reasonable and possible.

(4) Respond promptly to enrollee grievances and complaints, written or oral, including those regarding services obtained out-of-network.

(5) Meet the requirements for a point-of-service plan contract set forth in this section and any additional requirements that may be required by the commissioner.

(c) Comply initially and on an ongoing basis with the requirements of this article.

(d) This section shall become operative July 1, 1995.

1374.70. At least 60 business days prior to offering a point-of-service plan contact, a health care service plan shall file a notice of material modification in accordance with Section 1352. Notwithstanding the 20 business days referenced in subdivision (b) of Section 1352, the commissioner shall within 60 business days or such additional time as the plan may specify, by order, approve, disapprove, suspend, or postpone the effectiveness of a point-of-service plan contract. The notice of material modification shall include, but not be limited to, provisions specifying how the health care service plan will:

(a) Design the benefit levels and conditions of coverage for in-network coverage and services and out-of-network point-of-service utilization.

(b) Provide or arrange for the provisions of adequate systems to do all of the following:

(1) Process and pay claims for all out-of-network coverage and services.

(2) Generate accurate financial and utilization data and reports on a timely basis, so that it and any authorized regulatory agency can evaluate the health care service plan's experience with point-of-service plan contracts and monitor compliance with point-of-service plan contract projections established by the health care service plan and regulatory requirements.

(3) Track and monitor the quality of health care obtained out-of-network by plan enrollees to the extent reasonable and possible.

(4) Respond promptly to enrollee grievances and complaints, written or oral, including those regarding services obtained out-of-network.

(5) Meet the requirements for a point-of-service product plan contract set forth in this section and any additional requirements that may be required by the commissioner.

(c) Comply initially and on an ongoing basis with the

requirements of this article.

(d) 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.

1374.71. No plan formerly registered under the Knox-Mills Health Plan Act (Article 2.5 (commencing with Section 12530) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code) in 1975 shall be required to file a notice of material modification under Section 1374.69 or 1374.70 for any point-of-service plan contract previously approved by the commissioner under this chapter and offered by plan on or before September 1, 1993.

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 that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

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 988

An act to amend and supplement the Budget Act of 1993 (Chapter 55 of the Statutes of 1993) by amending Items 1730-001-001, 2740-001-044, and 2740-001-064 of, and adding Items 1730-001-044 and 1730-001-064 to, Section 2.00 thereof, relating to public finance, to take effect immediately as an appropriation for the usual current expenses of the state.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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 of California has the responsibility for administering and collecting the Vehicle License Fee (VLF) for cities and counties. In this capacity, the state assumes responsibility for ensuring administrative efficiency and improving tax compliance.

As part of the budget compromise for the 1993–94 fiscal year, the

Legislature transferred from the Department of Motor Vehicles to the Franchise Tax Board the administrative responsibility of collecting delinquent VLF accounts. In making this transfer, the Legislature expects to increase tax fairness, reduce administrative costs, and increase revenue collections.

(b) Chapter 60 of the Statutes of 1993 implemented this transfer of administrative responsibility. However, that measure did not amend the Budget Act of 1993 to reduce appropriations to the Department of Motor Vehicles or increase appropriations to the Franchise Tax Board as necessary to conform to that transfer.

(c) It is the intent of the Legislature, pursuant to this act, to adjust appropriations made in the Budget Act of 1993 in order to: (1) implement the provisions of Chapter 60 of the Statutes of 1993, (2) increase administrative efficiency, (3) increase tax fairness, and (4) increase VLF allocations to cities and counties, consistent with the property tax provisions of Chapter 68 of the Statutes of 1993.

SEC. 2. Item 1730-001-001 of Section 2.00 of the Budget Act of 1993 (Chapter 55 of the Statutes of 1993) is amended to read:

1730-001-001—For support of Franchise Tax Board		244,795,000
Schedule		
(a) 10-Tax Programs.....	242,860,000	
(b) 20-Homeowners and Renters Assistance.....	1,868,000	
(c) 30-Political Reform Audit (1,122,000).....	0	
(d) 40-Child Support Collections	2,034,000	
(e) 50-DMV Collections	7,347,000	
(f) 70-Contract Work.....	2,017,000	
(g) 80.01-Administration	12,658,000	
(h) 80.02-Distributed Administration.....	−12,658,000	
(i) Reimbursements	−3,437,000	
(j) Amount payable from the Delinquent Tax Collection Fund (Sections 18839 and 26256 of the Revenue and Taxation Code)	−404,000	
(k) Amount payable from the Rare Fish, Wildlife, and Plant Species Conservation and Enhancement Account, Fish and Game Preservation Fund (Item 1730-001-200)	−29,000	
(*l*) Amount payable from the Veterans Memorial Fund (Section 1316 of the Military and Veterans Code)	−5,000	
(m) Amount payable from the State		

Children's Trust Fund (Item 1730-001-803) ..... —26,000
(n) Amount payable from the California Alzheimer's Disease and Related Disorders Research Fund (Item 1730-001-823) ..... —33,000
(o) Amount payable from the California Seniors Special Fund (Item 1730-001-886) ..... —5,000
(p) Amount payable from the California Election Campaign Fund (Item 1730-001-905) ..... —19,000
(q) Amount payable from the California Breast Cancer Research Fund (Item 1730-001-945) ..... —5,000
(r) Amount payable from the California Seniors Fund (Item 1730-001-983) ..... —21,000
(s) Amount payable from the Motor Vehicle Account, State Transportation Fund (Item 1730-001-044).. —2,562,000
(t) Amount payable from the Motor Vehicle License Fee Account, Transportation Tax Fund (Item 1730-001-064) ..... —4,785,000

Provisions:

1. It is the intent of the Legislature that the Franchise Tax Board resolve tax controversies, without litigation, on a basis that is fair to both the state and the taxpayer and in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the board.
2. In accordance with subdivision (b) of Section 18937 of the Revenue and Taxation Code, during the 1993–94 fiscal year the collection cost recovery fee shall be one hundred three dollars ($103) and the filing enforcement cost recovery fee shall be one hundred fourteen dollars ($114).
3. In accordance with subdivision (b) of Section 26313 of the Revenue and Taxation Code, during the 1993–94 fiscal year the collection cost recovery fee shall be one hundred eighty-three dollars ($183) and the filing enforcement cost recovery fee shall be one hundred nineteen dollars ($119).
4. Of the amount appropriated in this item, the Franchise Tax Board shall allocate a sufficient

amount to initiate a strategic planning effort to consolidate the state's tax administration activities, which shall be conducted jointly by the State Board of Equalization and the Franchise Tax Board. Up to $150,000 of that amount may be expended to pay the Franchise Tax Board's share of costs for consulting services needed in connection with the strategic planning effort. It is the intent of the Legislature that the jointly conducted strategic planning efforts produce a plan to facilitate orderly consolidation of the state's tax administration activities, including the identification of methods to resolve critical issues such as the consolidation of computer systems, telecommunications, and office space, and the identification of other critical issues that may need to be resolved through legislation. The strategic planning effort shall include a progress report to the Joint Legislative Budget Committee and the fiscal committees of each house of the Legislature not later than April 1, 1994. This provision shall be operative only upon the enactment of legislation authorizing the consolidation of the state's tax administration activities.

5. Notwithstanding Section 11003 of the Revenue and Taxation Code, funding is appropriated under this item to the Franchise Tax Board from Vehicle License Fee (VLF) collections for the 1993–94 fiscal year to fund the board's enforcement of Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code.

SEC. 3. Item 1730-001-044 is added to Section 2.00 of the Budget Act of 1993 (Chapter 55 of the Statutes of 1993), to read:

1730-001-044—For support of Franchise Tax Board, for payment to Item 1730-001-001, payable from the Motor Vehicle Account, State Transportation Fund 2,562,000

SEC. 4. Item 1730-001-064 is added to Section 2.00 of the Budget Act of 1993 (Chapter 55 of the Statutes of 1993), to read:

1730-001-064—For support of Franchise Tax Board, for payment to Item 1730-001-001, payable from the Motor Vehicle License Fee Account, Transportation Tax Fund 4,785,000

SEC. 5. Item 2740-001-044 of Section 2.00 of the Budget Act of 1993 (Chapter 55 of the Statutes of 1993) is amended to read:

2740-001-044—For support of Department of Motor Vehicles, payable from the Motor Vehicle Account, State Transportation Fund 459,294,000
Schedule:
(a) 11-Vehicle/Vessel Identification and Compliance 274,993,272
(b) 22-Driver Licensing and Personal Identification 142,031,800
(c) 25-Driver Safety 65,154,832
(d) 32-Occupational Licensing and Investigative Services 27,946,000
(e) 35-New Motor Vehicle Board 1,451,000
(f) 41-01-Administration 62,404,000
(g) 41-02-Distributed Administration ..... −62,404,000
(h) Reimbursements ..... −13,964,000
(i) Amount payable from the General Fund (Item 2740-001-001) ..... −60,000
(j) Amount payable from the New Motor Vehicle Board Account (Item 2740-001-054) ..... −1,451,000
(k) Amount payable from the Motor Vehicle License Fee Account, Transportation Tax Fund (Item 2740-001-064) ..... −32,354,000
(*l*) Amount payable from the Harbors and Watercraft Revolving Fund (Item 2740-001-516) ..... −4,385,000
(m) Amount payable from Federal Trust Fund (Item 2740-001-890) .. −69,000
Provisions:
1. Pursuant to Section 14669 of the Government Code, the Director of General Services, acting on behalf of the Department of Motor Vehicles, with the approval of the Department of Finance, may enter into a lease-purchase agreement or a lease with option to purchase, with an initial option purchase price over $2,000,000 to provide adequate office and parking facilities

for field offices in El Centro and Rocklin.

2. The amount appropriated in this item includes funding for the issuance of several series of special license plates, in accordance with new statutes. These funds may be expended, for each plate series, once the Department of Motor Vehicles has received 5,000 applications or reimbursement from each plate series sponsor to recover implementation costs.
3. Of the amount appropriated in this item, $901,000 may be used only to pay fees owed to a contractor pursuant to the contract for collection of delinquent fees. Any of these amounts not encumbered for this purpose before July 1, 1994, shall revert as of that date.
4. Of the amounts appropriated in this item, up to $534,000 may be expended to expand the pilot project demonstrating the use of credit card transactions at telephone service centers.
5. Section 42205 of the Vehicle Code and the requirements of Section 11003 of the Revenue and Taxation Code regarding the allocation of the appropriate costs of the registration program in the Department of Motor Vehicles between the Vehicle License Fee Account in the Transportation Tax Fund, the State Highway Account in the State Transportation Fund and the Motor Vehicle Account in the State Transportation Account shall be superseded during the 1993-94 fiscal year. This action is taken in order to increase the distribution of Vehicle License Fee moneys to cities and counties for the 1993–94 fiscal year.

SEC. 6. Item 2740-001-064 of Section 2.00 of the Budget Act of 1993 (Chapter 55 of the Statutes of 1993) is amended to read:

2740-001-064—For support of Department of Motor Vehicles, for payment to Item 2740-001-044, payable from the Motor Vehicle License Fee Account, Transportation Tax Fund 32,354,000

Provisions:

1. Of the amounts appropriated in this item, $1,749,000 may be used only to pay fees owed to a contractor pursuant to the contract for collection of delinquent fees. Any of these amounts not encumbered for this purpose before July 1, 1994, shall revert as of that date.

SEC. 7. 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 989

An act to amend Sections 25207.2 and 25207.4 of, to amend and renumber Sections 25207.7, 25207.8, 25207.9, 25207.10, 25207.11, and 25207.12 of, to add Section 25207.7 to, to repeal and add Sections 25207.5 and 25207.6 of, and to repeal Section 25207.13 of, the Health and Safety Code, relating to hazardous wastes.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 25207.2 of the Health and Safety Code is amended to read:

25207.2. (a) A county may develop and establish a collection program for the collection of banned, unregistered, or outdated agricultural wastes, 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 Pesticide Regulation, the Department of the California Highway Patrol, 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.

(c) If a county implements a collection program pursuant to this article, the program shall include the education of eligible participants on the procedures for the disposal of banned, unregistered, or outdated agricultural wastes, and on problems concerning liability with regard to that disposal.

SEC. 2. Section 25207.4 of the Health and Safety Code is amended to read:

25207.4. If a county implements a collection program that includes collection sites for the dropoff of banned, unregistered, or outdated agricultural wastes by eligible participants, the county shall, upon selection of the sites, complete and submit to the department, for review and approval, all of the following:

(a) An application for Hazardous Waste Identification Numbers for each collection site.

(b) A completed application for an extremely hazardous waste disposal permit, which shall identify the collection site.

(c) A notification to operate each collection site under a permit-by-rule.

SEC. 3. Section 25207.5 of the Health and Safety Code is repealed.

SEC. 4. Section 25207.5 is added to the Health and Safety Code, to read:

25207.5. (a) Except as provided in subdivision (b), for purposes of this article, all eligible participants who transport banned, unregistered, or outdated agricultural wastes which are identified in the survey conducted pursuant to Section 25207.3, and which are prepackaged in accordance with the federal regulations specified in subdivision (a) of Section 25207.6 and transported to the collection site in accordance with subdivision (c) of Section 25207.6, or who transport banned, unregistered, or outdated agricultural wastes which are rejected at the collection site and required to be transported back to the point of origin, are exempt from all of the following:

(1) The requirements for hazardous waste transporter registration and vehicle certification specified in Sections 25163 and 25168.3.

(2) The manifest requirement specified in subdivision (c) of Section 25160.

(3) The volume and weight limits specified in subdivision (c) of Section 25163.

(4) The requirement to obtain an extremely hazardous waste disposal permit pursuant to Chapter 43 (commencing with Section 67430.1) of Division 4.5 of Title 22 of the California Code of Regulations.

(b) Notwithstanding subdivision (a), any eligible participant who generates more than 100 kilograms per month of any RCRA hazardous waste or more than one kilogram per month of any extremely hazardous waste shall obtain a hazardous waste identification number and use a manifest as specified in subdivision (a) of Section 25160, when transporting banned, unregistered, or outdated agricultural wastes subject to a collection program, which shall be completed in accordance with the regulations set forth in Part B (commencing with Section 262.20) of Part 262 of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations. The eligible participant shall complete and process the manifest in the following manner:

(1) The blue copy of the manifest shall be sent to the department.

(2) The designated site for the collection of the banned, unregistered, or outdated agricultural wastes shall be listed in Block 9 of the manifest.

(3) The eligible participant shall sign the manifest as both the generator and the transporter, and sign in both Block 16 and Block 17 of the manifest.

(c) Any eligible participant who transports banned, unregistered, or outdated agricultural wastes pursuant to this section shall transport the waste by himself or herself or by an employee of the eligible participant, and the vehicle shall be owned by the eligible participant.

SEC. 5. Section 25207.6 of the Health and Safety Code is repealed.

SEC. 6. Section 25207.6 is added to the Health and Safety Code, to read:

25207.6. All eligible participants shall handle banned, unregistered, or outdated agricultural wastes that are transported pursuant to Section 25207.5 in the following manner:

(a) The wastes shall be prepackaged in accordance with the regulations adopted by the federal Department of Transportation.

(b) The wastes shall be accompanied by a shipping paper with the information required by the federal Department of Transportation for 100 kilograms or less of RCRA or any non-RCRA waste.

(c) The wastes 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.

SEC. 7. Section 25207.7 of the Health and Safety Code is amended and renumbered to read:

25207.8. The banned, unregistered, or outdated agricultural wastes transported from the collection site shall be transported by a registered hazardous waste transporter to an offsite hazardous waste disposal facility in a certified vehicle and container and a manifest shall be completed for the wastes, in accordance with Sections 25160, 25163, and 25168.3. The wastes shall also be handled and transported in accordance with the regulations adopted by the Environmental Protection Agency concerning the management 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 or regulations.

SEC. 8. Section 25207.7 is added to the Health and Safety Code, to read:

25207.7. The county shall act as the operator of the designated site for the collection of the wastes and shall comply with the regulations adopted pursuant to Section 25160 as the operator of that facility, as specified in Section 25207.13.

SEC. 9. Section 25207.8 of the Health and Safety Code is amended and renumbered to read:

25207.9. A report regarding any transportation accident involving banned, unregistered, or outdated agricultural wastes that are transported pursuant to a collection program shall be submitted to the department by the participating county within 10 days of the incident.

SEC. 10. Section 25207.9 of the Health and Safety Code is amended and renumbered to read:

25207.10. (a) A county implementing a collection program pursuant to this article shall 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 wastes. The county shall transfer 10 percent of the fees that are collected pursuant to this subdivision to the department, within 60 days from the date of collection, for deposit in the Hazardous Waste Control Account, for expenditure by the department, upon appropriation by the Legislature, for purposes of implementing this article.

(b) A county implementing a collection program pursuant to this article may also charge a fee to eligible participants to cover registration fees, administrative costs, and overhead expenses.

SEC. 11. Section 25207.10 of the Health and Safety Code is amended and renumbered to read:

25207.11. The collection program shall require, when economically 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 this chapter.

SEC. 12. Section 25207.11 of the Health and Safety Code is amended and renumbered to read:

25207.12. (a) Any eligible participant who submits banned, unregistered, or outdated agricultural wastes 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 wastes submitted for collection.

(b) An eligible participant who submits banned, unregistered, or outdated agricultural wastes for collection is exempt from the hazardous waste facilities permit requirements of Section 25201 with regard to the management of the wastes 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 this chapter, at a location other than that of the collection program.

SEC. 13. Section 25207.12 of the Health and Safety Code is amended and renumbered to read:

25207.13. For purposes of complying with the manifest requirements of subdivision (b) of Section 25160, a county which collects banned, unregistered, or outdated agricultural wastes pursuant to this article shall be deemed to be the person who produced the hazardous waste, if the banned, unregistered, or outdated agricultural wastes collected by the county is labeled and no remedial or removal action is required.

SEC. 14. Section 25207.13 of the Health and Safety Code is repealed.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district

will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 990

An act to amend Section 830.33 of the Penal Code, to amend Sections 120220, 120224.4, 120450, and 125220 of, to add Section 120550 to, to repeal Section 120354 of, to add Article 8 (commencing with Section 125450) to Chapter 4 of Division 11.5 of, and to add Article 6 (commencing with Section 125600) to Chapter 5 of Division 11.5 of, the Public Utilities Code, relating to transportation.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 830.33 of the Penal Code is amended to read:

830.33. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.

(a) A member of the San Francisco Bay Area Rapid Transit District Police Department appointed pursuant to Section 28767.5 of the Public Utilities Code, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the district or when performing necessary duties with respect to patrons, employees, and properties of the district.

(b) Harbor or port police regularly employed and paid in that capacity by a county, city, or district other than peace officers authorized under Section 830.1, if the primary duty of the peace officer is the enforcement of the law in or about the properties owned, operated, or administered by the harbor or port or when performing necessary duties with respect to patrons, employees, and properties of the harbor or port.

(c) Transit police officers or peace officers of a county, city, transit development board, or district, if the primary duty of the peace officer is the enforcement of the law in or about properties owned,

operated, or administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

(d) Any person regularly employed as an airport law enforcement officer by a city, county, or district operating the airport or by a joint powers agency, created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, operating the airport, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, and administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

(e) Any railroad police officer commissioned by the Governor pursuant to Section 8226 of the Public Utilities Code, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

SEC. 2. Section 120220 of the Public Utilities Code is amended to read:

120220. The board may make contracts and enter into stipulations of any nature whatsoever, either in connection with eminent domain proceedings or otherwise, including, without limiting the generality of the foregoing, contracts and stipulations to indemnify and save harmless, to employ labor, to contract with a private patrol operator licensed pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, with the county sheriff and municipal police departments within the areas described in Section 120054, and with other transit development boards for security, police, and related services, and to do all acts necessary and convenient for the full exercise of the powers granted in this division.

SEC. 3. Section 120224.4 of the Public Utilities Code is amended to read:

120224.4. (a) The Legislature finds and declares that the award of purchase contracts by the board under competitive bid procedures may not be feasible for products and materials which are undergoing rapid technological changes or for the introduction of new technologies into board operations, and that in these circumstances it is in the public interest to consider the broadest possible range of competing products and materials available, fitness of purpose, manufacturer's warranty, and other similar factors in addition to price in the award of these contracts.

(b) Notwithstanding Section 120222 the board may, after a finding by a two-thirds vote that a particular procurement qualifies under subdivision (g), direct that the procurement be conducted through competitive negotiation under this section. For purposes of this section, competitive negotiation includes, but is not limited to, all of the following requirements:

(1) The request for proposals shall be prepared and submitted to an adequate number of qualified sources, as determined by the board, to permit reasonable competition consistent with the nature and requirements of the procurement. In addition, notice of the request for proposals shall be published at least twice in a newspaper of general circulation, at least 10 days before the date for receipt of the proposals. The board shall make every effort to generate the maximum feasible number of proposals from qualified sources and shall make a finding to that effect before proceeding to negotiate if only a single response to the request for proposals is received.

(2) The request for proposals shall identify all significant evaluation factors, including price, and their relative importance.

(3) The board shall provide reasonable procedures for technical evaluation of the proposals received, identification of qualified sources, and selection for contract award.

(4) Contract awards shall be made to the qualified proposer whose proposal will be most advantageous to the board, with price and all other factors considered. If award is not made to the bidder whose proposal contains the lowest price, the board shall make a finding setting forth the basis for the award.

(c) The board may reject any and all proposals and request new proposals, at its discretion.

(d) Prior to making an award, the board shall prepare a price analysis and shall find that the final negotiated price is fair and reasonable based upon comparable procurements in the marketplace.

(e) Upon making an award to a qualified proposer, the board, upon request, shall make available to all other proposers and to the public, an analysis of the award which provides the basis for the selection of that particular qualified proposal.

(f) A person who submits, or who plans to submit, a proposal may protest any acquisition conducted in accordance with this section as follows:

(1) Protests based on the content of the request for proposals shall be filed with the board within 10 calendar days after the request for proposals is first advertised in accordance with subdivision (c). The board shall issue a written decision on the protest prior to opening of proposals. A protest may be renewed by refiling the protest with the board within 15 calendar days after the mailing of the notice of the recommended award.

(2) Any bidder may protest the recommended award on any ground not based upon the content of the request for proposals by filing a protest with the board within 15 calendar days after the mailing of the notice of the recommended award.

(3) Any protest shall contain a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest. Protestors shall have an opportunity to appear and be heard before the board prior to the opening of proposals in the case of protests based on the content of the request

for proposals, or prior to final award in the case of protests based on other grounds or the renewal of protests based on the content of the request for proposals.

(g) This section applies only to the purchase by the board of specialized rail transit equipment, computers, telecommunications equipment, fare collection equipment, microwave equipment, and other related electronic equipment and apparatus, and of rail cars. This section does not apply to contracts for construction or for the procurement of any product available in substantial quantities to the general public.

(h) Provisions in any contract concerning women and minority business enterprises, which provisions are in accordance with the request for proposals, shall not be subject to negotiation with the successful bidder.

SEC. 4. Section 120354 of the Public Utilities Code is repealed.

SEC. 5. Section 120450 of the Public Utilities Code is amended to read:

120450. Violation of any ordinance, rule, or regulation enacted by the board relating to the nonpayment of a fare in any transit facility owned or controlled by the board shall be an infraction punishable by a fine not exceeding seventy-five dollars ($75), except that a violation by a person, after the second conviction under this section, shall be a misdemeanor punishable by a fine not exceeding five hundred dollars ($500) or by imprisonment in the county jail not exceeding six months, or by both the fine and imprisonment.

SEC. 6. Section 120550 is added to the Public Utilities Code, to read:

120550. The board may establish and maintain a police force. Those employees of the board appointed by the general manager to the police force and who are duly sworn are peace officers and are subject to the powers set forth in Section 830.33 of the Penal Code. The board shall adhere to the standards for recruitment and training of peace officers established by the Commission on Peace Officer Standards and Training pursuant to Title 4 (commencing with Section 13500) of Part 4 of the Penal Code.

SEC. 6.5. Section 125220 of the Public Utilities Code is amended to read:

125220. The board may make contracts and enter into stipulations of any nature whatsoever, either in connection with eminent domain proceedings or otherwise, including, but not limited to, contracts and stipulations to indemnify and save harmless, to employ labor, to contract with a private patrol operator licensed pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, the county sheriff and municipal police departments within the areas described in Section 125052, and other transit development boards for security, police, and related services, and to do all acts necessary and convenient for the full exercise of the powers granted in this division.

SEC. 7. Article 8 (commencing with Section 125450) is added to

Chapter 4 of Division 11.5 of the Public Utilities Code, to read:

Article 8. Transit Enforcement and Penalties

125450. A violation of any ordinance, rule, or regulation enacted by the board relating to the nonpayment of a fare in any transit facility owned or controlled by the board shall be an infraction punishable by a fine not exceeding seventy-five dollars ($75), except that a violation by a person, after the second conviction under this section, shall be a misdemeanor punishable by a fine not exceeding five hundred dollars ($500) or by imprisonment in the county jail not exceeding six months, or by both that fine and imprisonment.

125451. No person shall give, either orally or in writing, information to a public officer or employee engaged in the enforcement of this article if that person knows that the information is false. A violation of this section is an infraction punishable by a fine not to exceed seventy-five dollars ($75), except that a violation by a person, after a second conviction of a violation of this section, shall be a misdemeanor punishable by a fine not to exceed five hundred dollars ($500) or by imprisonment in the county jail not to exceed six months, or by both the fine and imprisonment.

This section is in addition to, and does not supersede or limit, any and all other remedies, civil or criminal.

125452. A violation of any ordinance, rule, or regulation enacted by the board prohibiting unauthorized operation or manipulation of transit facilities owned or controlled by the board, or prohibiting unauthorized tampering or interference with, or loitering in or about, transit facilities owned or controlled by the board, is an infraction punishable by a fine not exceeding seventy-five dollars ($75), except that a violation by a person, after the first conviction under this section, is a misdemeanor punishable by a fine not exceeding five hundred dollars ($500) or by imprisonment in the county jail not exceeding six months, or by both that fine and imprisonment.

125453. A violation of any ordinance, rule, or regulation enacted by the board prohibiting the unauthorized entering into, climbing upon, holding onto, or in any manner attaching oneself to vehicles operated upon exclusive public mass transit guideways owned or controlled by the board, is an infraction punishable by a fine not exceeding seventy-five dollars ($75), except that a violation by a person, after the first conviction under this section, is a misdemeanor punishable by a fine not exceeding five hundred dollars ($500) or by imprisonment in the county jail not exceeding six months, or by both that fine and imprisonment.

SEC. 8. Article 6 (commencing with Section 125600) is added to Chapter 5 of Division 11.5 of the Public Utilities Code, to read:

Article 6. Transit Police Force

125600. The board may establish and maintain a police force. Those employees of the board appointed by the general manager to the police force and who are duly sworn are peace officers, subject to Section 830.33 of the Penal Code. The board shall comply with the standards for recruitment and training of peace officers established by the Commission on Peace Officer Standards and Training pursuant to Title 4 (commencing with Section 13500) of Part 4 of the Penal Code.

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 991

An act to amend Sections 5203, 5220, 5272, and 5442 of, to add Sections 5216.3, 5216.4, 5222.1, 5440.1, and 5442.5 to, and to repeal Sections 5207 and 5352 of, the Business and Professions Code, relating to outdoor advertising.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 5203 of the Business and Professions Code is amended to read:

5203. "Advertising structure" means a structure of any kind or character erected, used, or maintained for outdoor advertising purposes, upon which any poster, bill, printing, painting or other advertisement of any kind whatsoever may be placed, including statuary, for advertising purposes.

"Advertising structure" does not include:

(a) Official notices issued by any court or public body or officer;

(b) Notices posted by any public officer in performance of a public duty or by any person in giving legal notice;

(c) Directional, warning or information structures required by or authorized by law or by federal, state or county authority.

(d) A structure erected near a city or county boundary, which contains the name of such city or county and the names of, or any

other information regarding, civic, fraternal or religious organizations located therein.

SEC. 2. Section 5207 of the Business and Professions Code is repealed.

SEC. 3. Section 5216.3 is added to the Business and Professions Code, to read:

5216.3. "Nonconforming advertising display" means an advertising display that was lawfully placed, but that does not conform to the provisions of this chapter, or the administrative regulations adopted pursuant to this chapter, that were enacted subsequent to the date of placing.

SEC. 4. Section 5216.4 is added to the Business and Professions Code, to read:

5216.4. (a) "Officially designated scenic highway or scenic byway" means any state highway that has been officially designated and maintained as a state scenic highway pursuant to Sections 260, 261, 262, and 262.5 of the Streets and Highways Code or that has been officially designated a scenic byway as referred to in Section 131 (s) of Title 23 of the United States Code.

(b) "Officially designated scenic highway or scenic byway" does not include routes listed as part of the State Scenic Highway system, Streets and Highway Code, Section 263, et seq., unless those routes, or segments of those routes, have been designated as officially designated state scenic highways.

SEC. 5. Section 5220 of the Business and Professions Code is amended to read:

5220. "Primary highway" means any highway in the federal-aid system in existence on June 1, 1991, and any highway that is not in that system but which is in the National Highway System.

SEC. 6. Section 5222.1 is added to the Business and Professions Code, to read:

5222.1. "State highway system" means the state highway system as described in Section 300 of the Streets and Highways Code.

SEC. 7. Section 5272 of the Business and Professions Code is amended to read:

5272. With the exception of the provisions contained in Article 4 (commencing with Section 5300) and Sections 5400 and 5404, inclusive, nothing contained in this chapter applies to any advertising display that is not a message center display defined by paragraph (1) of subdivision (d) of Section 5405 and which is used exclusively for any of the following purposes:

(a) To advertise the sale, lease, or exchange of real property upon which the advertising display is placed.

(b) To advertise directions to, and the sale, lease, or exchange of, real property for which the advertising display is placed; provided, that the exemption of this paragraph shall not apply to advertising displays visible from a highway and subject to the Highway Beautification Act of 1965 (23 U.S.C., Sec. 131).

(c) To designate the name of the owner or occupant of the

premises or to identify the premises.

(d) To advertise the business conducted or services rendered or the goods produced or sold upon the property upon which the advertising display is placed if the display is upon the same side of the highway and within 1,000 feet of the point on the property or within 1,000 feet of the entrance to the site at which the business is conducted or services are rendered or goods are produced or sold.

SEC. 8. Section 5352 of the Business and Professions Code is repealed.

SEC. 9. Section 5440.1 is added to the Business and Professions Code, to read:

5440.1. Except as provided in Section 5442.5, no advertising display may be placed or maintained along any highway or segment of any interstate highway or primary highway that before, on, or after the effective date of Section 131(s) of Title 23 of the United States Code is an officially designated scenic highway or scenic byway.

SEC. 10. Section 5442 of the Business and Professions Code is amended to read:

5442. Section 5440 does not apply to any advertising structure or sign if the advertising display is used exclusively for any of the following purposes:

(a) To advertise the sale or lease of the property upon which the advertising display is placed.

(b) To designate the name of the owner or occupant of the premises upon which the advertising display is placed, or to identify the premises.

(c) To advertise goods manufactured or produced, or services rendered, on the property upon which the advertising display is placed.

SEC. 11. Section 5442.5 is added to the Business and Professions Code, to read:

5442.5. Section 5440.1 does not apply to any advertising display if the advertising display is used exclusively for any of the following purposes:

(a) Directional and official signs and notices, including, but not be limited to, signs and notices pertaining to natural wonders or scenic and historical attractions that are otherwise required or authorized by law and conform to regulations adopted by the department.

(b) Signs, displays, and devices advertising the sale or lease of real property upon which they are located.

(c) Signs, displays, and devices, including, but not limited to, those that may be changed at reasonable intervals by electronic process or by remote control, advertising activities conducted on the property on which they are located.

(d) Signs lawfully in existence on October 22, 1965, as determined by the department to be landmark signs, including signs on farm structures or natural surfaces, or of historic or artistic significance the preservation of which, in the opinion of the department, would be

consistent with the purposes of this section, as determined by regulations adopted by the department.

(e) Signs, displays, and devices advertising the distribution by nonprofit organizations of free coffee to individuals traveling on the interstate system or the primary system. For the purpose of this subdivision, the term "free coffee" means, coffee for which a donation may be made, but is not required.

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 992

An act to amend Section 11162 of, to amend the heading of Article 2 (commencing with Section 11160) of Title 1 of Part 4 of, to add Sections 11161.9, 11162.5, 11162.7, 11163, and 11163.2 to, and to repeal and add Sections 11160 and 11161 of, the Penal Code, relating to reports of injuries.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. The heading of Article 2 (commencing with Section 11160) of Title 1 of Part 4 of the Penal Code is amended to read:

Article 2. Reports of Injuries

SEC. 2. Section 11160 of the Penal Code is repealed.

SEC. 3. Section 11160 is added to the Penal Code, to read:

11160. (a) Any health practitioner employed in a health facility, clinic, or physician's office who has knowledge of, or observes, in his or her professional capacity or within the scope of his or her employment, a patient whom he or she knows or reasonably suspects is a person described as follows, shall immediately make a report in accordance with subdivision (b):

(1) Any person suffering from any wound or other injury inflicted by his or her own act or inflicted by another where the injury is by means of a knife, firearm, or other deadly weapon.

(2) Any person suffering from any wound or other physical injury

inflicted upon the person where the injury is the result of assaultive or abusive conduct.

(b) Any health practitioner employed in a health facility, clinic, or physician's office shall make a report regarding persons described in subdivision (a) to a local law enforcement agency as follows:

(1) A report by telephone shall be made immediately or as soon as practically possible.

(2) A written report shall be prepared and sent to a local law enforcement agency within two working days of receiving the information regarding the person.

(3) A local law enforcement agency shall be notified and a written report shall be prepared and sent pursuant to paragraphs (1) and (2) even if the person who suffered the wound, other injury, or assaultive or abusive conduct has expired, regardless of whether or not the wound, other injury, or assaultive or abusive conduct was a factor contributing to the death, and even if the evidence of the conduct of the perpetrator of the wound, other injury, or assaultive or abusive conduct was discovered during an autopsy.

(4) The report shall include, but shall not be limited to, the following:

(A) The name of the injured person, if known.

(B) The injured person's whereabouts.

(C) The character and extent of the person's injuries.

(D) The identity of any person the injured person alleges inflicted the wound, other injury, or assaultive or abusive conduct upon the injured person.

(c) For the purposes of this section, "injury" shall not include any psychological or physical condition brought about solely through the voluntary administration of a narcotic or restricted dangerous drug.

(d) For the purposes of this section, "assaultive or abusive conduct" shall include any of the following offenses:

(1) Murder, in violation of Section 187.

(2) Manslaughter, in violation of Section 192 or 192.5.

(3) Mayhem, in violation of Section 203.

(4) Aggravated mayhem, in violation of Section 205.

(5) Torture, in violation of Section 206.

(6) Assault with intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220.

(7) Administering controlled substances or anesthetic to aid in commission of a felony, in violation of Section 222.

(8) Battery, in violation of Section 242.

(9) Sexual battery, in violation of Section 243.4.

(10) Incest, in violation of Section 285.

(11) Throwing any vitriol, corrosive acid, or caustic chemical with intent to injure or disfigure, in violation of Section 244.

(12) Assault with a stun gun or taser, in violation of Section 244.5.

(13) Assault with a deadly weapon, firearm, assault weapon, or machine gun, or by means likely to produce great bodily injury, in violation of Section 245.

(14) Rape, in violation of Section 261.

(15) Spousal rape, in violation of Section 262.

(16) Procuring any female to have sex with another man, in violation of Section 266, 266a, 266b, or 266c.

(17) Child abuse or endangerment, in violation of Section 273a or 273d.

(18) Abuse of spouse or cohabitant, in violation of Section 273.5.

(19) Sodomy, in violation of Section 286.

(20) Lewd and lascivious acts with a child, in violation of Section 288.

(21) Oral copulation, in violation of Section 288a.

(22) Genital or anal penetration by a foreign object, in violation of Section 289 or 289.5.

(23) Elder abuse, in violation of Section 368.

(24) An attempt to commit any crime specified in paragraphs (1) to (23), inclusive.

(e) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of violence that is required to be reported pursuant to this section, and when there is an agreement among these persons to report as a team, the team may select by mutual agreement a member of the team to make a report by telephone and a single written report, as required by subdivision (b). The written report shall be signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(f) The reporting duties under this section are individual, except as provided in subdivision (e).

(g) No supervisor or administrator shall impede or inhibit the reporting duties required under this section and no person making a report pursuant to this section shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established, except that these procedures shall not be inconsistent with this article. The internal procedures shall not require any employee required to make a report under this article to disclose his or her identity to the employer.

(h) For the purposes of this section, it is the Legislature's intent to avoid duplication of information.

SEC. 4. Section 11161 of the Penal Code is repealed.

SEC. 5. Section 11161 is added to the Penal Code, to read:

11161. Notwithstanding Section 11160, the following shall apply to every physician or surgeon who has under his or her charge or care any person described in subdivision (a) of Section 11160:

(a) The physician or surgeon shall make a report in accordance with subdivision (b) of Section 11160 to a local law enforcement agency.

(b) It is recommended that any medical records of a person about whom the physician or surgeon is required to report pursuant to

subdivision (a) include the following:

(1) Any comments by the injured person regarding past domestic violence, as defined in Section 13700, or regarding the name of any person suspected of inflicting the wound, other physical injury, or assaultive or abusive conduct upon the person.

(2) A map of the injured person's body showing and identifying injuries and bruises at the time of the health care.

(3) A copy of the law enforcement reporting form.

(c) It is recommended that the physician or surgeon refer the person to local domestic violence services if the person is suffering or suspected of suffering from domestic violence, as defined in Section 13700.

SEC. 6. Section 11161.9 is added to the Penal Code, to read:

11161.9. (a) A health practitioner who makes a report in accordance with this article shall not incur civil or criminal liability as a result of any report required or authorized by this article.

(b) (1) No person required or authorized to report pursuant to this article, or designated by a person required or authorized to report pursuant to this article, who takes photographs of a person suspected of being a person described in this article about whom a report is required or authorized shall incur any civil or criminal liability for taking the photographs, causing the photographs to be taken, or disseminating the photographs to local law enforcement with the reports required by this article in accordance with this article. However, this subdivision shall not be deemed to grant immunity from civil or criminal liability with respect to any other use of the photographs.

(2) A court may award attorney's fees to a commercial film and photographic print processor when a suit is brought against the processor because of a disclosure mandated by this article and the court finds that the suit is frivolous.

(c) A health practitioner who, pursuant to a request from an adult protective services agency or a local law enforcement agency, provides the requesting agency with access to the victim of a known or suspected instance of abuse shall not incur civil or criminal liability as a result of providing that access.

(d) No employee shall be discharged, suspended, disciplined, or harassed for making a report pursuant to this section.

(e) This section does not apply to mandated reporting of child abuse, as provided for in Article 2.5 (commencing with Section 11164).

SEC. 7. Section 11162 of the Penal Code is amended to read:

11162. A violation of this article is a misdemeanor, punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

SEC. 8. Section 11162.5 is added to the Penal Code, to read:

11162.5. As used in this article, the following definitions shall apply:

(a) "Health practitioner" has the same meaning as provided in Section 11165.8.

(b) "Clinic" is limited to include any clinic specified in Sections 1204 and 1204.3 of the Health and Safety Code.

(c) "Health facility" has the same meaning as provided in Section 1250 of the Health and Safety Code.

(d) "Reasonably suspects" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect.

SEC. 9. Section 11162.7 is added to the Penal Code, to read:

11162.7. This article shall not apply when a report is required to be made pursuant to the Child Abuse and Neglect Reporting Act (Article 2.5 (commencing with Section 11164)), and Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code.

SEC. 10. Section 11163 is added to the Penal Code, to read:

11163. (a) The Legislature finds and declares that even though the Legislature has provided for immunity from liability, pursuant to Section 11161.9, for persons required or authorized to report pursuant to this article, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of abuse pursuant to other laws.

In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibility, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions.

(b) (1) Therefore, a health practitioner may present a claim to the State Board of Control for reasonable attorney's fees incurred in any action against that person on the basis of that person reporting in accordance with this article if the court dismisses the action upon a demurrer or motion for summary judgment made by that person or if that person prevails in the action.

(2) The State Board of Control shall allow the claim pursuant to paragraph (1) if the requirements of paragraph (1) are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorney's fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000).

(3) This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

SEC. 11. Section 11163.2 is added to the Penal Code, to read:

11163.2. (a) In any court proceeding or administrative hearing, neither the physician-patient privilege nor the psychotherapist privilege applies to the information required to be reported pursuant to this article.

(b) The reports required by this article shall be kept confidential

by the health facility, clinic, or physician's office that submitted the report, and by local law enforcement agencies, and shall only be disclosed by local law enforcement agencies to those involved in the investigation of the report or the enforcement of a criminal law implicated by a report. In no case shall the person suspected or accused of inflicting the wound, other injury, or assaultive or abusive conduct upon the injured person or his or her attorney be allowed access to the injured person's whereabouts.

(c) For the purposes of this article, reports of suspected child abuse and information contained therein may be disclosed only to persons or agencies with whom investigations of child abuse are coordinated under the regulations promulgated under Section 11174.

(d) The Board of Prison Terms may subpoena reports that are not unfounded and reports that concern only the current incidents upon which parole revocation proceedings are pending against a parolee.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs that may be incurred by a local agency or school district that will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

CHAPTER 993

An act to add Article 13 (commencing with Section 32435) to Chapter 3 of Part 19 of the Education Code, relating to the use of public funds by local educational entities.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Article 13 (commencing with Section 32435) is added to Chapter 3 of Part 19 of the Education Code, to read:

Article 13. Prohibited Uses of Public Funds

32435. (a) No school district, county board of education, or county superintendent of schools shall expend any public funds on the purchase of alcoholic beverages.

(b) If an employee of a school district or county educational agency requests and is erroneously granted a reimbursement for the purchase of alcoholic beverages in violation of subdivision (a) of this section, the employee may refund the reimbursement.

CHAPTER 994

An act relating to economic development.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. The Treasurer, in consultation with the State Banking Department and the Department of Savings and Loan, shall, on or before June 1, 1994, develop alternatives to current collateral requirements for all financial institutions that are eligible to hold state deposits and provide banking services for the Treasurer. The Treasurer, in evaluating collateral requirement alternatives, shall require a financial institution taking advantage of those requirements to demonstrate and maintain a community reinvestment performance profile that is consistent with promoting economic growth and recovery in California's minority and inner-city communities. It is the intent of the Legislature that the reason for developing new alternatives to collateral requirements is to promote the economic recovery and growth for those areas affected by the civil disturbances in Los Angeles on April 29, 1992, and following days.

CHAPTER 995

An act to amend Sections 836 and 853.6 of the Penal Code, relating to protective orders.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 836 of the Penal Code is amended to read:

836. (a) A peace officer may arrest a person in obedience to a

warrant, or, pursuant to the authority granted to him or her by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, without a warrant, may arrest a person whenever any of the following circumstances occur:

(1) The officer has reasonable cause to believe that the person to be arrested has committed a public offense in the officer's presence.

(2) The person arrested has committed a felony, although not in the officer's presence.

(3) The officer has reasonable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed.

(b) Any time a peace officer is called out on a domestic call, it shall be mandatory that the officer make a good faith effort to inform the victim of his or her right to make a citizen's arrest. This information shall include advising the victim how to safely execute the arrest.

(c) (1) When a peace officer is responding to a call alleging a violation of a protective order issued under Section 2035, 2045, 5530, 5550, 5650, 7710, 7720, or 7750 of the Family Code or Section 136.2 of this code, and the peace officer has reasonable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer may arrest the person without a warrant and take that person into custody whether or not the violation occurred in the presence of the arresting officer. The officer shall, as soon as possible after the arrest, confirm with the appropriate authorities that a true copy of the protective order has been filed, unless the victim provides the officer with a copy of the protective order.

(2) The person against whom a protective order has been issued shall be deemed to have notice of the order if the victim presents to the officer proof of service of the order, the officer confirms with the appropriate authorities that a true copy of the proof of service is on file, or the person against whom the protective order was issued was present at the protective order hearing or was informed by a peace officer of the contents of the protective order.

(3) In situations where mutual protective orders have been issued under Section 2035, 2045, 5530, 5550, 5650, 7710, 7720, or 7750 of the Family Code, liability for arrest under this subdivision applies only to those persons who are reasonably believed to have been the primary aggressor. In those situations, prior to making an arrest under this subdivision, the peace officer shall make reasonable efforts to identify, and may arrest, the primary aggressor involved in the incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider (A) the intent of the law to protect victims of domestic violence from continuing abuse, (B) the threats creating fear of physical injury, (C) the history of domestic violence between the persons involved, and (D) whether either person involved acted in self-defense.

SEC. 2. Section 853.6 of the Penal Code is amended to read:

853.6. (a) In any case in which a person is arrested for an offense declared to be a misdemeanor, including a violation of any city or county ordinance, and does not demand to be taken before a magistrate, that person shall, instead of being taken before a magistrate, be released according to the procedures set forth by this chapter. If the person is released, the officer or superior shall prepare in duplicate a written notice to appear in court, containing the name and address of the person, the offense charged, and the time when, and place where, the person shall appear in court. If, pursuant to subdivision (i), the person is not released prior to being booked and the officer in charge of the booking or his or her superior determines that the person should be released, the officer or superior shall prepare a written notice to appear in a court.

In any case in which a person is arrested for a misdemeanor violation of a protective court order involving domestic violence, as defined in subdivision (b) of Section 13700, the person shall be taken before a magistrate instead of being released according to the procedures set forth in this chapter, unless the arresting officer determines that there is not a reasonable likelihood that the offense will continue or resume or that the safety of persons or property would be imminently endangered by release of the person arrested. Prior to adopting these provisions, each city, county, or city and county shall develop a protocol to assist officers to determine when arrest and release is appropriate, rather than taking the arrested person before a magistrate. The county shall establish a committee to develop the protocol, consisting of, at a minimum, the police chief or county sheriff within the jurisdiction, the district attorney, county counsel, city attorney, representatives from domestic violence shelters, domestic violence councils, and other relevant community agencies.

Nothing in this subdivision shall be construed to affect a defendant's ability to be released on bail or on his or her own recognizance.

(b) Unless waived by the person, the time specified in the notice to appear shall be at least 10 days after arrest if the duplicate notice is to be filed by the officer with the magistrate.

(c) The place specified in the notice shall be the court of the magistrate before whom the person would be taken if the requirement of taking an arrested person before a magistrate were complied with, or shall be an officer authorized by that court to receive a deposit of bail.

(d) The officer shall deliver one copy of the notice to appear to the arrested person, and the arrested person, in order to secure release, shall give his or her written promise to appear in court as specified in the notice by signing the duplicate notice which shall be retained by the officer. Upon the signing of the duplicate notice, the arresting officer shall immediately release the person arrested from custody.

(e) The officer shall, as soon as practicable, file the duplicate

notice, as follows:

(1) It shall be filed with the magistrate if the offense charged is an infraction.

(2) It shall be filed with the magistrate if the prosecuting attorney has previously directed the officer to do so.

(3) The duplicate notice and underlying police reports in support of the charge or charges shall be filed with the prosecuting attorney in cases other than those specified in paragraphs (1) and (2).

If the duplicate notice is filed with the prosecuting attorney, he or she, within his or her discretion, may initiate prosecution by filing the notice or a formal complaint with the magistrate specified in the duplicate notice within 25 days from the time of arrest. If the prosecution is not to be initiated, the prosecutor shall send notice to the person arrested at the address on the notice to appear. The failure by the prosecutor to file the notice or formal complaint within 25 days of the time of the arrest shall not bar further prosecution of the misdemeanor charged in the notice to appear. However, any further prosecution shall be preceded by a new and separate citation or an arrest warrant.

Upon the filing of the notice with the magistrate by the officer, or the filing of the notice or formal complaint by the prosecutor, the magistrate may fix the amount of bail which in his or her judgment, in accordance with Section 1275, is reasonable and sufficient for the appearance of the defendant and shall indorse upon the notice a statement signed by him or her in the form set forth in Section 815a. The defendant may, prior to the date upon which he or she promised to appear in court, deposit with the magistrate the amount of bail set by the magistrate. At the time the case is called for arraignment before the magistrate, if the defendant does not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may, in his or her discretion, order that no further proceedings shall be had in the case, unless the defendant has been charged with violation of Section 374.3 or 374.7 of this code or of Section 11357, 11360, or 13002 of the Health and Safety Code, or a violation punishable under Section 5008.7 of the Public Resources Code, and he or she has previously been convicted of a violation of that section or a violation which is punishable under that section, except in cases where the magistrate finds that undue hardship will be imposed upon the defendant by requiring him or her to appear, the magistrate may declare the bail forfeited and order that no further proceedings be had in the case.

Upon the making of the order that no further proceedings be had, all sums deposited as bail shall immediately be paid into the county treasury for distribution pursuant to Section 1463.

(f) No warrant shall be issued for the arrest of a person who has given a written promise to appear in court, unless and until he or she has violated that promise or has failed to deposit bail, to appear for arraignment, trial, or judgment or to comply with the terms and provisions of the judgment, as required by law.

(g) The officer may book the arrested person prior to release or indicate on the citation that the arrested person shall appear at the arresting agency to be booked or indicate on the citation that the arrested person shall appear at the arresting agency to be fingerprinted prior to the date the arrested person appears in court. If it is indicated on the citation that the arrested person shall be booked or fingerprinted prior to the date of the person's court appearance, the arresting agency at the time of booking or fingerprinting shall provide the arrested person with verification of the booking or fingerprinting by either making an entry on the citation or providing the arrested person a verification form established by the arresting agency. If it is indicated on the citation that the arrested person is to be booked or fingerprinted, the magistrate, judge, or court shall, before the proceedings begin, order the defendant to provide verification that he or she was booked or fingerprinted by the arresting agency. If the defendant cannot produce the verification, the magistrate, judge, or court shall require that the defendant be booked or fingerprinted by the arresting agency before the next court appearance, and that the defendant provide the verification at the next court appearance unless both parties stipulate that booking or fingerprinting is not necessary.

(h) A peace officer shall use the written notice to appear procedure set forth in this section for any misdemeanor offense in which the officer has arrested a person without a warrant pursuant to Section 836 or in which he or she has taken custody of a person pursuant to Section 847.

(i) Whenever any person is arrested by a peace officer for a misdemeanor, that person shall be released according to the procedures set forth by this chapter unless one of the following is a reason for nonrelease, in which case the arresting officer may release the person, or the arresting officer shall indicate, on a form to be established by his or her employing law enforcement agency, which of the following was a reason for the nonrelease:

(1) The person arrested was so intoxicated that he or she could have been a danger to himself or herself or to others.

(2) The person arrested required medical examination or medical care or was otherwise unable to care for his or her own safety.

(3) The person was arrested under one or more of the circumstances listed in Sections 40302 and 40303 of the Vehicle Code.

(4) There were one or more outstanding arrest warrants for the person.

(5) The person could not provide satisfactory evidence of personal identification.

(6) The prosecution of the offense or offenses for which the person was arrested, or the prosecution of any other offense or offenses, would be jeopardized by immediate release of the person arrested.

(7) There was a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property

would be imminently endangered by release of the person arrested.

(8) The person arrested demanded to be taken before a magistrate or refused to sign the notice to appear.

(9) There is reason to believe that the person would not appear at the time and place specified in the notice. The basis for this determination shall be specifically stated.

The form shall be filed with the arresting agency as soon as practicable and shall be made available to any party having custody of the arrested person, subsequent to the arresting officer, and to any person authorized by law to release him or her from custody before trial.

(j) Once the arresting officer has prepared the written notice to appear and has delivered a copy to the person arrested, the officer shall deliver the remaining original and all copies as provided by subdivision (e).

Any person, including the arresting 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 side 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 magistrate or with a person authorized by the magistrate to receive deposit of bail, is guilty of a misdemeanor.

If, after an arrested person has signed and received a copy of a notice to appear, the arresting officer determines that, in the interest of justice, the citation or notice should be dismissed, the arresting agency may recommend, in writing, to the magistrate that the charges be dismissed. The recommendation shall cite the reasons for the recommendation and shall be filed with the court.

If the magistrate makes a finding that there are grounds for dismissal, the finding shall be entered in the record and the charges dismissed.

Under no circumstances shall a personal relationship with any officer, public official, or law enforcement agency be grounds for dismissal.

(k) For purposes of this section, the term "arresting agency" includes any other agency designated by the arresting agency to provide booking or fingerprinting services.

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 Section 668 of, and to add Section 658.3 to, the Harbors and Navigation Code, relating to vessels.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 658.3 is added to the Harbors and Navigation Code, to read:

658.3. (a) No person shall operate a motorboat, sailboat, or vessel that is 26 feet or less in length unless every person who is six years of age or less is wearing a type I, II, or III Coast Guard approved personal flotation device while that motorboat, sailboat, or vessel is underway.

(b) Subdivision (a) does not apply to a person operating a sailboat on which a person who is six years of age or less is restrained by a harness tethered to the vessel, or to a person operating a vessel on which a person who is six years of age or less is in an enclosed cabin.

(c) Subdivision (a) does not apply to a person operating a motorboat, sailboat, or vessel if the operator is reacting to an emergency rescue situation.

(d) The following definitions govern the construction of this section:

(1) "Enclosed cabin" means a space on board a vessel that is surrounded by bulkheads and covered by a roof.

(2) "Operate a motorboat, sailboat, or vessel" means to be in control or in charge of a motorboat, sailboat, or vessel while it is underway.

(3) "Underway" means all times except when the motorboat, sailboat, or vessel is anchored, moored, or aground.

(e) A violation of this section is a infraction punishable as provided in subdivision (a) of Section 668.

SEC. 2. Section 668 of the Harbors and Navigation Code is amended to read:

668. (a) Any person who violates subdivision (c) of Section 652, Section 654, 654.05, 654.06, 658.3, 659, 673, 674, or 754, or any rules or regulations adopted pursuant thereto, is guilty of an infraction, punishable by a fine of not more than two hundred fifty dollars ($250).

(b) (1) Any person who violates Section 655.2 or 655.3, or any regulation adopted pursuant thereto, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars ($100) or imprisonment in the county jail for not more than five days,

or by both that fine and imprisonment, for each violation.

(2) Any person who violates subdivision (a) or (b) of Section 658 is guilty of a misdemeanor and shall be punished by a fine of not more than two hundred dollars ($200) for each violation.

(3) Any person who violates subdivision (d) of Section 652, Section 652.5, subdivision (a) of Section 655, Section 655.05, 656, or 656.1, subdivision (d) or (e) of Section 658, Section 663.6 or 665, or any rules and regulations adopted pursuant to subdivision (b) or (c) of Section 660, is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than six months, or by both that fine and imprisonment, for each violation.

(c) Any person convicted of a first violation of subdivision (b), (c), (d), or (e) of Section 655, or of a violation of Section 655.4, shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than six months, or by both that fine and imprisonment. If probation is granted, the court may, as a condition of probation, require the person to participate in, and successfully complete, an alcohol or drug education, training, or treatment program, in addition to imposing any penalties required by this code. In order to enable all persons to participate in licensed programs, every person referred to a program licensed pursuant to Section 11836 of the Health and Safety Code shall pay that program's costs commensurate with that person's ability to pay as determined by Section 11837.4 of the Health and Safety Code.

(d) Any person convicted of a second or subsequent violation of subdivision (b), (c), (d), or (e) of Section 655 within seven years of the first conviction of any of those subdivisions or subdivision (f) of Section 655, or any person convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 within seven years of a separate conviction of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a vessel, or a separate conviction of Section 23152 or 23153 of the Vehicle Code or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. If probation is granted, the court may, as a condition of probation, require the person to do either of the following, if available in the county of the person's residence or employment:

(1) Participate, for at least 18 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the persons ability to pay as determined

pursuant to Section 11837.4 of the Health and Safety Code.

(2) Participate, for at least 30 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. A person ordered to treatment pursuant to this paragraph shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this paragraph is a basis for reducing any other probation requirement.

(e) Any person convicted of a violation of subdivision (f) of Section 655 shall be punished by imprisonment in the state prison, or in the county jail for not less than 90 days or more than one year, and by a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000). If probation is granted, the court may, as a condition of probation, require the person to participate in, and successfully complete, a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, if available in the person's county of residence or employment, as designated by the court. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code.

(f) (1) If any person is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (b), (c), (d), or (e) of Section 655 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for not less than five days or more than one year and pay a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000).

(2) If any person is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (f) of Section 655, of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for not less than 90 days or more

than one year, and pay a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000), and the court may order, as a condition of probation, that the person participate in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, if available in the county of the person's residence or employment. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code.

(g) The court shall not absolve a person who is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (b), (c), (d), (e), or (f) of Section 655, of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, from the minimum time in confinement provided in this section and a fine of at least two hundred fifty dollars ($250), except as provided in subdivision (h).

(h) Except in unusual cases where the interests of justice demand an exception, the court shall not strike a separate conviction of an offense under subdivision (b), (c), (d), (e), or (f) of Section 655 or of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, for purposes of sentencing in order to avoid imposing, as part of the sentence or as a term of probation, the minimum time in confinement and the minimum fine, as provided in this section. When a separate conviction is stricken by the court for purposes of sentencing, the court shall specify the reason or reasons for the striking order. On appeal by the people from an order striking a separate conviction, it shall be conclusively presumed that the order was made only for the reasons specified in the order, and the order shall be reversed if there is no substantial basis in the record for any of those reasons.

(i) Any person convicted of a violation of Section 656.2 or 656.3 shall be punished by a fine of not more than ten thousand dollars ($10,000) or imprisonment in the state prison or in the county jail for not more than one year, or by both that fine and imprisonment.

(j) Any person convicted of a violation of Section 658.5 shall be punished by a fine of not more than one hundred dollars ($100).

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 997

An act to add Section 1797.174 to, and to amend, add, and repeal Sections 1797.112, 1797.172, and 1798.200 of, the Health and Safety Code, relating to emergency medical services.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 1797.112 is added to the Health and Safety Code, to read:

1797.112. (a) The Emergency Medical Services Personnel Fund is hereby created in the State Treasury and is continuously appropriated to the authority to maintain the authority's testing and personnel certification program and to make reimbursements to entities for the performance of functions for which fees are collected pursuant to subdivision (a) of Section 1797.185. The authority may transfer unused portions of the Emergency Medical Services Personnel Fund to the Surplus Money Investment Fund.

(b) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1995, deletes or extends that date.

SEC. 2. Section 1797.112 of the Health and Safety Code, as added by Section 1.2 of Chapter 100 of the Statutes of 1993, is amended to read:

1797.112. (a) The Emergency Medical Services Personnel Fund is hereby created in the State Treasury and is continuously appropriated to the authority to maintain the authority's testing and personnel registry program and to make reimbursements to entities for the performance of functions for which fees are collected pursuant to subdivision (a) of Section 1797.185. The authority may transfer unused portions of the Emergency Medical Services Personnel Fund to the Surplus Money Investment Fund.

(b) This section shall be inoperative until January 1, 1995, and shall become operative on that date.

SEC. 3. Section 1797.172 is added to the Health and Safety Code, to read:

1797.172. (a) The authority shall develop, and after the approval of the commission pursuant to Section 1799.50, shall adopt, minimum

standards for the training and scope of practice for EMT-P. Notwithstanding any other provision of law, the authority shall be the agency solely responsible for certification and recertification of EMT-Ps who meet the standards and are not precluded from certification because of any of the reasons listed in Section 1798.200.

(b) The director shall, in consultation with a committee of local EMS medical directors named by the Emergency Medical Directors Association of California, approve any addition to a local optional scope of practice for EMT-P's proposed by the medical director of a local EMS agency prior to implementation of the addition in the local system.

(c) The authority may charge fees, which shall be established in regulations adopted by the authority after the approval of the commission and shall not exceed the authority's actual costs, for the certification and recertification of EMT-Ps. During the 1994 calendar year, the basic fee for certification or recertification of an EMT-P shall not exceed one hundred twenty-five dollars ($125). Separate fees, in addition to the basic fee which shall not exceed the actual costs, may be established, at the option of the authority, for any of the following services that are not shared by all applicants:

(1) Initial application for certification as an EMT-P.

(2) Competency testing, the fee for which shall not exceed thirty dollars ($30).

(3) Fingerprint and criminal record check.

(4) Out-of-state training equivalency determination.

(5) Verification of additional continuing education required for a lapse in certification.

(6) Replacement of a lost certification card.

(d) The authority may also establish fees for information provided from the EMT-P certification data bank to persons or entities other than the certified EMT-P or applicant for certification as an EMT-P to whom the information applies, the EMT-P's or the applicant's advanced life support provider employer, or a local EMS agency.

(e) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1995, deletes or extends that date.

SEC. 4. Section 1797.172 of the Health and Safety Code, as added by Section 1.4 of Chapter 100 of the Statutes of 1993, is amended to read:

1797.172. (a) The authority shall develop, and after the approval of the commission pursuant to Section 1799.50, shall adopt, minimum standards for the training and scope of practice for EMT-P.

(b) The director shall, in consultation with a committee of local EMS medical directors named by the Emergency Medical Directors Association of California, approve any addition to a local optional scope of practice for EMT-Ps proposed by the medical director of a local EMS agency prior to implementation of the addition in the local system.

(c) This section shall be inoperative until January 1, 1995, and shall

become operative on that date.

SEC. 5. Section 1797.174 is added to the Health and Safety Code, to read:

1797.174. In consultation with the commission, the Emergency Medical Directors Association of California, and other affected constituencies, the authority shall develop statewide guidelines for continuing education courses and approval of continuing education courses for EMT-Ps and for quality improvement systems which monitor and promote improvement in the quality of care provided by EMT-Ps throughout the state.

SEC. 6. Section 1798.200 is added to the Health and Safety Code, to read:

1798.200. (a) The medical director of the local EMS agency may place any EMT-I or EMT-II certificate holder on probation or deny certification as an EMT-I or EMT-II or suspend or revoke any EMT-I or EMT-II certificate issued under this division, in accordance with guidelines established by the authority, upon the finding by that medical director of an imminent threat to the public health and safety as evidenced by the occurrence of any of the actions listed in subdivision (d).

(b) The medical director of the local EMS agency may place any EMT-P certificate holder on probation or temporarily suspend or recommend to the authority the suspension or revocation of any EMT-P certificate issued under this division, in accordance with guidelines established by the authority, upon the finding by that medical director of an imminent threat to the public health and safety as evidenced by the occurrence of any of the actions listed in subdivision (d). A recommendation for the suspension or revocation of an EMT-P certificate shall be accompanied by all documentary evidence collected by the medical director relative to the recommendation. The recommendation and accompanying evidence shall be deemed in the nature of an investigative communication and be protected by Section 6254 of the Government Code.

(c) The authority may deny, suspend, or revoke certification as an EMT-P or may place any EMT-P certificate holder on probation, in accordance with guidelines established by the authority, upon the finding by the director of an imminent threat to the public health and safety as evidenced by the occurrence of any of the actions listed in subdivision (d).

(d) Any of the following actions shall be considered evidence of a threat to the public health and safety and may result in the denial, suspension, or revocation of a certificate issued under this division or the placement on probation of a certificate holder:

(1) Fraud in the procurement of any certification under this division.

(2) Gross negligence.

(3) Repeated negligent acts.

(4) Incompetence.

(5) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, and duties of prehospital personnel.

(6) Conviction of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel. The record of conviction or a certified copy of the record shall be conclusive evidence of such conviction.

(7) Violating or attempting to violate directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this division or the regulations adopted by the authority pertaining to prehospital personnel.

(8) Violating or attempting to violate any federal or state statute or regulation which regulates narcotics, dangerous drugs, or controlled substances.

(9) Addition to the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.

(10) Functioning outside the supervision of medical control in the field care system operating at the local level, except as authorized by any other license or certification.

(11) Demonstration of irrational behavior or occurrence of a physical disability to the extent that a reasonable and prudent person would have reasonable cause to believe that the ability to perform the duties normally expected may be impaired.

(e) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1995, deletes or extends that date.

SEC. 7. Section 1798.200 of the Health and Safety Code, as added by Section 1.6 of Chapter 100 of the Statutes of 1993, is amended to read:

1798.200. (a) The medical director of the local EMS agency may place on probation any certificate holder or suspend or revoke any certificate issued under this division and in accordance with guidelines established by the authority upon the finding by that medical director of an imminent threat to the public health and safety as evidenced by the occurrence of any of the following actions:

(1) Fraud in the procurement of any certification under this division.

(2) Gross negligence.

(3) Repeated negligent acts.

(4) Incompetence.

(5) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, and duties of prehospital personnel.

(6) Conviction of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel. The record of conviction or a certified copy of the record shall be conclusive evidence of such conviction.

(7) Violating or attempting to violate directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any

provision of this division or the regulations adopted by the authority pertaining to prehospital personnel.

(8) Violating or attempting to violate any federal or state statute or regulation which regulates narcotics, dangerous drugs, or controlled substances.

(9) Addiction to the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.

(10) Functioning outside the supervision of medical control in the field care system operating at the local level, except as authorized by any other license or certification.

(11) Demonstration of irrational behavior or occurrence of a physical disability to the extent that a reasonable and prudent person would have reasonable cause to believe that the ability to perform the duties normally expected may be impaired.

(b) This section shall be inoperative until January 1, 1995, and shall become operative on that date.

SEC. 8. (a) The Emergency Medical Services Authority shall conduct an evaluation of the current state EMT-P exam, which tests EMT-Ps on the basic scope of practice, and determines its efficacy as a mechanism for ensuring quality prehospital care provided by EMT-Ps. To the extent data is available, the evaluation shall include, but not be limited to, all of the following:

(1) An explanation and evaluation of the elements of the basic scope of practice exam and a contrast between the knowledge necessary to achieve a passing score on the exam versus the knowledge required of a practicing EMT-P and the knowledge required to provide effective services in the field.

(2) The historic passage rates for EMT-Ps at two and four year intervals.

(3) Other EMT-P testing requirements on specific life support practices which are required at the local level.

(4) The extent to which testing requirements should be tailored to EMT-Ps with differing levels of experience in the field.

(5) The extent of local continuing education and quality improvement programs and the extent to which these programs currently offer an alternative to periodic testing on the basic scope of practice and a mechanism for promoting and maintaining quality prehospital care.

(b) The authority shall provide by August 1, 1994, a copy of its evaluation with recommendations to the Commission on Emergency Medical Services and to the public generally. The commission shall review the evaluation and act upon the recommendations of the authority concerning the necessity of a basic scope of practice exam for recertifying EMT-Ps as a mechanism for ensuring quality prehospital care and any alternative testing, education or practice mechanisms which could, in part or in whole, be utilized to ensure quality prehospital services in lieu of the basic scope of practice exam.

SEC. 9. The Emergency Medical Services Authority shall adopt

regulations pursuant to the Administrative Procedures Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) to implement this act. Initial regulations to implement this act shall be adopted as emergency regulations. The adoption of these emergency regulations shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, or general welfare.

CHAPTER 998

An act to amend Sections 6314, 6651, 7314, and 7350 of the Labor Code, relating to occupational safety and health.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 6314 of the Labor Code is amended to read:

6314. (a) To make an investigation or inspection, the chief of the division and all qualified divisional inspectors and investigators authorized by him or her shall, upon presenting appropriate credentials to the employer, have free access to any place of employment to investigate and inspect during regular working hours, and at other reasonable times when necessary for the protection of safety and health, and within reasonable limits and in a reasonable manner. The chief or his or her authorized representative may, during the course of any investigation or inspection, obtain any statistics, information, or any physical materials in the possession of the employer that are directly related to the purpose of the investigation or inspection, conduct any tests necessary to the investigation or inspection, and take photographs. Photographs taken by the division during the course of any investigation or inspection shall be considered to be confidential information pursuant to the provisions of Section 6322, and shall not be deemed to be public records for purposes of the California Public Records Act.

(b) If permission to investigate or inspect the place of employment is refused, or the facts or circumstances reasonably justify the failure to seek permission, the chief or his or her authorized representative may obtain an inspection warrant pursuant to the provisions of Title 13 (commencing with Section 1822.50) of the Code of Civil Procedure. Cause for the issuance of a warrant shall be deemed to exist if there has been an industrial accident, injury, or illness reported, if any complaint that violations of occupational safety and health standards exist at the place of employment has been received by the division, or if the place of

employment to be inspected has been chosen on the basis of specific neutral criteria contained in a general administrative plan for the enforcement of this division.

(c) The chief and his or her authorized representatives may issue subpoenas to compel the attendance of witnesses and the production of books, papers, records, and physical materials, administer oaths, examine witnesses under oath, take verification or proof of written materials, and take depositions and affidavits for the purpose of carrying out the duties of the division.

(d) In the course of any investigation or inspection of an employer or place of employment by an authorized representative of the division, a representative of the employer and a representative authorized by his or her employees shall have an opportunity to accompany him or her on the tour of inspection. Any employee or employer, or their authorized representatives, shall have the right to discuss safety and health violations or safety and health problems with the inspector privately during the course of an investigation or inspection. Where there is no authorized employee representative, the chief or his or her authorized representatives shall consult with a reasonable number of employees concerning matters of health and safety of the place of employment.

(e) During any investigation of an industrial accident or occupational illness conducted by the division pursuant to the provisions of Section 6313, the chief or his or her authorized representative may issue an order to preserve physical materials or the accident site as they were at the time the accident or illness occurred if, in the opinion of the division, it is necessary to do so in order to determine the cause or causes of the accident or illness, and the evidence is in potential danger of being removed, altered, or tampered with. Under these circumstances, the division shall issue that order in a manner that will avoid, to the extent possible, any interference with normal business operations.

A conspicuous notice that an order has been issued shall be prepared by the division and shall be posted by the employer in the area or on the article to be preserved. The order shall be limited to the immediate area and the machines, devices, apparatus, or equipment directly associated with the accident or illness.

Any person who knowingly violates an order issued by the division pursuant to this subdivision shall, upon conviction, be punished by a fine of not more than five thousand dollars ($5,000).

SEC. 2. Section 6651 of the Labor Code is amended to read:

6651. (a) Notwithstanding Section 340 of the Code of Civil Procedure, an action to collect any civil penalty, fee, or penalty fee under this division shall be commenced within three years from the date the penalty or fee became final.

(b) The amendments made to this section by the act adding this subdivision shall only apply to penalty assessments or fees for which the three-year period prescribed in this section for the commencement of an action to collect a civil penalty or fee has not

expired on the effective date of the act adding this subdivision.

SEC. 3. 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 the date of 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 the date of 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 that 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.

(f) For purposes of this section, the date of the invoice assessing a fee pursuant to this section shall be considered the date of notification.

SEC. 4. Section 7350 of the Labor Code is amended to read:

7350. (a) The division may fix and collect fees for the inspection of aerial passenger tramways as it deems necessary to cover the actual cost of having the inspection performed by a division safety engineer. The division may not charge for inspections performed by certified insurance inspectors, but may charge a fee of not more than ten dollars ($10) to cover the cost of processing the permit when issued by the division as a result of the inspection.

(b) Whenever a person owning or having custody, management, or operation of an aerial passenger tramway fails to pay any fee required under this chapter within 60 days after the date of notification by the division, the division shall assess a penalty fee equal to 100 percent of the initial fee. For purposes of this section, the date of the invoice fixing the fee shall be considered the date of notification.

CHAPTER 999

An act to amend Section 16367.5 of the Government Code, and to amend Section 13001 of the Welfare and Institutions Code, relating to home energy assistance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 16367.5 of the Government Code is amended to read:

16367.5. The Department of Economic Opportunity shall receive and administer the federal Low-Income Home Energy Assistance Programs Block Grant, provided for pursuant to the Low-Income Home Energy Assistance Act of 1981, as amended (42 U.S.C. Sec. 8621 et seq.), and shall allocate funds received as follows:

(a) Five percent of the total federal allocation shall be allocated for purposes of administration. An additional 2.5 percent of the total federal allocation shall be set aside for administrative purposes and made available upon request of the Department of Finance, and pursuant to Section 28 of Chapter 99 of the Statutes of 1981.

(b) An amount between 15 percent and 25 percent of the total federal allocation shall be allocated for weatherization services for eligible individuals. For the purposes of this subdivision, weatherization shall include all energy conservation measures and energy efficient appliances that are cost effective and improve energy efficiency. For the purposes of this subdivision, these services shall be available to households where one or more individuals are receiving aid under Chapter 2 (commencing with Section 11200) and Chapter 3 (commencing with Section 12000) of Part 3 of Division 9 of the Welfare and Institutions Code, county general assistance recipients under Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code, Food Stamp Program recipients, provided for under Chapter 10 (commencing with Section 18900) of Part 6 of Division 9 of the Welfare and Institutions Code, payments under Section 415, 521, 541, or 542 of Title 38 of the United States Code, or under Section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978, and other households with incomes not exceeding an amount equal to 150 percent of the federally established poverty level.

(d) Twenty-five percent for the Energy Crisis Intervention Program, to consist solely of emergency assistance to eligible individuals for programs specified in this subdivision, who give evidence of one or more of the following conditions:

(1) Proof of utility shutoff notice.

(2) Proof of energy termination.

(3) Insufficient funds to establish a new energy account.

(4) Insufficient funds to pay a current or delinquent utility bill.

(5) Insufficient funds to pay the cost of space heating devices where no alternative source of space heating is reasonably available.

(6) Insufficient funds to pay for essential firewood.

(7) Insufficient funds to pay for the cost of emergency repairs to heating and cooling units.

(8) Insufficient funds to pay energy costs for a household where a household member's medical condition requires use of life support or climate and temperature control systems.

The crisis intervention program shall not include advocacy, community mobilization, or community planning.

The Energy Crisis Intervention Program shall be available to households containing recipients of programs contained in Division 9 (commencing with Section 10000) of the Welfare and Institutions Code and referred to in subdivision (c), and other households with incomes not exceeding 130 percent of the federally established poverty level.

(e) The remainder of the total federal allocation shall be utilized for aid for home energy costs for direct assistance payments, which shall be distributed in accordance with subdivision (b) of Section 16367.6. Services shall be provided to both of the following:

(1) Households where one or more individuals are receiving any of the following:

(A) Aid to families with dependent children under the state's plan approved under Part A of Title IV of the federal Social Security Act (42 U.S.C. Sec. 601 et seq.) and Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code, other than aid in the form of foster care received in accordance with Section 408 of the federal Social Security Act.

(B) Supplemental Security Income payments under Title XVI of the federal Social Security Act (42 U.S.C. Sec. 1381 et seq.) and Chapter 3 (commencing with Section 12000) of Part 3 of Division 9 of the Welfare and Institutions Code).

(C) Food stamps received pursuant to Chapter 10 (commencing with Section 18900) of Part 6 of Division 9 of the Welfare and Institutions Code.

(D) Payments under Section 415, 521, 541, or 542 of Title 38, United States Code, or under Section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978.

(2) Households with incomes not exceeding the greater of either an amount equal to 150 percent of the poverty level for this state, or an amount equal to 60 percent of the state median income, except that no household may be excluded from eligibility under this paragraph if the household has an income less than 110 percent of the poverty level of this state.

(f) The Department of Economic Opportunity shall contract with local public or private nonprofit agencies to assist with outreach and intake and other activities to enroll eligible individuals.

(g) The program components provided for in subdivisions (c) and (e) shall include activities to enroll eligible individuals, especially the elderly and disabled, and to educate recipients about general energy conservation practices and about the availability of state and utility programs for free weatherization of low-income homes.

(h) The Department of Economic Opportunity and the Office of Planning and Research may enter into an interagency agreement concerning the education component of this section. If an agreement is entered into pursuant to this subdivision, it shall provide that the Office of Planning and Research shall contract with local public or private nonprofit agencies for the education component. In order to maximize the efficiency of these programs, the Office of Planning and Research shall contract, to the extent feasible, with community-based organizations and community-action agencies providing crisis intervention grants under this section.

SEC. 2. Section 13001 of the Welfare and Institutions Code is amended to read:

13001. Funding for social services programs administered by county welfare departments shall include but not be limited to federal funds received under Titles IV, XIX, and XX of the federal Social Security Act, and the State General Fund. The appropriation and allocation of these funds shall be in accordance with the annual Budget Act and the provisions of this chapter.

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 California law be brought into compliance with federal law at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1000

An act to amend Section 21204 of, and to add Section 21212 to, the Vehicle Code, relating to vehicles.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 21204 of the Vehicle Code is amended to read:

21204. (a) No person operating a bicycle upon a highway shall ride other than upon or astride a permanent and regular seat attached thereto.

(b) No operator shall allow a person riding as a passenger, and no person shall ride as a passenger, on a bicycle upon a highway other

than upon or astride a separate seat attached thereto. If the passenger is four years of age or younger, or weighs 40 pounds or less, the seat shall have adequate provision for retaining the passenger in place and for protecting the passenger from the moving parts of the bicycle.

SEC. 2. Section 21212 is added to the Vehicle Code, to read:

21212. (a) A person under 18 years of age shall not operate a bicycle, or ride upon a bicycle as a passenger, upon a street, bikeway, as defined in subdivision (a) of Section 2373 of the Streets and Highways Code, or any other public bicycle path or trail unless that person is wearing a properly fitted and fastened bicycle helmet that meets the standards of the American National Standards Institute (ANSI Z 90.4 bicycle helmet standard) or the Snell Memorial Foundation's Standard for Protective Headgear for Use in Bicycling. This requirement also applies to a person who rides upon a bicycle while in a restraining seat that is attached to the bicycle or in a trailer towed by the bicycle.

(b) Any helmet sold or offered for sale for use by operators and passengers of bicycles shall be conspicuously labeled in accordance with the standard described in subdivision (a) which shall constitute the manufacturer's certification that the helmet conforms to the applicable safety standards.

(c) No person shall sell, or offer for sale, for use by an operator or passenger of a bicycle any safety helmet which is not of a type meeting requirements established by this section.

(d) (1) A person who violates a requirement of this section in 1994 shall be warned of the violation by the enforcing official, but shall not be issued a notice to appear.

(2) Any charge under this subdivision shall be dismissed when the person charged alleges in court, under oath, that the charge against the person is the first charge against that person under this subdivision, unless it is otherwise established in court that the charge is not the first charge against the person.

(e) Except as provided in subdivision (d), a violation of this section is an infraction punishable by a fine of not more than twenty-five dollars ($25).

The parent or legal guardian having control or custody of an unemancipated minor whose conduct violates this section shall be jointly and severally liable with the minor for the amount of the fine imposed pursuant to this subdivision.

(f) Notwithstanding Section 1463 of the Penal Code or any other provision of law, the fines collected for a violation of this section shall be allocated as follows:

(1) Seventy-two and one-half percent of the amount collected shall be deposited in a special account of the county health department, to be used for bicycle safety education and for assisting low-income families in obtaining approved bicycle helmets for children under the age of 18 years, either on a loan or purchase basis. The county may contract for the implementation of this program,

which, to the extent practicable, shall be operated in conjunction with the child passenger restraint program pursuant to Section 27360.

(2) Two and one-half percent of the amount collected shall be deposited in the county treasury to be used by the county to administer the program described in paragraph (1).

(3) If the violation occurred within a city, 25 percent of the amount collected shall be transferred to and deposited in the treasury of that city. If the violation occurred in an unincorporated area, this 25 percent shall be deposited and used pursuant to paragraph (1).

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 1001

An act to amend Section 18990 of, and to add Section 18993 to, the Government Code, relating to state employees, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 18990 of the Government Code is amended to read:

18990. (a) Notwithstanding any other provision of law or rule, persons employed by the Legislature for two or more consecutive years shall be eligible to apply for promotional civil service examinations, including examinations for career executive assignments, for which they meet the minimum qualifications as prescribed by the class specification. Persons receiving passing scores shall have their names placed on promotional lists resulting from these examinations or otherwise gain eligibility for appointment. In evaluating minimum qualifications, related legislative experience shall be considered state civil service experience in a class deemed comparable by the State Personnel Board, based on the duties and responsibilities assigned.

(b) In cases where promotional examinations are given by more

than one department for the same classification, the employee shall select one department in which to compete. Once this selection is made, it cannot be changed for the duration of the promotional list established from the examination in which the employee participated. Employees may transfer list eligibility between departments in the same manner as provided for civil service employees.

(c) Employees who meet the requirements of this section, are employed by the Legislature as of January 1, 1991, and who resign or are released from service due to a force reduction of the Legislature before January 1, 1992, shall be eligible to take promotional civil service examinations, including examinations for career executive assignments, for three years following their resignation or release in accordance with subdivisions (a) and (b).

(d) Employees who meet the requirements of this section, are employed by the office of the Auditor General or the office of the Legislative Analyst as of January 1, 1992, and who resign or are released from service due to a force reduction of the Legislature before January 1, 1994, shall be eligible to take promotional civil service examinations, including career executive assignments, for three years following their resignation or release in accordance with subdivisions (a) and (b).

(e) An employee who establishes eligibility on a promotional civil service list, either pursuant to subdivision (c) or prior to having resigned or having been released in a manner to which subdivision (c) would apply, shall maintain that eligibility for the duration of that particular list.

SEC. 2. Section 18993 is added to the Government Code, to read:

18993. A legislative or nonelected exempt executive branch employee who met the requirements of either Section 18990 or 18992, was subsequently employed in a career executive assignment position, and whose career executive assignment appointment was terminated, shall be eligible to take promotional civil service examinations, including examinations for career executive assignments, pursuant to Section 18990 or 18992, to the same extent as a legislative or nonelected exempt executive branch employee who had not been employed in the career executive assignment position. Time spent in a career executive assignment position shall be counted for purposes of determining examination eligibility under subdivisions (c) and (d) of Section 18990.

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 facilitate the movement of certain legislative and nonelected exempt executive branch employees into state civil service employment at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1002

An act to amend Section 402.1 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 402.1 of the Revenue and Taxation Code is amended to read:

402.1. (a) In the assessment of land, the assessor shall consider the effect upon value of any enforceable restrictions to which the use of the land may be subjected. These restrictions shall include, but are not limited to, all of the following:

(1) Zoning.

(2) Recorded contracts with governmental agencies other than those provided in Section 422.

(3) Permit authority of, and permits issued by, governmental agencies exercising land use powers concurrently with local governments, including the California Coastal Commission and regional coastal commissions, the San Francisco Bay Conservation and Development Commission, and the Tahoe Regional Planning Agency.

(4) Development controls of a local government in accordance with any local coastal program certified pursuant to Division 20 (commencing with Section 30000) of the Public Resources Code.

(5) Development controls of a local government in accordance with a local protection program, or any component thereof, certified pursuant to Division 19 (commencing with Section 29000) of the Public Resources Code.

(6) Environmental constraints applied to the use of land pursuant to provisions of statutes.

(7) Hazardous waste land use restriction pursuant to Section 25240 of the Health and Safety Code.

(8) A recorded conservation, trail, or scenic easement, as described in Section 815.1 of the Civil Code, that is granted in favor of a public agency, or in favor of a nonprofit corporation organized pursuant to Section 501 (c) (3) of the Internal Revenue Code that has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use.

(b) There is a rebuttable presumption that restrictions will not be removed or substantially modified in the predictable future and that they will substantially equate the value of the land to the value attributable to the legally permissible use or uses.

(c) Grounds for rebutting the presumption may include, but are not necessarily limited to, the past history of like use restrictions in

the jurisdiction in question and the similarity of sales prices for restricted and unrestricted land. The possible expiration of a restriction at a time certain shall not be conclusive evidence of the future removal or modification of the restriction unless there is no opportunity or likelihood of the continuation or renewal of the restriction, or unless a necessary party to the restriction has indicated an intent to permit its expiration at that time.

(d) In assessing land with respect to which the presumption is unrebutted, the assessor shall not consider sales of otherwise comparable land not similarly restricted as to use as indicative of value of land under restriction, unless the restrictions have a demonstrably minimal effect upon value.

(e) In assessing land under an enforceable use restriction wherein the presumption of no predictable removal or substantial modification of the restriction has been rebutted, but where the restriction nevertheless retains some future life and has some effect on present value, the assessor may consider, in addition to all other legally permissible information, representative sales of comparable lands that are not under restriction but upon which natural limitations have substantially the same effect as restrictions.

(f) For the purposes of this section the following definitions apply:

(1) "Comparable lands" are lands that are similar to the land being valued in respect to legally permissible uses and physical attributes.

(2) "Representative sales information" is information from sales of a sufficient number of comparable lands to give an accurate indication of the full cash value of the land being valued.

(g) It is hereby declared that the purpose and intent of the Legislature in enacting this section is to provide for a method of determining whether a sufficient amount of representative sales information is available for land under use restriction in order to ensure the accurate assessment of that land. It is also hereby declared that the further purpose and intent of the Legislature in enacting this section and Section 1630 is to avoid an assessment policy which, in the absence of special circumstances, considers uses for land that legally are not available to the owner and not contemplated by government, and that these sections are necessary to implement the public policy of encouraging and maintaining effective land use planning. Nothing in this statute shall be construed as requiring the assessment of any land at a value less than as required by Section 401 or as prohibiting the use of representative comparable sales information on land under similar restrictions when this information is available.

CHAPTER 1003

An act to add Section 15333.3 to the Government Code, relating to the California Spaceport Authority.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) Vandenberg Air Force Base, located in the County of Santa Barbara, is recognized as the best location in the United States for polar orbit commercial space activities. Vandenberg Air Force Base possesses, for that purpose, all necessary infrastructure, and an experienced pool of engineers, scientists, and other support personnel, as well as access to universities, colleges, and research centers.

(b) Commercial space activities should be encouraged as a way to stimulate the California economy and replace the thousands of aviation and defense-related jobs that have recently been lost in this state.

SEC. 2. Section 15333.3 is added to the Government Code, to read:

15333.3. (a) The Western Commercial Space Center, a nonprofit corporation, is designated as the California Spaceport Authority to provide the support and unique services required for the development of commercial launch, manufacturing, and academic and research operations related to space flight.

(b) The California Spaceport Authority shall be the official recipient of federal grants for space related studies, services, infrastructure improvements and modernization, and defense transition programs to the extent permitted by federal law.

CHAPTER 1004

An act to amend Section 56.30 of, and to add Section 56.06 to, the Civil Code, relating to medical information.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 56.06 is added to the Civil Code, to read:

56.06. (a) Any corporation organized for the primary purpose of maintaining medical information in order to make the information available to the patient or to a provider of health care at the request

of the patient or a provider of health care, for purposes of diagnosis or treatment of the patient, shall be deemed to be a provider of health care subject to the requirements of this part. However, nothing in this section shall be construed to make a corporation specified in this subdivision a provider of health care for purposes of any law other than this part, including laws that specifically incorporate by reference the definitions of this part.

(b) Any corporation described in subdivision (a) shall maintain the same standards of confidentiality required of a provider of health care with respect to medical information disclosed to the corporation.

(c) Any corporation described in subdivision (a) shall be subject to the penalties for improper use and disclosure of medical information prescribed in this part.

SEC. 2. Section 56.30 of the Civil Code is amended to read:

56.30. The disclosure and use of the following medical information shall not be subject to the limitations of this part:

(a) (Mental health and developmental disabilities) Information and records obtained in the course of providing services under Division 4 (commencing with Section 4001), Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100) of the Welfare and Institutions Code.

(b) (Public social services) Information and records which are subject to Sections 10850, 14124.1, and 14124.2 of the Welfare and Institutions Code.

(c) (State health services, communicable diseases, developmental disabilities) Information and records maintained pursuant to Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of the Health and Safety Code and pursuant to Division 4 (commencing with Section 3000) of the Health and Safety Code.

(d) (Licensing and statistics) Information and records maintained pursuant to Division 2 (commencing with Section 1200) and Division 9 (commencing with Section 10000) of the Health and Safety Code; pursuant to Chapter 3 (commencing with Section 1200) of Division 2 of the Business and Professions Code; and pursuant to Section 8608, 8706, 8817, or 8909 of the Family Code.

(e) (Medical survey, workers' safety) Information and records acquired and maintained or disclosed pursuant to Sections 1380 and 1382 of the Health and Safety Code and pursuant to Division 5 (commencing with Section 6300) of the Labor Code.

(f) (Industrial accidents) Information and records acquired, maintained, or disclosed pursuant to Division 1 (commencing with Section 50), Division 4 (commencing with Section 3201), Division 4.5 (commencing with Section 6100), and Division 4.7 (commencing with Section 6200) of the Labor Code.

(g) (Law enforcement) Information and records maintained by a health facility which are sought by a law enforcement agency

under Chapter 3.5 (commencing with Section 1543) of Title 12 of Part 2 of the Penal Code.

(h) (Investigations of employment accident or illness) Information and records sought as part of an investigation of an on-the-job accident or illness pursuant to Division 5 (commencing with Section 6300) of the Labor Code or pursuant to Section 2950 of the Health and Safety Code.

(i) (Alcohol or drug abuse) Information and records subject to the federal alcohol and drug abuse regulations (Part 2 (commencing with Section 2.1) of subchapter A of Chapter 1 of Title 42 of the Code of Federal Regulations) or to Section 11977 of the Health and Safety Code dealing with narcotic and drug abuse.

(j) (Patient discharge data) Nothing in this part shall be construed to limit, expand, or otherwise affect the authority of the California Health Facilities Commission to collect patient discharge information from health facilities pursuant to Section 441.18 of the Health and Safety Code.

(k) Medical information and records disclosed to, and their use by, the Insurance Commissioner, the Commissioner of Corporations, the Division of Industrial Accidents, the Workers' Compensation Appeals Board, the Department of Insurance, or the Department of Corporations.

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 1005

An act to add Section 14007.2 to the Government Code, relating to the Department of Transportation.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 14007.2 is added to the Government Code, to read:

14007.2. (a) There is in the Department of Transportation a unit, known as the Spaceport Office, whose primary responsibility is to seek and obtain federal funding for the commercialization of private

space activities in California.

(b) It is the intent of the Legislature that the responsibilities assigned to the department by this section be carried out with existing resources not exceeding the equivalent of one personnel year annually, and that the department not request an increase in its budget for this purpose.

SEC. 2. The Spaceport Office shall work cooperatively with the Western Commercial Space Center, a not-for-profit corporation formed pursuant to Section 501 (c) (3) of Title 26 of the United States Code, and any other corporations or consortia that are established or operate for the purposes of commercial space applications, in developing plans, grant proposals, bids, and other submissions to federal agencies and private corporations for funds to support the development of commercial space programs in California. The Department of Transportation shall receive, evaluate, and give consideration to, grant proposals and bids submitted by those corporations and consortia.

SEC. 3. The State of California recognizes the Western Commercial Space Center, a not-for-profit corporation formed pursuant to Section 501 (c) (3) of Title 26 of the United States Code, as an eligible recipient of federal, state, and local grants and loans for the purpose of engaging in the planning, development, and operation of commercial and educational space launch facilities at Vandenberg Air Force Base and for the promotion of business opportunities in the space field.

CHAPTER 1006

An act to amend Sections 16500.5, 16500.7, and 16501.1 of, and to add Section 16500.8 to, the Welfare and Institutions Code, relating to children, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 16500.5 of the Welfare and Institutions Code is amended to read:

16500.5. (a) (1) The Legislature hereby declares its intent to encourage the continuity of the family unit by:

(A) (i) Providing family preservation services.

(ii) For purposes of this subdivision "family preservation services" means intensive services for families whose children, without these services, would be subject to any of the following:

(I) Be at imminent risk of out-of-home placement.

(II) Remain in existing out-of-home placement for longer periods

of time.

(III) Be placed in a more restrictive out-of-home placement.

(B) Providing supportive services for those children within the meaning of Sections 360, 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 301.

(C) Providing counseling and family support services 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) It is the intent of the Legislature that family preservation and support services in California conform to the federal definitions contained in Section 431 of the Social Security Act as contained in Public Law 103-66, the Omnibus Budget Reconciliation Act of 1993. The Legislature finds and declares that California's existing family preservation programs meet the intent of this new federal initiative.

(c) (1) (A) (i) Any county, subject to the approval of the State Department of Social Services, may claim, on an annual basis, a portion of the state's share, and to the extent permitted, the federal share, of that county's AFDC-FC expenditures pursuant to subdivision (d) of Section 11450 for children subject to Sections 300, 301, 360, 361, and 364, in advance, provided the county conducts a program of family reunification and family maintenance services for families receiving these services pursuant to Sections 300, 301, 360, 364, and, as permitted by the department, children subject to Sections 601, 602, 726, and 727 of this code, and Section 7572.5 of the Government Code.

(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 program, a participating county may claim in advance an amount not to exceed an actual dollar amount that shall not exceed 25 percent of the state's share, and to the extent permitted, the federal share, of AFDC-FC funds to be expended by that county pursuant to subdivision (d) of Section 11450 for children subject to Sections 300, 301, 360, 361, and 364, and if permitted by the department, Sections 601, 602, 726, and 727,

calculated for the first year of the project.

(iv) The amount of funds to be advanced annually shall be calculated at the beginning of the county's program described in this subdivision. The advance shall be determined by projecting the state share of AFDC-FC General Fund expenditures, and to the extent permitted, the federal share of AFDC-FC expenditures for abused or neglected children pursuant to Sections 300, 301, 360, 361, 364, and, if permitted by the department, Sections 601, 602, 726, and 727, based upon state, and to the extent permitted, federal expenditures for AFDC-FC for the previous five years.

(B) If the county's total AFDC-FC general fund expenditures and, to the extent permitted by federal law, the federal share of AFDC-FC expenditures, added to the amount expended from the advance to the county exceeds, by more than 5 percent, the county's total projected AFDC-FC general fund expenditures and, to the extent permitted by federal law, the federal share of AFDC-FC expenditures for that fiscal year, the county shall fund that portion of the coverage in excess of 5 percent on a 100-percent basis. If the sum of a participating county's total AFDC-FC General Fund expenditures and, to the extent permitted by federal law, the federal share of AFDC-FC 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 and, to the extent permitted by federal law, the federal share of AFDC-FC expenditures for their children for that fiscal year, the county shall receive 25 percent of the amount of the savings.

(2) Services which may be provided under this program may include, but are not limited to, counseling, mental health treatment and substance abuse treatment services, parenting, respite, day treatment, transportation, homemaking, and family support services. Each county that chooses to provide mental health treatment and substance abuse treatment shall identify and develop these services in consultation with county mental health treatment and substance abuse treatment agencies. Additional services may include those enumerated in Sections 16506 and 16507. 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. Each county shall utilize available private nonprofit resources in the county prior to developing new county-operated resources when these private nonprofit resources are of at least equal quality and costs as county-operated resources and shall utilize available county resources of at least equal quality and cost prior to new private nonprofit resources.

(3) 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:

(A) Children who are dependent children not taken from

physical custody of their parents or guardians pursuant to Section 364.

(B) Children who are dependent children removed from the physical custody of their parents or guardian pursuant to Section 361.

(C) Children who it is determined will probably soon be within the jurisdiction of the juvenile court pursuant to Section 301.

(D) Upon approval of the department, children who have been adjudged wards of the court pursuant to Sections 601 and 602.

(E) Upon approval of the department, families of children subject to Sections 726 and 727.

(F) Upon approval of the department, children who are determined to require out-of-home placement pursuant to Section 7572.5 of the Government Code.

(4) The services shall only be provided to families whose children 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.

(5) 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.

(6) The program in each county shall be deemed successful if it meets the following standards:

(A) Enables families to resolve their own problems, effectively utilize service systems, and advocate for their children in educational and social agencies.

(B) Enhancing family functioning by building on family strengths.

(C) At least 75 percent of the children receiving services remain in their own home for six months after termination of services.

(D) During the first year after services are terminated:

(i) At least 60 percent of the children receiving services remain at home one year after services are terminated.

(ii) The average length of stay in out-of-home care of children selected to receive services who have already been removed from their home and placed 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.

(E) Two years after the termination of family preservation services:

(i) The average length of out-of-home stay of children selected to receive services under this section who, at the time of selection, are in out-of-home care, is 50 percent less than the average length of stay in out-of-home care for children in out-of-home care who do not receive services pursuant to this section.

(ii) At least 60 percent of the children who were returned home pursuant to this section remain at home.

(7) Funds used for services provided under this section shall supplement, not supplant, child welfare services funds available for services pursuant to Sections 16506 and 16507.

(8) Each county participating in the program authorized by this section shall only continue to utilize the advance fund-claiming mechanism specified in paragraph (1) if the department finds the county has demonstrated the successful outcome of the county program, based on the criteria for success specified in paragraph (6).

(9) 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.

(d) (1) 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.

(2) The county probation department may, with the approval of the State Department of Social Services, through an interagency agreement with the county welfare department, refer cases to the county welfare department for the direct provision of services under this subdivision.

(e) 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.

(f) 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.

(g) A county may establish family preservation programs that serve one or more geographic areas of the county, subject to the approval of the State Department of Social Services.

SEC. 2. Section 16500.7 of the Welfare and Institutions Code is amended to read:

16500.7. (a) (1) Commencing with the 1993–94 fiscal year, each county or city and county with a family preservation program pursuant to Section 16500.5, in operation at least three consecutive years prior to the year in which the transfer is to occur, may request the department to transfer, once, on a permanent basis, funds from the category of General Fund moneys appropriated for out-of-home placement provided pursuant to subdivision (d) of Section 11450 for

children subject to Section 300, 301, 360, 361, or 364 for that county or city and county, to the category of child welfare services as specified in subdivision (j) of Section 16501 for the purposes of providing family preservation services. The county shall make the request as part of the annual application and documentation submitted to the department pursuant to Section 16500.5 commencing with the plan for the 1993–94 fiscal year.

(2) Any county that served children subject to Section 601 or 602, or Section 7572.5 of the Government Code, during the pilot phase may continue to serve the same populations after the permanent transfer described in this section.

(3) Subject to the approval of the department, a county may, at any time after the permanent transfer, request a supplemental permanent transfer to serve additional populations of eligible children who were not served during the pilot phase. The maximum amount that may be transferred pursuant to this paragraph is subject to the limits specified in clause (iii) of subparagraph (A) of paragraph (1) of subdivision (b) of Section 16500.5.

(4) For any county with an approved plan pursuant to Section 16500.5, the three-year period required by paragraph (1) may, at the discretion of the department, include any year in which a county has operated a family preservation program pursuant to Section 16500.5, which has been financed with county funds.

(b) The amount identified for transfer pursuant to this section shall be an amount up to 70 percent of the highest annual amount spent pursuant to Section 16500.5 and agreed to by both the county or city and county and the department as sufficient to maintain family preservation services at a level which ensures the continuation of an appropriate level of family preservation services on a permanent basis. This determination shall be made on a county-by-county basis, relying on the experience each county has with conducting its program under Section 16500.5.

(c) Beginning with the fiscal year in which the transfer takes place, each participating county or city and county shall be required to match these funds consistent with the matching requirements in place for other General Fund moneys appropriated and allocated to counties for child welfare services provided pursuant to Section 16501.

(d) Upon approval of the transfer, the department and the Department of Finance shall incorporate the transferred funding into the base funding allocations in later years provided to the participating counties for services provided under Section 16501.

(e) For counties receiving transfers pursuant to subdivision (a), the provisions of subdivision (b) of Section 16500.5, including the ability to claim additional advances on AFDC-FC funds in subparagraph (A) of that section and the financial risk provisions in subparagraph (B) of that section, shall no longer apply.

(f) (1) In enacting this section, the Legislature establishes the commitment to provide the means by which family preservation

services may convert from pilot projects as established in Chapter 105 of the Statutes of 1988 to ongoing permanent programs. However, in order to assess the feasibility of the approach provided in this section, the Legislature has provided for the repeal of this section.

(2) Subject to paragraph (3), this section shall remain in effect only until six months following the execution of a declaration, that shall be retained by the director, stating that the department has secured a permanent stable federal funding source to support family preservation services, and as of that date shall be repealed.

(3) If the director does not execute the declaration described in paragraph (2) prior to January 1, 1997, this section shall become inoperative on July 1, 1997, and as of January 1, 1998, is repealed unless a later enacted statute, that becomes effective on or before January 1, 1998, deletes or extends the dates on which it becomes inoperative and is repealed.

(4) If the director executes the declaration described in paragraph (2), the department shall make reasonable arrangements to shift those counties operating a family preservation program under a memorandum of understanding with the department, to the newly federally funded family preservation program.

SEC. 3. Section 16500.8 is added to the Welfare and Institutions Code, to read:

16500.8. (a) The department shall, in consultation with the County Welfare Directors Association, seek additional federal revenues to finance the family preservation activities described in Section 16500.7. Those revenue sources shall include, but need not be limited to, all of the following:

(1) Title IV-A of the federal Social Security Act, contained in Part A (commencing with Section 601) of Subchapter 4 of Chapter 7 of Title 42 of the United States Code.

(2) Title IV-E of the federal Social Security Act contained in Part E (commencing with Section 670) of Subchapter 4 of Chapter 7 of Title 42 of the United States Code.

(3) Title IV-B of the federal Social Security Act contained in Part B (commencing with Section 620) of Subchapter 4 of Chapter 7 of Title 42 of the United States Code.

(4) Title XIX of the federal Social Security Act, contained in Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

(b) It is the intent of the Legislature that any additional funds received pursuant to this section shall supplement, and not supplant, existing General Fund support for family preservation services.

SEC. 4. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(b) The Legislature further finds and declares that a case plan

ensures that the child receives protection and proper case management, and that services are provided to the parents or other caretakers as appropriate. A case plan shall be based upon the principles of this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made.

(c) When out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of the least restrictive or most familylike setting, selection of the environment best suited to meet the child's special needs and best interests, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 275 of the Civil Code.

(d) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.25 or 366.26, but no less frequently than once every six months.

(e) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(f) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances which required child welfare services intervention.

(2) The case plan shall identify specific goals, and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents which led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services.

(5) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in

this section.

(6) When out-of-home services are used, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.

(7) Parents and legal guardians shall have an opportunity to review the case plan, sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(8) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the plan.

(g) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings be provided with information necessary to accomplish this visitation. Nothing in this section shall be construed to require or prohibit the probation officer's facilitation, transportation, or supervision of visits between the child and his or her siblings.

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 facilitate the timely administration of the provisions of this act with respect to the 1993–94 fiscal year, to provide needed services to families as soon as possible, and to conform with new federal statutes, it is necessary that this act take effect immediately.

CHAPTER 1007

An act to add and repeal Chapter 6.1 (commencing with Section 1780.50) of Part 2 of Division 1 of the Insurance Code, relating to insurance.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Chapter 6.1 (commencing with Section 1780.50) is added to Part 2 of Division 1 of the Insurance Code, to read:

CHAPTER 6.1. SURPLUS LINE ADVISORY ORGANIZATION

1780.50. (a) The Legislature finds and declares that consumers in the State of California have insurance needs which cannot always be met through the admitted insurance market. For this reason, many insurance consumers need access to insurance underwritten by nonadmitted insurers, as permitted by law. To help ensure that insurance consumers have access to financially sound and reputable nonadmitted insurers, it is in the public interest to authorize a surplus line advisory organization within the State of California to perform certain duties delegated by the Insurance Commissioner, as provided in this chapter.

(b) The Legislature further finds and declares that it is in the public interest for the surplus line advisory organization authorized under this chapter to be composed of surplus line brokers or persons involved in the business of surplus line insurance. The advisory organization's activities shall constitute an integral part of the business of insurance. The advisory organization will facilitate the state's ability to monitor and regulate the transfer of risk on a sound basis through surplus line brokers to nonadmitted insurers in accordance with Chapter 6 (commencing with Section 1760) and may perform certain functions in this state's system of monitoring and regulating the persons and entities involved in this state in the surplus line segment of the insurance industry.

(c) The Legislature further finds and declares that the authorization of a surplus line advisory organization to perform the duties delegated by the Insurance Commissioner, as provided in this chapter, will further the policies of the State of California expressed in the findings set forth in this section. The oversight, supervision, and examination by the Insurance Commissioner provided for in this chapter are intended to subject the activities of the advisory organization to active state supervision.

(d) The Legislature further finds and declares that, as it is the obligation and duty of the elected Insurance Commissioner to regulate the business of insurance in the State of California, it is in

the public interest to grant the Insurance Commissioner the authority and discretion to utilize the expertise and knowledge of a surplus line advisory organization to assist in carrying out that responsibility, as provided in this chapter.

1780.51. (a) As used in this chapter, "surplus line advisory organization" shall mean the organization authorized to perform the duties delegated by the commissioner under this chapter and to exercise the authority incidental thereto.

(b) All references in this chapter to "advisory organization" shall mean "surplus line advisory organization."

(c) As used in this chapter, the term "surplus line law" shall refer to Chapter 6 (commencing with Section 1760).

(d) All references in this chapter to the "commissioner" shall mean the Insurance Commissioner of the State of California.

1780.52. (a) The surplus line advisory organization shall be deemed a joint arrangement established by statute to assure the availability of insurance on a sound basis under paragraph (2) of subdivision (b) of Section 1861.03.

(b) All surplus line brokers licensed under the surplus line law shall be deemed to be members of the advisory organization.

1780.53. The commissioner shall remain fully responsible for supervising the implementation and administration of the surplus line law and for all regulatory decisions and initiatives in connection therewith, and nothing in this chapter shall be deemed or construed to diminish or impair the commissioner's authority and responsibility.

1780.54. To be authorized to perform the duties delegated by the commissioner under this chapter and to exercise the authority incidental thereto, an organization must satisfy the requirements of this section.

(a) The organization must be a private, nonprofit organization that has all the following qualifications:

(1) Experience in professional surplus line brokerage, advisory, and regulatory activity in California or whose members possess that experience.

(2) The administrative capability and recordkeeping facilities to process all surplus line filings in California.

(3) The data processing capability and the necessary personnel to perform appropriate security review of all nonadmitted insurers.

(4) The capability to perform the duties that may be delegated by the commissioner under this chapter and to exercise the authority incidental thereto.

(b) An organization that has the qualifications described in subdivision (a) must file with the commissioner all of the following:

(1) A copy of its constitution, its articles of agreement or association, or its certificate of incorporation.

(2) A copy of its bylaws, if any.

(3) A current list of its members.

(4) The name and address of a resident of this state as agent for

service of process.

(5) A plan of operation identifying the duties set forth in Section 1780.56 that the organization proposes to perform and describing how the organization will perform those duties.

(6) Any other documents, evidence, or information necessary to show that the organization complies with the provisions of this chapter.

(c) The advisory organization shall file with the commissioner every material change in the documents required by subdivision (b), including every amendment to its plan of operation required by subdivision (d).

(d) The advisory organization's plan of operation shall be amended whenever necessary to conform to and effectuate the purposes of any amendments to this chapter or to the surplus line law or the regulations pertaining thereto. Further, the plan of operation shall be amended in response to any written request reasonably made by the commissioner to improve the advisory organization's effectiveness in performing the duties delegated by the commissioner under this chapter. The commissioner's requests under this subdivision shall be consistent with technical and economic feasibility and established techniques or practices for performing the types of activities encompassed by the duties delegated by the commissioner.

1780.55. (a) Within 120 days after the filing of the documents required by subdivision (b) of Section 1780.54, the commissioner shall notify the organization in writing of the commissioner's determination to approve or disapprove the organization's qualifications and its plan of operation and which, if any, of the duties identified in the plan of operation the commissioner has determined to delegate to the organization. The commissioner and the organization shall confer to resolve any and all issues that the commissioner may raise concerning the organization's qualifications, its plan of operation, or which duties should be delegated to the organization. Any determination by the commissioner to disapprove the organization's qualifications or plan of operation or not to delegate one or more of the duties identified in the plan of operation shall be accompanied by a statement of the commissioner's reasons therefor.

(b) The commissioner may provisionally approve the organization's qualifications and plan of operation and may provisionally delegate one or more of the duties identified in the plan of operation pending the commissioner's determinations under subdivision (a).

(c) Upon approval of the organization's qualifications and plan of operation and upon delegation to the organization of one or more of the duties identified in the plan of operation, the organization shall commence operations as the advisory organization under this chapter, consistent with the duties delegated by the commissioner. In the event of provisional approval and delegation pursuant to

subdivision (b), the organization shall operate as the advisory organization under this chapter during the period of, and consistent with, the provisional approval and delegation by the commissioner.

(d) Any amendment to the advisory organization's plan of operation that is required by subdivision (d) of Section 1780.54 shall be approved or disapproved pursuant to the procedures set forth in this section.

(e) The time periods set forth in this section may be extended by consent of the organization and the commissioner.

(f) The decision whether to delegate or withdraw one or more of the duties identified in the plan of operation is committed to the commissioner's sound discretion. The commissioner may, upon not less than one year's notice to the advisory organization, withdraw one or more functions that have been delegated to the advisory organization in order that any one or more functions so withdrawn may be performed by the Department of Insurance.

1780.56. (a) The commissioner may delegate one or more of the following duties to a qualified surplus line advisory organization under this chapter:

(1) To receive, review, and record all documents required by law, regulation, or order to be filed with the commissioner or his or her designee with respect to foreign and alien nonadmitted insurers and any insurance placed with nonadmitted insurers, except that the advisory organization shall not receive documents submitted pursuant to subdivision (c) of Section 1763. The review under this subdivision shall be for completeness, accuracy, and any other matters the commissioner reasonably may direct the advisory organization to review. The advisory organization shall notify the filing surplus line broker in writing of any filing that the advisory organization determines to be incomplete or inaccurate, and shall request the filing broker to correct the problem. The advisory organization may, or as directed by the commissioner shall, notify the commissioner of incomplete or inaccurate filings.

(2) To conduct a security review and analysis of all foreign and alien nonadmitted insurers with which surplus line brokers place or propose to place insurance covering property or risks located or persons residing in this state, and to provide to the commissioner a report on any foreign or alien nonadmitted insurer based on that review and analysis. The review and analysis under this subdivision shall take account of any matters the commissioner reasonably may direct the advisory organization to review and any other matters the advisory organization considers necessary or appropriate.

(3) To make confidential recommendations to the commissioner as to the suitability of any foreign or alien nonadmitted insurer to insure property or risks located or persons residing in this state or whether any foreign or alien nonadmitted insurer should be added to or removed from any list of either eligible or disapproved nonadmitted insurers maintained by the commissioner. The advisory organization's recommendations shall be based on any review and

analysis that it performs under this chapter and on any additional information that may come to the advisory organization's attention or that the commissioner reasonably may request the advisory organization to consider.

(4) To report to the commissioner and other appropriate authorities instances of actual fraudulent or illegal insurance activity in the surplus line market that come to the advisory organization's attention and any facts that come to the advisory organization's attention that, in the reasonable judgment of the advisory organization, may indicate the presence of fraudulent or illegal insurance activity in the surplus line market or potential risk of harm to consumers of surplus line insurance.

(5) To maintain and report information necessary or that reasonably may be requested by the commissioner for the calculation and collection of premium taxes on surplus line insurance premiums.

(6) To respond to any request by the commissioner for comments on any proposed legislation or regulation affecting the placement of insurance pursuant to the surplus line law.

(7) To receive and disseminate to its members information relating to surplus line insurance, to educate its members about the surplus line law and the regulations pertaining thereto, and to perform any specific educational activities that the commissioner reasonably may request.

(8) To communicate with organizations of admitted insurers with respect to the proper use of the surplus line market.

(9) To enter into written arrangements with the commissioner whereby the advisory organization will perform any other functions that, in the judgment of the commissioner and the advisory organization, will help the commissioner provide effective and cost-efficient supervision of the surplus line market.

(b) If the commissioner delegates to the advisory organization one or more of the duties set forth in subdivision (a), the advisory organization also shall be authorized to assess a stamping fee for each policy, declarations page, cover note, or other premium bearing document submitted to the advisory organization. The stamping fee shall be established from time to time by the governing body of the advisory organization, shall reflect all reasonable costs associated with the services provided by the advisory organization, and may be reviewed by the commissioner for reasonableness as part of the commissioner's examination of the advisory organization. Except as otherwise provided in this subdivision, the stamping fee may not exceed three-fourths of 1 percent of the premium for the insurance. Any proposed increase in the stamping fee above three-fourths of 1 percent shall be filed with the commissioner along with a written explanation of the reason for the increase, and the increase shall take effect upon the expiration of 60 days after the date of filing unless the commissioner disapproves it within that time. Within 60 days after the date of filing, the commissioner may provisionally approve the proposed increase, in which event the increase shall take effect

immediately. The proposed increase shall be deemed fully approved upon the expiration of 120 days after the date of filing unless the commissioner disapproves the proposed increase within that time. The stamping fee shall be paid by the surplus line broker, provided, however, that the surplus line broker shall be allowed to receive and collect the stamping fee from the insured.

(c) Nothing in this chapter shall affect any delegation by the commissioner pursuant to the surplus line law, provided, however, that once the commissioner delegates one or more of the duties set forth in this section and the advisory organization commences operations under this chapter, no other organization may simultaneously perform the same duties under this chapter or exercise the authority incidental thereto.

(d) The advisory organization may cease performing the duties delegated by the commissioner under this chapter and exercising the authority incidental thereto at any time upon 180 days' written notice to the commissioner. The commissioner may require the advisory organization to continue performing the duties under this chapter for up to an additional 180 days, and the commissioner shall be entitled, following receipt of notice from the advisory organization under this subdivision, to obtain copies of all unprivileged files, documents, and records maintained by the advisory organization on behalf of the commissioner under this chapter.

(e) The commissioner's findings, determinations, rules, rulings, and orders under this chapter shall apply only to the advisory organization's right to perform the duties delegated by the commissioner under this chapter and to exercise the authority incidental thereto. Nothing in this chapter shall be deemed or construed to affect the advisory organization's right to exist and function as a private, nonprofit organization, with all powers attendant thereto, and to engage in lawful activities other than under the authority of this chapter.

1780.57. If the commissioner delegates to the surplus line advisory organization one or more of the duties set forth in Section 1780.56, the advisory organization also shall be authorized to exercise the authority, in connection with those duties and incidental thereto:

(a) To facilitate and encourage compliance by its members with the laws of California and the rules and regulations of the commissioner relating to surplus line insurance.

(b) To maintain files for all documents received under this chapter and any other files the commissioner reasonably may direct the advisory organization to maintain.

(c) To provide comments on any proposed legislation or regulation.

(d) To make contracts necessary or appropriate to effect the purposes of this chapter and to perform the duties delegated by the commissioner under this chapter and to exercise the authority incidental thereto.

(e) To employ and retain whatever persons are necessary to perform the duties delegated by the commissioner under this chapter and to exercise the authority incidental thereto.

(f) To perform any other acts necessary or appropriate to monitor the surplus line business and to effect the purposes of this chapter as well as the surplus line law and the regulations pertaining thereto, consistent with the duties delegated by the commissioner under this chapter.

1780.58. (a) The surplus line advisory organization shall be subject to the supervision of the commissioner, including, but not limited to, the powers of the commissioner pursuant to Article 6.5 (commencing with Section 790) of Chapter 1 of Part 2 of Division 1, and Article 1 (commencing with Section 12919) of Chapter 2 of Division 3.

(b) The advisory organization shall prepare and submit an annual report on the performance of its duties under this chapter in the form and manner required by the commissioner and may advise the commissioner from time to time concerning any other matters relevant to its duties or the regulation of the surplus line market.

(c) The commissioner shall, at least once every three years, make or cause to be made an examination of the advisory organization, including the reasonableness of its costs. The examination may be made by independent auditors retained for that purpose by the commissioner. The reasonable cost of the examination shall be paid to the commissioner or, if the commissioner retains independent auditors for that purpose, directly to the independent auditors, by the advisory organization upon presentation by the commissioner, or by the independent auditors, of a detailed account of the cost. The commissioner shall furnish two copies of the examination report to the advisory organization.

(d) Within 20 days of receiving the commissioner's examination report, the advisory organization may request a hearing on the report or on any facts or recommendations contained therein by mailing written notice to the commissioner specifying the matters to be considered at the hearing. The commissioner shall hold a hearing within 60 days on those aspects of the examination report and on any other aspects of the report that the commissioner designates for consideration.

1780.59. (a) If, as a result of the commissioner's examination of the surplus line advisory organization or otherwise, there is good cause to believe that the advisory organization does not comply with any provision of this chapter or with any written request reasonably made by the commissioner pursuant to the provisions of this chapter, the commissioner shall give notice in writing to the advisory organization, stating in what manner and to what extent noncompliance is alleged to exist and specifying a reasonable time, not less than 10 days thereafter, in which the noncompliance may be corrected. Notices under this section shall be confidential as between the commissioner and the advisory organization unless a hearing is

held under Section 1780.60.

(b) For purposes of this chapter, noncompliance includes any material failure by the advisory organization to perform adequately the duties delegated by the commissioner under this chapter or exercise properly the authority incidental thereto.

1780.60. (a) If there is good cause to believe that the surplus line advisory organization's noncompliance with any provision of this chapter is willful, or if within the period prescribed by the commissioner in the notice required by subdivision (a) of Section 1780.59 the advisory organization does not make the changes necessary to correct the noncompliance specified by the commissioner or establish to the satisfaction of the commissioner that noncompliance does not exist, then the commissioner may hold a hearing in connection therewith, provided that within a reasonable period of time, which shall not be less than 30 days before the date of the hearing, the commissioner shall mail written notice specifying the matters to be considered at the hearing to the advisory organization. The notice shall conform to the requirements for an accusation as prescribed by Section 11503 of the Government Code. If no notice has been given as provided in subdivision (a) of Section 1780.59, notice shall be given as to the manner and extent of noncompliance that is alleged to exist. The hearing shall not include any subjects not specified in the notices required by subdivision (a) of Section 1780.59 or this section, except that if the hearing relates to or is based upon any aspect of the commissioner's examination report on the advisory organization, the hearing shall also include any other aspect of the report that the advisory organization designates for consideration.

(b) In the event the commissioner reasonably determines that the advisory organization is engaged in fraudulent activity or malfeasance in the performance of the duties delegated by the commissioner under this chapter or in the exercise of the authority incidental thereto or otherwise is in violation of or noncompliance with any provision of this chapter, and that conduct has resulted, or is likely to result, in a significant, adverse, and immediate effect on the public or the commissioner's ability to regulate the surplus line business that, because of the emergency nature of the effect on the public or the commissioner's ability to regulate the surplus line business, cannot reasonably be remedied under the other provisions of this chapter, the commissioner may issue an order, without prior hearing, directing the advisory organization to cease and desist from the conduct or suspending or revoking all or part of the advisory organization's authorization to perform the duties delegated by the commissioner under this chapter, in addition to imposing any other penalty provided for in this code. An order under this subdivision may, if necessary, also direct the advisory organization to preserve documents and records and to grant immediate access by the commissioner's authorized representatives to the advisory organization's premises to examine and make copies of any and all

unprivileged documents and records of the advisory organization maintained on behalf of the commissioner pursuant to this chapter. Within five days after issuing an order under this subdivision, the commissioner shall issue the notice and shall thereafter hold the hearing under subdivision (a) of this section, provided, however, that:

(1) The notice shall include a statement of the factual bases for issuance of the order under this subdivision.

(2) The notice shall be delivered to the advisory organization's offices within one day of issuance.

(3) The advisory organization shall be granted a hearing upon 10 days' written request to the commissioner or upon the hearing date set by the commissioner, whichever is earlier.

(4) Within 10 days following the hearing under this subdivision, the commissioner shall confirm, modify, or withdraw the summary order issued prior to hearing under this subdivision.

1780.61. If, after a hearing pursuant to subdivision (d) of Section 1780.58 or subdivision (a) of Section 1780.60, the commissioner finds:

(a) That the advisory organization has violated or failed to comply with any provision of this chapter, the commissioner may issue an order to the advisory organization, specifying in what respect the violation or noncompliance exists and stating when, within a reasonable period of time, the violation or noncompliance shall cease.

(b) That the advisory organization has failed to comply with a final order of the commissioner under subdivision (a) within the time prescribed by the commissioner's order or by any extension thereof which the commissioner may grant, the commissioner may issue an order suspending or revoking all or part of the advisory organization's authorization to perform the duties delegated by the commissioner under this chapter, in addition to imposing any other penalty provided for in this chapter.

(c) That the advisory organization has willfully engaged in any fraudulent or dishonest act or practice, the commissioner may issue an order suspending or revoking all or part of the advisory organization's authorization to perform the duties delegated by the commissioner under this chapter, in addition to imposing any other penalty provided for in this code.

1780.62. Except as otherwise provided in this chapter, the proceedings required or authorized by subdivision (d) of Section 1780.58 and by Sections 1780.60 and 1780.61 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 commissioner shall have all the powers granted therein. Hearings shall be conducted by administrative law judges chosen under Section 11502 of the Government Code or appointed by the commissioner.

1780.63. (a) Any finding, determination, rule, ruling, or order made by the commissioner under this chapter shall be subject to

review by the courts of this state, and proceedings on review shall be conducted in accordance with the provisions of the Code of Civil Procedure. In proceedings on review, the court shall apply the substantial evidence standard set forth in subdivision (c) of Section 1094.5 of the Code of Civil Procedure.

(b) Notwithstanding any other provision of law to the contrary, a petition for judicial review of any finding, determination, rule, ruling, or order of the commissioner may be filed within 30 days after the effective date thereof. Upon application by the advisory organization, a court may for good cause stay or enjoin the effect of any finding, determination, rule, ruling, or order of the commissioner issued pursuant to this chapter.

(c) The advisory organization shall have legal standing to bring and defend actions, in the name of the advisory organization, in administrative and judicial proceedings, with all powers attendant thereto.

1780.64. (a) If the surplus line advisory organization, or any of its officers, committee members, agents, or employees, fails to comply with a final order of the commissioner under this chapter, the advisory organization or the person shall be liable to the state in an amount not exceeding one hundred dollars ($100), but if the failure is willful, the advisory organization or the person shall be liable to the state in an amount not exceeding five thousand dollars ($5,000) for the failure. The commissioner shall collect the amount so payable and may bring an action in the name of the people of the State of California to enforce collection. These penalties may be in addition to any other penalties provided by law.

(b) A willful violation of any provision of this chapter by any person is a misdemeanor.

1780.65. Any action by the surplus line advisory organization may be reviewed by the commissioner upon petition by any person adversely affected thereby, but only after all applicable remedies available under the advisory organization's constitution, articles, and bylaws, if any, have been exhausted.

1780.66. (a) There shall be no liability on the part of, and no cause of action of any nature shall arise against, the surplus line advisory organization, or its members, officers, committee members, agents, or employees, or the Department of Insurance, the commissioner, or employees or representatives of the Department of Insurance, for any action taken or omitted by any of them in the performance of their duties or the exercise of their authority under this chapter, unless it can be shown that any of the parties specified in this subdivision acted in bad faith. The performance of any duty to the advisory organization delegated by the commissioner under this chapter or the exercise of any authority incidental thereto is an official duty of the advisory organization. Nothing in this subdivision shall be deemed or construed to grant any immunity, or any defense to liability, to a surplus line broker for that broker's failure to comply with the surplus line law or the regulations pertaining thereto.

(b) The advisory organization's communications with the commissioner and other appropriate authorities pursuant to its performance of the duties delegated by the commissioner under this chapter or its exercise of the authority incidental thereto shall be considered communications by an interested person to another interested person under the provisions of subdivision (c) of Section 47 of the Civil Code and shall be deemed confidential communications as defined in Section 12919.

(c) The immunities and privileges afforded by this section shall not affect the availability of any other immunities or privileges afforded by law and shall not affect any of the rights of hearing and review under, or any other provisions of, this chapter.

1780.67. (a) No person shall serve on the governing body of the surplus line advisory organization if in the past 10 years that person has been disciplined for violating the insurance laws or regulations of this state. The commissioner may waive this provision if the prior violation is not material to the person's fitness to serve.

(b) At least 30 days prior to the election of its governing body, the advisory organization shall advise the commissioner of the names of the persons nominated for election to the governing body. If, prior to the election, the commissioner objects on reasonable grounds to the fitness to serve of any nominee or nominees, the nominee or nominees shall not qualify for that election.

(c) The advisory organization shall select and determine the terms of employment of its employees. The name and qualifications of any candidate for the permanent full-time position of executive director, manager, or chief operating officer of the advisory organization shall be submitted for the commissioner's review. If, within 30 days after the submission of the candidate's name and qualifications to the commissioner, the commissioner disapproves on reasonable grounds that candidate's fitness to serve, the candidate shall not serve as the executive director, manager, or chief operating officer of the advisory organization.

1780.68. 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 on or before January 1, 1995, deletes or extends that date.

SEC. 2. This bill shall not become operative if Senate Bill 959 of the 1993–94 Regular Session is enacted and becomes effective on or before January 1, 1994.

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 1008

An act to amend Sections 25286 and 25287 of the Health and Safety Code, relating to hazardous substances.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 25286 of the Health and Safety Code is amended to read:

25286. (a) An application for a permit to operate an underground storage tank, or for renewal of the permit, shall be made, by the owner, on a standardized form prepared by the board and provided by the local agency and shall be accompanied by the appropriate fee, as specified in Section 25287. As a condition of any permit to operate an underground storage tank, the permittee shall notify the local agency, within the period determined by the local agency, of any changes in the usage of the underground storage tank, including the storage of new hazardous substances, changes in monitoring procedures, and if there has been any unauthorized release from the underground storage tank, as specified in Section 25294 or 25295.

(b) (1) The local agencies shall provide either the California Association of Environmental Health Administrators or the designee of the board with copies of the completed permit applications, using forms, an industry standard computer readable magnetic tape, diskettes, or any other form in a format acceptable to the board.

(2) The board may enter into a contract with the California Association of Environmental Health Administrators or any other designee of the board for the purpose of administering the underground storage tank permit data base, and reimburse the association, or any other designee of the board, upon appropriation by the Legislature, for any costs determined by the board to have been necessary and incurred pursuant to this section, including programming, training, maintenance, actual data-processing expenditures, and any incidental costs of the operation of the data base related to the permitting of underground storage tanks. In selecting a contractor pursuant to this paragraph, the board shall consider the fiscal impact upon local agencies of converting to the database systems and procedures employed by that contractor. The permit application information required in subdivision (c) shall be stored in the data base. The California Association of Environmental Health Administrators or other designee of the board shall submit to the board a quarterly report, including any information required by

the board concerning permit application data. Each local agency shall provide the California Association of Environmental Health Administrators or other designee of the board with a copy of the completed permit application within 30 days after taking final action on the application.

(c) The application form shall include, but not be limited to, requests for the following information:

(1) A description of the age, size, type, location, uses, and construction of the underground storage tank or tanks.

(2) A list of all the hazardous substances which are or will be stored in the underground storage tank or tanks, specifying the hazardous substances for each underground storage tank.

(3) A description of the monitoring program for the underground tank system.

(4) The name and address of the person, firm, or corporation which owns the underground tank system and, if different, the name and address of the person who operates the underground tank system.

(5) The address of the facility at which the underground tank system is located.

(6) The name of the person making the application.

(7) The name and 24-hour phone number of the contact person in the event of an emergency involving the facility.

(8) If the owner or operator of the underground storage tank is a public agency, the application shall include the name of the supervisor of the division, section, or office which operates the tank.

(d) If a permittee stores in an underground storage tank or tanks a hazardous substance which is not listed in the application, as required by paragraph (2) of subdivision (c), the permittee shall apply for a new or amended permit within 30 days after commencing the storage of that hazardous substance.

SEC. 2. Section 25287 of the Health and Safety Code is amended to read:

25287. (a) Except as provided in subdivision (c), a fee shall be paid to the local agency by each person who submits an application for a permit to operate an underground storage tank or to renew or amend a permit. The governing body of the county, or a city which assumes enforcement jurisdiction, shall establish the amount of the fees at a level sufficient to pay the necessary and reasonable costs incurred by the local agency in administering this chapter, including, but not limited to, permitting and inspection responsibilities. The governing body may provide for the waiver of fees when a state or local government agency makes an application for a permit to operate or an application to renew a permit.

(b) This fee shall include a surcharge, the amount of which shall be determined by the Legislature annually to cover the costs of the board in carrying out its responsibilities under this chapter and the costs of the local agency in collecting the surcharges. The local agency may retain 6 percent of any surcharge collected for costs

incurred in its collection. The 6 percent of the surcharge retained by the local agency is the local agency's sole source of reimbursement for the cost of collecting the surcharge. The local agency shall transmit all remaining surcharge revenue collected by the local agency to the board within 45 days after receipt pursuant to subdivision (a). The surcharge shall be deposited in the Underground Storage Tank Fund hereby created in the General Fund. The money in this account is available, upon appropriation by the Legislature, to the board for the purposes of implementing this chapter.

(c) A local agency may waive the fee required by subdivision (a) for an underground storage tank which has a capacity of 5,000 gallons or less, which is located on a farm, and which contains motor vehicle or heating fuel used primarily for agricultural purposes, if the local agency finds that the fee will impose undue economic hardship upon the person applying for the permit. However, the local agency shall not waive the surcharge required under subdivision (b).

(d) If a local agency does not transmit the surcharge for a particular permit application to the board, the local agency shall pay the California Association of Environmental Health Administrators or other designee of the board for any costs associated with processing that application incurred by the data base.

(e) A county of the fifth class, as defined in Section 28020 of the Government Code as a county with a population of 1,000,000 and under 1,070,000, and any city located within that county, is exempt from the requirements of collecting or transmitting to the board the surcharge required to be included in fees paid to a local agency pursuant to this section.

CHAPTER 1009

An act to add Chapter 3.7 (commencing with Section 21504) to Part 1 of Division 9 of, and to repeal Section 21506 of, the Public Utilities Code, relating to public utilities, and making an appropriation therefor.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Chapter 3.7 (commencing with Section 21504) is added to Part 1 of Division 9 of the Public Utilities Code, to read:

CHAPTER 3.7. WIRE STRIKE EDUCATION AND PREVENTION

21504. The Legislature finds and declares as follows:

(a) Representatives from the aviation community, electric utility

industry, and government agencies voluntarily convened a working group in July 1992 to develop a comprehensive program to improve low-level flight safety throughout California.

(b) The working group found that the prevention of aircraft wire strikes and losses through (1) pilot education and awareness and (2) selective marking of those wires and supporting structures that present a hazard to low-level flight safety are equally important to improving low-level flight safety throughout the state.

(c) The working group developed criteria for marking selected wires and supporting structures based upon visibility and likelihood of aircraft activity, which now must be evaluated in the field.

(d) It is, therefore, the intent of the Legislature in enacting this chapter to implement recommendations of the working group to undertake a pilot education and awareness program and to evaluate the criteria for marking selected wires and supporting structures in the field.

21505. (a) The Division of Aeronautics, in cooperation with the aviation industry and the electric utility industry and in consultation with the Federal Aviation Administration, shall coordinate and disseminate information provided by the working group to pilots to increase awareness of wire hazards and to communicate techniques for identifying and avoiding wires.

(b) For purposes of coordinating and disseminating the information provided to the division by the working group pursuant to subdivision (a), every electrical corporation and publicly owned electrical utility in this state which serves 250,000 or more customers shall pay a one-time fee in a sufficient amount so that the total of all fees collected does not exceed one hundred thousand dollars ($100,000). The fee shall be in the proportion that each utility's total miles of transmission line greater than 110 kilovolts bears to the total miles of transmission line greater than 110 kilovolts statewide.

(c) All fees collected pursuant to subdivision (b) shall be deposited in the Aeronautics Account in the State Transportation Fund to be continuously appropriated to the Department of Transportation for the purposes set forth in subdivision (a).

21506. (a) It is the intent of the Legislature in enacting this section to provide a procedure to evaluate criteria used in determining whether wires and supporting structures should be marked.

(b) Any person may request an electrical corporation or a publicly owned electrical utility which serves 250,000 or more customers to mark a wire or supporting structure.

(c) In response to such a request, the utility shall consider the following criteria: the visibility of the wire or supporting structure and the likelihood of aircraft activity at the level of the wire or structure.

(d) The utility shall notify the requester within 90 days of the request whether the wire or supporting structure will be marked.

(e) If the utility determines that the line or supporting structure

should not be marked, the utility shall notify the requester that he or she may submit to the Division of Aeronautics the issue of whether the wire or supporting structure should be marked considering the criteria in subdivision (c). Within 90 days of the request, the division shall provide its recommendation to the utility on this issue.

(f) The division shall be reimbursed at a rate not to exceed one thousand dollars ($1,000) for each recommendation provided to a utility pursuant to subdivision (e). Reimbursement shall be made by the utility to whom the recommendation is made. Reimbursements shall be deposited in the Aeronautics Account in the State Transportation Fund, and shall be continuously appropriated to the Department of Transportation for purposes of subdivision (e).

(g) The electric utility industry, in cooperation with the aviation community, shall prepare and submit to the Division of Aeronautics on or before December 31, 1995, a report describing the results of the efforts to evaluate criteria for marking selected wires and supporting structures.

(h) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute which becomes effective on or before January 1, 1996, deletes or extends the date on which it is repealed.

21507. All costs incurred by an electrical corporation pursuant to this chapter shall be deemed reasonable by the commission and shall be fully recoverable through rates.

CHAPTER 1010

An act to amend Section 50686.5 of the Health and Safety Code, relating to housing.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 50686.5 of the Health and Safety Code is amended to read:

50686.5. (a) Any local agency incorporated pursuant to Part 1 (commencing with Section 9000) of Division 2 of Title 1 of the Corporations Code which is providing, or proposes to provide, housing for persons requiring supportive services may apply to the department for assistance in obtaining federal housing subsidies therefor.

(b) (1) On or after July 1, 1994, the department, with the approval of the federal Department of Housing and Urban Development, shall transfer, in accordance with subdivision (c), all contracts entered into under this section to local agencies incorporated pursuant to Part 1 (commencing with Section 9000) of

Division 2 of Title 1 of the Corporations Code. Prior to the transfer of vouchers and certificates that are specifically designated for the use of persons with disabilities, the local agency shall deliver to the department a letter attesting to its intent to maintain the vouchers and certificates for the use of persons with disabilities, including the maintenance of a separate list of eligible voucher and certificate applicants to the extent allowed by federal law. The list shall be specially coded and identified as a local preference for Aftercare eligible certificate and voucher holders. The department shall make copies of the letters of intent available to any person who requests that information.

(2) Each housing authority shall be required to annually report on its Aftercare activities in its annual Section 8 Certificate and Voucher Program report submitted to the federal Department of Housing and Urban Development and the department and to any representative of the disabled community that requests that information. All information in the annual Aftercare report shall be subject to public comment and review at a properly noticed Housing Authority Commission meeting.

(c) The transfers authorized pursuant to paragraph (1) of subdivision (b) shall not occur unless and until the federal Department of Housing and Urban Development, prior to March 1, 1994, has notified the department, in writing, that the transfer can be structured so that the Aftercare vouchers and certificates will continue to serve the program's existing and future clients.

CHAPTER 1011

An act to add Chapter 5.5 (commencing with Section 6400) to Division 3 of the Business and Professions Code, relating to unlawful detainer.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. The Legislature finds and declares that there currently exist numerous unscrupulous individuals and associations of individuals who purport to offer protection to tenants from eviction. These unscrupulous individuals and associations represent themselves as legitimate tenants' rights associations, legal consultants, professional legal assistants, paralegals, attorneys, or typing services. In fact, these individuals and associations act to defraud tenants of both their funds and their rights under the law. While allegedly acting to assist unsuspecting tenants, these individuals have filed thousands of frivolous or fraudulent legal pleadings in both state and federal courts. In most instances, the

nature of the legal pleadings filed or the very fact of their filing has not been disclosed to the tenant. The acts of these unscrupulous individuals and associations are particularly despicable in that they target low-income and non-English-speaking Californians as victims for their fraudulent practices.

In several counties, including the largest, Los Angeles, the problem has reached epidemic proportions resulting in the defrauding of thousands of tenants, severe economic losses to landlords, and the clogging of both state and federal courts with frivolous or fraudulent proceedings. This has resulted in unnecessary financial burdens and delays in the judicial system. Further, the acts of these individuals and associations, purporting to assist tenants, have brought discredit to the state and federal judicial systems, law enforcement, the State Bar, and to legitimate tenants' rights' organizations and legal assistants.

Law enforcement officials have been frustrated in their attempts to prosecute these unscrupulous individuals due to the transient nature of their operations. Frequently, these individuals and associations literally disappear overnight making prosecution impossible. A registration requirement for unlawful detainer consultants and the printing of a registration number on all advertisements and prepared pleadings will assist law enforcement in locating and prosecuting unscrupulous individuals and associations. Further, the requirement of the posting of a bond will make funds available to those tenants who have been defrauded.

In order to ensure the protection of tenants and landlords, and the esteem of the judicial system, law enforcement, members of the State Bar, and legitimate tenants' rights organizations, the Legislature finds and declares that it is necessary to enact the "Unlawful Detainer Assistants Act."

SEC. 2. Chapter 5.5 (commencing with Section 6400) is added to Division 3 of the Business and Professions Code, to read:

CHAPTER 5.5. UNLAWFUL DETAINER ASSISTANTS

Article 1. General Provisions

6400. (a) "Unlawful detainer assistant" means any individual who for compensation renders assistance or advice in the prosecution or defense of an unlawful detainer claim or action, including any bankruptcy petition that may affect the unlawful detainer claim or action.

(b) "Unlawful detainer claim" means proceeding, filing, or action affecting rights or liabilities of any person which arises under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure and which contemplates an adjudication by a court.

(c) "Compensation" means money, property, or anything else of value.

6401. This chapter does not apply to any of the following:

(a) Any government employee who is acting in the course of his or her employment.

(b) A member of the State Bar of California, or his or her employee or agent, or an independent contractor while acting on behalf of a member of the State Bar.

(c) Any employee of a nonprofit, tax-exempt corporation who assists clients free of charge.

6401.5. Nothing in this chapter shall be construed to sanction, authorize, or encourage the practice of law by nonlawyers. Registration under this chapter shall not serve in any way to insulate or immunize any person from prosecution pursuant to Section 6125 , 6126, or 6127.

Article 2. Registration Procedures

6402. An unlawful detainer assistant shall be registered pursuant to this chapter by the county clerk of the county in which he or she resides and of each county in which he or she performs acts for which registration is required. No person who has been disbarred or suspended from the practice of law pursuant to Article 6 (commencing with Section 6100) of Chapter 4 shall, during the period of any disbarment or suspension, register as an unlawful detainer assistant.

6403. (a) The application for registration of a natural person shall contain all of the following statements about the applicant:

(1) Name, age, address, and telephone number.

(2) Whether he or she has been convicted of a felony, or of a misdemeanor under Section 6126 or 6127.

(3) Whether he or she has been held liable in a civil action by final judgment or consented to the entry of a stipulated judgment, if the action alleged fraud, or the use of untrue or misleading representations, or the use of an unfair, unlawful, or deceptive business practice.

(b) The application for registration of a partnership or corporation shall contain all of the following statements about the applicant:

(1) The names, ages, addresses, and telephone numbers of the general partners of officers.

(2) Whether the general partners or officers have ever been convicted of a felony.

(3) Whether the general partners or officers have ever been held liable in a civil action by final judgment or have consented to the entry of a stipulated judgment. If the action alleged fraud, whether it involved the use of untrue or misleading representations, or the use of an unfair, unlawful, or deceptive business practice.

6404. An applicant shall pay a fee of one hundred seventy-five dollars ($175) to the county clerk at the time he or she files an application for initial registration or renewal of registration. An

additional fee of ten dollars ($10) shall be paid to the county clerk for each additional identification card.

6405. (a) A certificate of registration shall be accompanied by a bond of twenty-five thousand dollars ($25,000) which is executed by a corporate surety qualified to do business in this state and conditioned upon compliance with this chapter. The total aggregate liability on the bond shall be limited to twenty-five thousand dollars ($25,000). The bond may be terminated pursuant to Section 995.440 of, and Article 13 (commencing with Section 996.310) of Chapter 2 of Title 14 of Part 2 of, the Code of Civil Procedure.

(b) The county clerk shall, upon filing of the bond, deliver the bond forthwith to the county recorder for recording. The recording fee specified in Section 27361 of the Government Code shall be paid by the registrant. The fee may be paid to the county clerk, who shall transmit it to the recorder.

(c) The fee for filing, canceling, revoking, or withdrawing the bond is seven dollars ($7).

(d) The county recorder shall record the bond and any notice of cancellation, revocation, or withdrawal of the bond, and shall thereafter mail the instrument, unless specified to the contrary, to the person named in the instrument and, if no person is named, to the party leaving it for recording. The recording fee specified in Section 27361 of the Government Code for notice of cancellation, revocation, or withdrawal of the bond shall be paid to the county clerk, who shall transmit it to the county recorder.

(e) In lieu of the bond required by subdivision (a), a registrant may deposit twenty-five thousand dollars ($25,000) in cash with the county clerk.

(f) If the certificate is revoked, the bond or cash deposit shall be returned to the bonding party or depositor subject to subdivision (g) and the right of a person to recover against the bond or cash deposit under Section 6412.

(g) The county clerk may retain a cash deposit until the expiration of three years from the date the registrant has ceased to do business, or three years from the expiration or revocation date of the registration, in order to ensure there are no outstanding claims against the deposit. A judge of a municipal or superior court may order the return of the deposit prior to the expiration of three years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit.

6406. A certificate of registration shall be effective for a period of two years. Thereafter, a registrant shall file an application for renewal of registration and pay the fee required by Section 6404.

6407. (a) The county clerk shall maintain a register of unlawful detainer assistants, assign a unique number to each unlawful detainer assistant, and issue an identification card to each one. Additional cards for employees of unlawful detainer assistants shall be issued upon the payment of ten dollars ($10) for each card. Upon renewal of registration, the same number shall be assigned, provided there is

no lapse in the period of registration.

(b) The identification card shall be a card 3½ inches by 2¼ inches, and shall contain at the top, the title "Unlawful Detainer Assistant" followed by the registrant's name, address, registration number, date of expiration, and county of registration. It shall also contain a photograph of the registrant in the lower left corner.

Article 3. Conduct of Business and Prohibited Acts

6408. The registrant's registration number and county of registration shall appear on any solicitation or advertisement, and on the registrant's work product, including, but not limited to, letterhead, correspondence, documents, forms, claims, petitions, checks, receipts, money orders, pleadings, and other papers relating to unlawful detainer claims or actions.

6409. No unlawful detainer assistant shall retain in his or her possession original documents of a client.

6410. (a) Every unlawful detainer assistant who enters into a contract or agreement with a client to provide services shall, prior to providing any services, provide the client with a written contract, the contents of which shall be prescribed by regulations adopted by the Department of Consumer Affairs.

(b) The written contract shall include provisions relating to the following:

(1) The services to be performed.

(2) The costs of the services to be performed.

(3) There shall be printed on the face of the contract in 10-point boldface type a statement that the unlawful detainer assistant is not an attorney and may not perform the legal services that an attorney performs.

(c) The provisions of the written contract shall be stated both in English and, if the client is non-English-speaking, in the language of the client.

(d) Failure of an unlawful detainer assistant to comply with the provisions of subdivisions (a), (b), and (c) shall make the contract or agreement for services voidable at the option of the client. Upon the voiding of the contract, the unlawful detainer assistant shall immediately return in full any fees paid by the client.

(e) The client shall have the right to rescind the contract within 24 hours of the signing of the contract. Upon the voiding or rescinding of the contract or agreement for services, the unlawful detainer assistant shall immediately return to the client any fees paid by the client, except fees for services that were actually, necessarily, and reasonably performed on the client's behalf by the unlawful detainer assistant. The requirements of this subdivision shall be conspicuously set forth in the written contract in both English and, if the client is non-English-speaking, in the language of the client.

6411. It is unlawful for any person engaged in the business or acting in the capacity of an unlawful detainer assistant to do any of

the following:

(a) Make false or misleading statements to a client while providing services to that client.

(b) Make any guarantee or promise to a client, unless the guarantee or promise is in writing and the unlawful detainer assistant has some basis for making the guarantee or promise.

(c) Make any statement that the unlawful detainer assistant can or will obtain special favors or has special influence with a court, or a state or federal agency.

(d) Provide assistance or advice which constitutes the unlawful practice of law pursuant to Section 6125, 6126, or 6127.

6412. (a) Any owner or manager of residential or commercial rental property, tenant, or other person who is awarded damages in any action or proceeding for injuries caused by the acts of a registrant while in the performance of his or her duties as an unlawful detainer assistant may recover damages from the bond or cash deposit required by Section 6405.

(b) Whenever there has been a recovery against a bond or cash deposit under subdivision (a) and the registration has not been revoked pursuant to Section 6413, the registrant shall file a new bond or deposit an additional amount of cash within 30 days to reinstate the bond or cash deposit to the amount required by Section 6405. If the registrant does not file a bond, or deposit this amount within 30 days, his or her certificate of registration shall be revoked.

6413. The county clerk shall revoke the registration of an unlawful detainer assistant upon receipt of an official document or record stating that the registrant has been found guilty of the unauthorized practice of law pursuant to Section 6125 , 6126, or 6127, has been found guilty of a misdemeanor violation of this chapter, or that a civil judgment has been entered against the registrant in an action arising out of the registrant's failure to properly perform his or her obligation as an unlawful detainer assistant. The county clerk shall be given notice of the disposition in any court action by the city attorney, district attorney, or plaintiff, as applicable. A registrant whose registration is revoked pursuant to this section may reapply for registration after one year.

6414. A registrant whose certificate is revoked shall be entitled to challenge the decision in a court of competent jurisdiction.

6415. A failure, by a person who engages in acts of an unlawful detainer assistant, to comply with any of the requirements of Section 6402 or 6408, or subdivision (a), (b), or (c) of Section 6411 is punishable as a misdemeanor punishable by a fine of not less than one thousand dollars ($1,000) or more than two thousand dollars ($2,000), as to each client with respect to whom a violation occurs, or imprisonment for not more than one year, or by both fine and imprisonment. Payment of restitution to a client shall take precedence over payment of a fine.

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 costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 1012

An act to add and repeal Section 12804.14 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 12804.14 is added to the Vehicle Code, to read:

12804.14. (a) The department may issue a restricted class A driver's license for the operation of any two-axle vehicle weighing 4,000 pounds or more unladen when towing a livestock trailer not exceeding 15,000 pounds gross vehicle weight rating or gross vehicle weight, if all of the following conditions are met:

(1) The vehicle is controlled and operated by a farmer.

(2) The vehicle is used to transport livestock to or from a farm.

(3) The vehicle is not used in the operations of a common or contract carrier.

(4) The vehicle is used within 150 miles of the person's farm.

(b) A restricted class A driver's license issued pursuant to this section is not valid for the towing of a trailer over 10,000 pounds gross vehicle weight unless the trailer is attached to the towing vehicle with a fifth-wheel connection.

(c) The requirements of subdivision (a) incorporate the guidelines published by the Federal Highway Administration in the Federal Register on September 26, 1988 (53 FR 37313). The department shall follow those guidelines in acting pursuant to this section as those guidelines now exist and as they are hereafter amended.

(d) In lieu of a report of a medical examination required by Sections 12804 and 12804.9, a licensed California driver applying for a restricted license issued pursuant to subdivision (a) shall, upon

application and every two years thereafter, submit medical information on a form approved by the department.

(e) This section shall remain in effect only until January 1, 1996, and on that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 2. The Department of the California Highway Patrol shall report to the Legislature, as needed, on any safety problems or concerns that the department observes as a result of the enactment of Section 12804.14 of the Vehicle Code.

CHAPTER 1013

An act to amend Sections 3553 and 3584 of the Public Utilities Code, relating to public utilities.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 3553 of the Public Utilities Code is amended to read:

3553. (a) The commission shall issue or authorize the transfer of no permit under this chapter except upon a showing before the commission and a finding by the commission that the applicant or proposed transferee meets all of the following requirements:

(1) Is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol governing highway safety.

(2) Is committed to observing the hours of service regulations of state and, where applicable, federal law, for all persons, whether employees or subhaulers, operating vehicles in transportation for compensation under the permit.

(3) Has a preventive maintenance program in effect for its vehicles used in transportation for compensation that conforms to regulations of the Department of the California Highway Patrol in Title 13 of the California Code of Regulations.

(4) Participates in a program to regularly check the driving records of all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation requiring a class 1 driver's license under the permit.

(5) Has a safety education and training program in effect for all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation.

(6) Will maintain its vehicles used in transportation for compensation in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the

California Code of Regulations relative to motor vehicle safety.

(7) Has filed with the commission the certificate of workers' compensation insurance coverage or statement required by Section 3554.

(8) Has provided the commission an address of an office or terminal where documents supporting the factual matters specified in the showing required by this section may be inspected by the commission and the Department of the California Highway Patrol.

(b) With respect to paragraphs (2) and (6) of subdivision (a), the commission may base a finding on a certification by the commission that an applicant has filed, with the commission, a sworn declaration of ability to comply and intent to comply.

(c) As provided in subdivision (d) of Section 3584, the commission may delegate to its executive director or the executive director's designee the authority to issue, or authorize the transfer of, seasonal agricultural carrier permits and to make the findings specified in subdivisions (a) and (b) of this section and subdivisions (b) and (c) of Section 3584 necessary to exercise the delegated authority.

(d) The commission shall, commencing on April 15, 1989, and quarterly thereafter, prepare and submit to the Legislature a report of its implementation of this section. This report may be combined with the report required by Section 1063.5.

SEC. 1.5. Section 3553 of the Public Utilities Code is amended to read:

3553. (a) The commission shall issue or authorize the transfer of no permit under this chapter except upon a showing before the commission and a finding by the commission that the applicant or proposed transferee meets all of the following requirements:

(1) Is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol governing highway safety.

(2) Is committed to observing the hours of service regulations of state and, where applicable, federal law, for all persons, whether employees or subhaulers, operating vehicles in transportation for compensation under the permit.

(3) Has a preventive maintenance program in effect for its vehicles used in transportation for compensation that conforms to regulations of the Department of the California Highway Patrol in Title 13 of the California Code of Regulations.

(4) Participates in a program to regularly check the driving records of all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation requiring a class 1 driver's license under the permit.

(5) Has a safety education and training program in effect for all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation.

(6) Will maintain its vehicles used in transportation for compensation in a safe operating condition and in compliance with

the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety.

(7) Has filed with the commission the workers' compensation document required by Section 3554 for its employees or a certificate of consent to self-insure, issued by the Director of Industrial Relations or its successor agency.

(8) Has provided the commission an address of an office or terminal where documents supporting the factual matters specified in the showing required by this section may be inspected by the commission and the Department of the California Highway Patrol.

(b) With respect to paragraphs (2) and (6) of subdivision (a), the commission may base a finding on a certification by the commission that an applicant has filed, with the commission, a sworn declaration of ability to comply and intent to comply.

(c) As provided in subdivision (d) of Section 3584, the commission may delegate to its executive director or the executive director's designee the authority to issue, or authorize the transfer of, seasonal agricultural carrier permits and to make the findings specified in subdivisions (a) and (b) of this section and subdivisions (b) and (c) of Section 3584 necessary to exercise the delegated authority.

(d) The commission shall, commencing on April 15, 1989, and quarterly thereafter, prepare and submit to the Legislature a report of its implementation of this section. This report may be combined with the report required by Section 1063.5.

SEC. 2. Section 3584 of the Public Utilities Code is amended to read:

3584. (a) Except as provided in Section 3583, any highway carrier desiring a permit to operate as a livestock carrier or an agricultural carrier shall file an application therefor with the commission. The application shall set forth all of the following:

(1) The name and address of the applicant.

(2) The names and addresses of its officers, if any.

(3) Full information concerning the financial condition and physical properties of the applicant.

(4) Other information necessary to the enforcement of this article as the commission may require.

(b) The commission shall not issue or authorize the transfer of any permit under this chapter except upon a showing before the commission and a finding by the commission that the applicant or proposed transferee meets all of the following requirements:

(1) Is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol governing highway safety.

(2) Is committed to observing the hours of service regulations of state and, where applicable, federal law, for all persons, whether employees or subhaulers, operating vehicles in transportation for compensation under the permit.

(3) Has a preventive maintenance program in effect for its

vehicles used in transportation for compensation that conforms to regulations of the Department of the California Highway Patrol in Title 13 of the California Code of Regulations.

(4) Participates in a program to regularly check the driving records of all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation requiring a class 1 driver's license under the permit.

(5) Has a safety education and training program in effect for all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation.

(6) Will maintain its vehicles used in transportation for compensation in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety.

(7) Has filed with the commission the workers' compensation documentation required by Section 3554 for its employees or a certificate of consent to self-insure, issued by the Director of Industrial Relations or its successor agency.

(8) Has provided the commission an address of an office or terminal where documents supporting the factual matters specified in the showing required by this section may be inspected by the commission and the Department of the California Highway Patrol.

(c) With respect to paragraphs (2) and (6) of subdivision (b), the commission may base a finding on a certification by the commission that an applicant has filed, with the commission, a sworn declaration of ability to comply and intent to comply.

(d) The commission may delegate to its executive director or the executive director's designee the authority to issue, or authorize the transfer of, seasonal agricultural carrier permits and to make the findings specified in subdivisions (b) and (c) necessary to exercise the delegated authority.

(e) The commission shall, commencing on April 15, 1991, and quarterly thereafter, prepare and submit to the Legislature a report of its implementation of this section. This report may be combined with the report required by Section 1063.5.

SEC. 2.5. Section 3584 of the Public Utilities Code is amended to read:

3584. (a) Except as provided in Section 3583, any highway carrier desiring a permit to operate as a livestock carrier or an agricultural carrier shall file an application therefor with the commission. The application shall set forth all of the following:

(1) The name and address of the applicant.

(2) The names and addresses of its officers, if any.

(3) Full information concerning the financial condition and physical properties of the applicant.

(4) Other information necessary to the enforcement of this article as the commission may require.

(b) The commission shall not issue or authorize the transfer of any permit under this chapter except upon a showing before the

commission and a finding by the commission that the applicant or proposed transferee meets all of the following requirements:

(1) Is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol governing highway safety.

(2) Is committed to observing the hours of service regulations of state and, where applicable, federal law, for all persons, whether employees or subhaulers, operating vehicles in transportation for compensation under the permit.

(3) Has a preventive maintenance program in effect for its vehicles used in transportation for compensation that conforms to regulations of the Department of the California Highway Patrol in Title 13 of the California Code of Regulations.

(4) Participates in a program to regularly check the driving records of all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation requiring a class 1 driver's license under the permit.

(5) Has a safety education and training program in effect for all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation.

(6) Will maintain its vehicles used in transportation for compensation in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety.

(7) Has filed with the commission a certificate of workers' compensation insurance coverage for its employees or a certificate of consent to self-insure issued by the Director of Industrial Relations.

(8) Has provided the commission an address of an office or terminal where documents supporting the factual matters specified in the showing required by this section may be inspected by the commission and the Department of the California Highway Patrol.

(c) With respect to paragraphs (2) and (6) of subdivision (b), the commission may base a finding on a certification by the commission that an applicant has filed, with the commission, a sworn declaration of ability to comply and intent to comply.

(d) The commission may delegate to its executive director or the executive director's designee the authority to issue, or authorize the transfer of, seasonal agricultural carrier permits and to make the findings specified in subdivisions (b) and (c) necessary to exercise the delegated authority.

(e) The commission shall, commencing on April 15, 1991, and quarterly thereafter, prepare and submit to the Legislature a report of its implementation of this section. This report may be combined with the report required by Section 1063.5.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 3553 of the Public Utilities Code proposed by both this bill and SB 472. It shall only become operative if (1) both bills are

enacted and become effective on January 1, 1994, (2) each bill amends Section 3553 of the Public Utilities Code, and (3) this bill is enacted after SB 472, in which case Section 1 of this bill shall not become operative.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 3584 of the Public Utilities Code proposed by both this bill and SB 472. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 3584 of the Public Utilities Code, and (3) this bill is enacted after SB 472, in which case Section 2 of this bill shall not become operative.

CHAPTER 1014

An act to amend Section 502.7 of the Penal Code, relating to telephone fraud.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 502.7 of the Penal Code is amended to read:

502.7. (a) Any person who, knowingly, willfully, and with intent to defraud a person providing telephone or telegraph service, avoids or attempts to avoid, or aids, abets or causes another to avoid the lawful charge, in whole or in part, for telephone or telegraph service by any of the following means is guilty of a misdemeanor or a felony, except as provided in subdivision (g):

(1) By charging the service to an existing telephone number or credit card number without the authority of the subscriber thereto or the lawful holder thereof.

(2) By charging the service to a nonexistent telephone number or credit card number, or to a number associated with telephone service which is suspended or terminated, or to a revoked or canceled (as distinguished from expired) credit card number, notice of the suspension, termination, revocation, or cancellation of the telephone service or credit card having been given to the subscriber thereto or the holder thereof.

(3) By use of a code, prearranged scheme, or other similar stratagem or device whereby the person, in effect, sends or receives information.

(4) By rearranging, tampering with, or making connection with telephone or telegraph facilities or equipment, whether physically, electrically, acoustically, inductively, or otherwise, or by using telephone or telegraph service with knowledge or reason to believe that the rearrangement, tampering, or connection existed at the time of the use.

(5) By using any other deception, false pretense, trick, scheme, device, conspiracy, or means, including the fraudulent use of false, altered, or stolen identification.

(b) Any person who does either of the following is guilty of a misdemeanor or a felony, except as provided in subdivision (g):

(1) Makes, possesses, sells, gives, or otherwise transfers to another, or offers or advertises any instrument, apparatus, or device with intent to use it or with knowledge or reason to believe it is intended to be used to avoid any lawful telephone or telegraph toll charge or to conceal the existence or place of origin or destination of any telephone or telegraph message.

(2) Sells, gives, or otherwise transfers to another or offers, or advertises plans or instructions for making or assembling an instrument, apparatus, or device described in paragraph (1) of this subdivision with knowledge or reason to believe that they may be used to make or assemble the instrument, apparatus, or device.

(c) Any person who publishes the number or code of an existing, canceled, revoked, expired, or nonexistent credit card, or the numbering or coding which is employed in the issuance of credit cards, with the intent that it be used or with knowledge or reason to believe that it will be used to avoid the payment of any lawful telephone or telegraph toll charge is guilty of a misdemeanor. Subdivision (g) shall not apply to this subdivision. As used in this section, "publishes" means the communication of information to any one or more persons, either orally, in person or by telephone, radio, or television, or electronic means, including, but not limited to, a bulletin board system, or in a writing of any kind, including without limitation a letter or memorandum, circular or handbill, newspaper, or magazine article, or book.

(d) Any person who is the issuee of a calling card, credit card, calling code, or any other means or device for the legal use of telecommunications services and who receives anything of value for knowingly allowing another person to use the means or device in order to fraudulently obtain telecommunications services is guilty of a misdemeanor or a felony, except as provided in subdivision (g).

(e) Subdivision (a) applies when the telephone or telegraph communication involved either originates or terminates, or both originates and terminates, in this state, or when the charges for service would have been billable, in normal course, by a person providing telephone or telegraph service in this state, but for the fact that the charge for service was avoided, or attempted to be avoided, by one or more of the means set forth in subdivision (a).

(f) Jurisdiction of an offense under this section is in the jurisdictional territory where the telephone call or telegram involved in the offense originates or where it terminates, or the jurisdictional territory to which the bill for the service is sent or would have been sent but for the fact that the service was obtained or attempted to be obtained by one or more of the means set forth in subdivision (a).

(g) Theft of any telephone or telegraph services under this section by a person who has a prior misdemeanor or felony conviction for theft of services under this section within the past five years, is a felony.

(h) Any person or telephone company defrauded by any acts prohibited under this section shall be entitled to restitution for the entire amount of the charges avoided from any person or persons convicted under this section.

(i) Any instrument, apparatus, device, plans, instructions, or written publication described in subdivision (b) or (c) may be seized under warrant or incident to a lawful arrest, and, upon the conviction of a person for a violation of subdivision (a), (b), or (c), the instrument, apparatus, device, plans, instructions, or written publication may be destroyed as contraband by the sheriff of the county in which the person was convicted or turned over to the person providing telephone or telegraph service in the territory in which it was seized.

(j) Any computer, computer system, computer network, or any software or data, owned by the defendant, which is used during the commission of any public offense described in this section or any computer, owned by the defendant, which is used as a repository for the storage of software or data illegally obtained in violation of this section shall be subject to forfeiture.

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 1015

An act to add and repeal Section 7215.6 to the Business and Professions Code, relating to dogs.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 7215.6 is added to the Business and Professions Code, to read:

7215.6. (a) In order to provide a procedure for the resolution of disputes between guide dog users and guide dog schools relating to

the continued physical custody and use of a guide dog, in all cases except those in which the dog user is the unconditional legal owner of the dog, the following arbitration procedure shall be established as a pilot project.

(b) This procedure establishes an arbitration panel for the settlement of disputes between a guide dog user and a licensed guide dog school regarding the continued use of a guide dog by the user in all cases except those in which the dog user is the unconditional legal owner of the dog. The disputes which may be subject to this procedure concern differences between the user and school over whether or not a guide dog should continue to be used, differences between the user and school regarding the treatment of a dog by the user, and differences over whether or not a user should continue to have custody of a dog pending investigation of charges of abuse. It specifically does not address issues such as admissions to schools, training practices, or other issues relating to school standards.

(c) The licensed guide dog schools in California and the board shall provide to guide dog users graduating from guide dog programs in these schools a new avenue for the resolution of disputes which involve continued use of a guide dog, or the actual physical custody of a guide dog. The licensed guide dog schools and the board shall participate in an arbitration panel pilot project for a period of five years from the effective date of this legislation, in order to settle the kinds of disputes outlined above. Guide dog users who are dissatisfied with decisions of schools regarding continued use of guide dogs may appeal to the board to convene an arbitration panel composed of all of the following:

(1) One person designated by the guide dog user.

(2) One person designated by the licensed guide dog school.

(3) A representative of the board who shall coordinate the activities of the panel and serve as chair.

(d) If the guide dog user or guide dog school wishes to utilize the arbitration panel, this must be stated in writing to the board. The findings and decision of the arbitration panel shall be final and binding.

(e) A licensed guide dog school which fails to comply with any provision of this section shall automatically be subject to a penalty of two hundred fifty dollars ($250) per day for each day in which a violation occurs. The penalty shall be paid to the board. The license of a guide dog school shall not be renewed until all penalties have been paid.

The fine shall be assessed without advance hearing, but the licensee may apply to the board for a hearing on the issue of whether the fine should be modified or set aside. This application shall be in writing and shall be received by the board within 30 days after service of notice of the fine. Upon receipt of this written request, the board shall set the matter for hearing within 60 days.

(f) As a general rule, custody of the guide dog shall remain with the guide dog user pending a resolution by the arbitration panel. In

circumstances where the immediate health and safety of the guide dog user or guide dog is threatened, the licensed school may take custody of the dog at once. However, if the dog is removed from the user's custody without the user's concurrence, the school shall provide to the board the evidence which caused this action to be taken at once and without fail; and within five calendar days a special committee of two members of the board shall make a determination regarding custody of the dog pending hearing by the arbitration panel.

(g) The arbitration panel shall decide the best means to determine final resolution in each case. This shall include, but is not limited to, a hearing of the matter before the arbitration panel at the request of either party to the dispute, an opportunity for each party in the dispute to make presentations before the arbitration panel, examination of the written record, or any other inquiry as will best reveal the facts of the disputes. In any case, the panel shall make its findings and complete its examination within 45 calendar days of the date of filing the request for arbitration, and a decision shall be rendered within 10 calendar days of the examination.

All arbitration hearings shall be held at sites convenient to the parties and with a view to minimizing costs. Each party to the arbitration shall bear its own costs, except that the arbitration panel, by unanimous agreement, may modify this arrangement.

(h) The board may study the effectiveness of the arbitration panel pilot project in expediting resolution and reducing conflict in disputes between guide dog users and guide dog schools and may share its findings with the Legislature upon request.

(i) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

CHAPTER 1016

An act to amend Section 269 of the Code of Civil Procedure, to amend Section 69954 of the Government Code, and to amend Section 190.9 of the Penal Code, relating to courts.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 269 of the Code of Civil Procedure is amended to read:

269. (a) The official reporter of a superior court, or any of them, where there are two or more, shall, at the request of either party, or of the court in a civil action or proceeding, and on the order of the court, the district attorney, or the attorney for the defendant in a

criminal action or proceeding, take down in shorthand all testimony, objections made, rulings of the court, exceptions taken, all arraignments, pleas, and sentences of defendants in criminal cases, arguments of the prosecuting attorney to the jury, and all statements and remarks made and oral instructions given by the judge. If directed by the court, or requested by either party, the official reporter shall, within such reasonable time after the trial of the case as the court may designate, write the transcripts out, or the specific portions thereof as may be requested, in plain and legible longhand, or by typewriter, or other printing machine, and certify that the transcripts were correctly reported and transcribed, and when directed by the court, file the transcripts with the clerk of the court.

(b) In any case where a defendant is convicted of a felony, after a trial on the merits, the record on appeal shall be prepared immediately after the verdict or finding of guilt is announced unless the court determines that it is likely that no appeal from the decision will be made. The court's determination of a likelihood of appeal shall be based upon standards and rules adopted by the Judicial Council.

(c) Any court, party, or person may request delivery of any transcript in a computer-readable form, except that an original transcript shall be on paper. A copy of the original transcript ordered within 120 days of the filing or delivery of the transcript by the official reporter shall be delivered in computer-readable form upon request if the proceedings were produced utilizing computer-aided transcription equipment. Except as modified by standards adopted by the Judicial Council, the computer-readable transcript shall be on disks in standard ASCII code unless otherwise agreed by the reporter and the court, party, or person requesting the transcript. Each disk shall be labeled with the case name and court number, the dates of proceedings contained on the disk, and the page and volume numbers of the data contained on the disk. Each disk as produced by the court reporter shall contain the identical volume divisions, pagination, line numbering, and text of the certified original paper transcript or any portion thereof. Each disk shall be sequentially numbered within the series of disks.

SEC. 2. Section 69954 of the Government Code is amended to read:

69954. (a) Transcripts prepared by a reporter using computer assistance and delivered on a medium other than paper shall be compensated at the same rate set for paper transcripts, except the reporter may also charge an additional fee not to exceed the cost of the medium or any copies thereof.

(b) The fee for a second copy of a transcript on appeal in computer-readable format ordered by or on behalf of a requesting party within 120 days of the filing or delivery of the original transcript shall be compensated at one-third the rate set forth for a second copy of a transcript as provided in Section 69950. A reporter may also charge an additional fee not to exceed the cost of the

medium or any copies thereof.

(c) The fee for a computer-readable transcript shall be paid by the requesting court, party, or person, unless the computer-readable transcript is requested by a party in lieu of a paper transcript required to be delivered to that party by the rules of court. In that event, the fee shall be chargeable as statute or rule provides for the paper transcript.

(d) Any court, party, or person who has purchased a transcript may, without paying a further fee to the reporter, reproduce a copy or portion thereof as an exhibit pursuant to court order or rule, or for internal use, but shall not otherwise provide or sell a copy or copies to any other party or person.

SEC. 3. Section 190.9 of the Penal Code is amended to read:

190.9. (a) In any case in which a death sentence may be imposed, all proceedings conducted in the justice, municipal, and superior courts, including proceedings in chambers, shall be conducted on the record with a court reporter present. The court reporter shall prepare and certify a daily transcript of these proceedings.

The court shall assign a court reporter who uses computer-aided transcription equipment to report all proceedings under this section. Failure to comply with the requirements of this section relating to the assignment of court reporters who use computer-aided transcription equipment shall not be a ground for reversal.

(b) Any computer-readable transcript produced by court reporters pursuant to this section shall conform to the requirements of subdivision (c) of Section 269 of the Code of Civil Procedure.

CHAPTER 1017

An act to add Section 1015.5 to the Health and Safety Code, relating to environmental laboratories.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 1015.5 is added to the Health and Safety Code, to read:

1015.5. (a) Notwithstanding any other provision of law, the department may issue a certificate to the owner of a laboratory in a field of testing or method adopted by the federal Environmental Protection Agency pursuant to Part 136 of Title 40 of the Code of Federal Regulations, as amended September 11, 1992, as published in the Federal Register (57 FR 41830), or Part 141 of Title 40 of the Code of Federal Regulations, as amended July 17, 1992, as published in the Federal Register (57 FR 31776), and as subsequently amended and published in the Federal Register.

(b) Notwithstanding any other provision of law, the department shall not be required to meet the requirements of Chapter 3.5 (commencing with Section 11340) of the Government Code in order to issue a certificate pursuant to subdivision (a).

CHAPTER 1018

An act to add Section 27552 to the Health and Safety Code, relating to food facilities.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

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

(a) All food facilities are required by law to obtain public health permits prior to operating a business.

(b) Itinerant food facilities do not always obtain public health permits along with business licenses.

(c) Local health agencies have public health responsibilities within their jurisdictions.

(d) The lack of coordination between cities and local health agencies in verifying public health permits could jeopardize public health and safety.

(e) Individuals who qualify for a business license do not always meet the criteria for a public health permit.

(f) Cities are encouraged to verify that all food facilities, especially itinerant food vendors, have obtained a public health permit from the responsible local health agency prior to applying for a business license.

SEC. 2. Section 27552 is added to the Health and Safety Code, to read:

27552. Any person operating a food facility or conducting any itinerant food vending shall obtain all necessary permits to conduct business, including but not limited to, a public health permit. In addition to the penalties prescribed under Article 4 (commencing with Section 27560), violators shall be subject to closure of the facility and a penalty not to exceed three times the cost of the public health permit.

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 1019

An act to add Chapter 1.9 (commencing with Section 65055) to Division 1 of Title 7 of the Government Code, relating to rural economic development.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Chapter 1.9 (commencing with Section 65055) is added to Division 1 of Title 7 of the Government Code, to read:

CHAPTER 1.9. RURAL ECONOMIC DEVELOPMENT

65055. On or before December 31, 1994, the Director of Planning and Research, in consultation with the Governor's Interagency Council on Growth Management and an advisory committee composed of rural landowners and citizens, shall adopt a rural economic growth strategy. The purposes of the strategy shall include, but are not limited to, encouraging all of the following:

(a) A healthy, self-sustaining rural economy and society, including resource-based uses such as agriculture, and their related employment.

(b) A wide variety of land uses and income streams consistent with rural densities, resource-based uses, appropriate siting and design, and economic opportunities.

(c) A balance of equities, opportunities, and responsibilities between urban and rural areas.

(d) (1) Members of the advisory committee shall serve without compensation and shall not be reimbursed for any expenses in connection with their duties.

(2) Any costs incurred in implementing this chapter shall be met within the existing budget of the office.

(e) The advisory committee shall terminate upon adoption of the rural economic growth strategy pursuant to this section.

65055.5 (a) The rural economic growth strategy shall include, but is not limited to, the following components:

(1) Rural economic development.

(2) Rural quality of life.

(3) Rural resources and land use.

(4) Rural infrastructure.

(5) Rural self-governance.

(6) Rural regulatory streamlining.
(7) Rural publicly-owned land.
(b) The rural economic growth strategy shall establish a positive strategy, recognizing rural residents, businesses, employees, and landowners as equal partners in growth, outside of urbanized areas, including, but not limited to, all of the following:
(1) Capital information and financing opportunities.
(2) New market, product, and services development.
(3) Augmentation and allocation of public fiscal resources.
(c) The rural economic growth strategy shall develop one or more practical methods of distinguishing between rural and urban areas for the purposes of this chapter. It shall also evaluate the economic interaction between rural and urban areas, including, but not limited to, the consequences of the urbanization of rural lands, increases in rural population, and the benefits to urban areas provided by rural areas.

CHAPTER 1020

An act to amend Section 1267.13 of, and to add Chapter 9 (commencing with Section 1765.101) to Division 2 of, the Health and Safety Code, relating to health.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 1267.13 of the Health and Safety Code is amended to read:

1267.13. Pursuant to paragraph (3) of subdivision (a) and subdivision (b) 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, persons who are catastrophically and severely disabled, persons who are mentally alert but physically disabled, or any combination of these persons, 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, catastrophically and severely disabled persons, persons who are mentally alert but physically disabled, or any combination of these persons. These minimum requirements shall recognize the residential and noninstitutional setting of congregate living health facilities serving terminally ill persons, catastrophically and severely disabled persons, persons who are mentally alert but physically disabled, or any combination of these 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, including, but not limited to, 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, catastrophically and severely disabled, mentally alert but physically disabled, or any combination of these persons, 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, catastrophically and severely disabled, mentally alert but physically disabled, or any combination of these persons, 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, catastrophically and severely disabled, mentally alert but physically disabled, or any combination of these persons, 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, catastrophically and severely disabled, mentally alert but physically disabled, or any combination of these persons, 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, catastrophically and severely disabled, mentally alert but physically disabled, or any combination of these persons, 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 are 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 standards prescribed by this section shall become inoperative upon the filing of the regulations with the Secretary of State.

SEC. 2. Chapter 9 (commencing with Section 1765.101) is added to Division 2 of the Health and Safety Code, to read:

CHAPTER 9. MOBILE HEALTH CARE UNITS

1765.101. This chapter shall be known, and may be cited as, the Mobile Health Care Services Act.

1765.105. As used in this chapter, the following definitions shall apply:

(a) "Parent facility" means a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, or a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2.

(b) (1) "Mobile service unit" or "mobile unit" means a special purpose commercial coach as defined in Section 18012.5, or a commercial coach as defined in Section 18001.8, that provides services as set forth in Section 1765.110, and meets any of the following criteria:

(A) Is approved pursuant to this chapter by the state department as a service of a licensed health facility, as defined in Section 1250.

(B) Is approved by the state department pursuant to this chapter as a service of a licensed clinic, as defined in Section 1200.

(C) Is licensed pursuant to this chapter by the state department as a clinic, as defined in Section 1200.

(D) Is licensed pursuant to this chapter as an "other" type of approved mobile unit by the state department. "Other" types of approved mobile units shall be limited to mobile units performing services within new health facility or clinic licensure categories created after the effective date of this chapter. The State Department of Health Services shall not create a new health facility or clinic licensure category under this subparagraph absent a legislative mandate.

(2) "Mobile service unit" or "mobile unit" does not mean a modular, relocatable, or transportable unit that is designed to be placed on a foundation when it reaches its destination, nor does it mean any entity that is exempt from licensure pursuant to Section 1206.

1765.110. The purpose of this chapter is to provide for the use of mobile units to provide medical, diagnostic, and treatment services, in order to help ensure the availability of quality health care services for patients who receive care in remote or underserved areas and for patients who need specialized types of medical care provided in a

cost-effective way.

1765.115. A mobile unit may operate as one of the following:

(a) As an adjunct to a licensed health facility or to a licensed clinic.

(b) As an independent-freestanding clinic pursuant to Chapter 1 (commencing with Section 1200).

(c) As an "other" type of approved mobile unit.

1765.117. The state department shall charge applicants a licensure fee as follows:

(a) Pursuant to Chapter 1 (commencing with Section 1200), or Chapter 2 (commencing with Section 1250).

(b) Pursuant to the applicable section of the Health and Safety Code that creates a new health facility or clinic licensure category.

(c) No additional licensure fee will be imposed solely because a service is to be provided in a mobile unit.

1765.120. Compliance with all of the following criteria shall be required prior to licensure:

(a) The mobile unit shall comply with the applicable requirements of the Vehicle Code, and shall have a vehicle identification number.

(b) The mobile unit shall bear an insignia issued by the Department of Housing and Community Development pursuant to Section 18026.

1765.125. (a) Except as provided in subdivision (b), no person, political subdivision of the state, or governmental agency shall operate a mobile service unit without first obtaining a license or an addition to existing licensure under this chapter unless exempt from licensure under Section 1206.

(b) Any person, political subdivision of the state, or governmental agency, that was operating a mobile unit as of January 1, 1994, may continue to operate the mobile unit only under the following conditions:

(1) The person, political subdivision of the state, or governmental agency shall apply to the state department for a mobile unit license, or an addition to existing licensure, via a request for licensure under this chapter by March 1, 1994.

(2) The person, political subdivision of the state, or governmental agency shall cease operating the mobile unit upon a final decision of the state department denying the application for licensure or addition to licensure under this chapter.

1765.130. (a) Any applicant under this chapter shall file with the state department an application. The application shall be on forms prescribed and furnished by the state department that shall contain any information as may be required by the state department for the proper administration and enforcement of this chapter.

(b) An applicant health facility or clinic pursuant to this chapter shall submit an application to the licensing and certification district office of the state department stating with specificity all of the following:

(1) The proposed service to be provided.

(2) The expected hours and days of operation.

(3) The type and the manufacturer of the mobile unit contemplated.

(4) The proposed area or areas where the mobile unit will be providing services.

(c) An applicant for licensure as an independently licensed clinic under this chapter shall submit a verified application to the state department on the appropriate forms for the type of clinic for which it wishes to obtain licensure.

(d) Prior to granting approval to an applicant parent facility for operation of a mobile unit under the parent facility's existing licensure pursuant to this chapter, or prior to granting license for an independent mobile unit, the state department shall conduct an onsite inspection, including, but not limited to, a review of policies and procedures.

(e) Supplemental services offered via mobile units shall be listed by the state department as an approved or supplemental service on the license of the parent facility.

(f) Licenses issued by the state department authorizing operation of a mobile unit as an addition to existing parent facility licensure shall be posted at the parent facility. Licenses authorizing operation of a clinic as a mobile unit shall be posted at the administrative headquarters of the licensee. A true copy of the license shall be posted within the mobile unit.

1765.135. (a) To qualify for a license under this chapter, an applicant shall satisfy all the requirements of this chapter, the applicable requirements of Chapter 1 (commencing with Section 1200) or of Chapter 2 (commencing with Section 1250) of Division 2, and all applicable regulations.

(b) The applicant shall file a completed application with the state department.

1765.140. (a) Mobile units that provide services as an addition to the existing license of a parent facility shall be subject to the same requirements and regulations as the parent facility, except that, instead of complying with the physical plant requirements applicable to the parent facility, they shall comply with the mobile unit requirements contained in this chapter.

(b) Clinics licensed as mobile units shall be subject to the same requirements and regulations as any other clinic, except that, instead of complying with the physical plant requirements applicable to the clinic, the mobile unit shall comply with the mobile unit requirements contained in this chapter.

1765.145. A licensee using mobile services pursuant to this chapter shall, at the state department's option, be periodically inspected, in addition to any inspections required pursuant to the parent facility licensure requirements, by a duly authorized representative of the state department. Reports of each inspection shall be prepared by the representative conducting it upon forms prepared and furnished by the state department and filed with the

state department. The inspection shall be for the purpose of ensuring that this chapter and the rules and regulations of the state department adopted under this chapter are being followed.

(b) Any officer, employee, or agent of the state department may enter and inspect any building, premises, or vehicle and may have access to and inspect any document, file, or other record, of a mobile unit or of a parent facility operating a mobile unit, at any reasonable time to assure compliance with, or to prevent violation of, this chapter.

(c) After the initial licensure, or the initial approval of the addition to existing licensure of a parent facility, the mobile unit shall be periodically reviewed for compliance. When approved as additions to the existing licensure of a parent facility, reviews shall be conducted as a part of the parent facility's regular inspection. When the mobile unit is an independently licensed clinic, it shall be reviewed in accordance with the licensing inspection schedule for clinics.

(d) Demonstration of a mock emergency drill shall be observed by state department staff in the mobile unit on a site where patient mobility is limited.

1765.150. (a) The mobile unit shall be of sufficient size and shall be arranged in a manner that is appropriate for the provision of those health care services that it is licensed to provide.

(b) The mobile unit shall be equipped with appropriate utilities for the comfort and safety of patients. The Office of Statewide Health Planning and Development shall review and approve hospital-provided utility connections for mobile units that require utility hookups with general acute care hospitals.

(c) The mobile unit shall be maintained in good repair and in a clean and sanitary manner.

(d) All proposed modifications to previously approved services, procedures, and sites shall be reviewed and approved by the state department before they are implemented. Site changes shall also be reported by the licensee to local authorities, as appropriate. Modifications to the mobile service unit shall be approved by the Department of Housing and Community Development pursuant to Section 18029.

1765.155. (a) The licensed parent facility or clinic shall be responsible for obtaining approvals for the site or sites of the mobile unit from the local planning, zoning, and fire authorities, as required.

(b) The mobile unit shall be situated for safe and comfortable patient access. The mobile unit shall comply with all local parking laws. Any parking restrictions developed by a parent facility or clinic for mobile units shall be strictly enforced by the parent facility or clinic.

(c) The parent facility or clinic shall ensure that there is sufficient lighting around the perimeter of the site from which the mobile unit provides any services.

1765.160. Any licensee using mobile services pursuant to this

chapter shall do all of the following:

(a) Have written policies established by the governing body of the licensee, to govern the services that the mobile unit provides. The policies shall include, but shall not be limited to, policies related to patient care, personnel training and orientation, personnel supervision, and evaluation of services provided by the mobile unit.

(b) Have written policies regarding patient selection criteria.

(c) Develop and implement the written policies and procedures for the mobile unit in consultation with other appropriate health care professionals.

(d) Ensure that the written policies and procedures are consistent with the policies and procedures of the parent facility, if any.

(e) Ensure that the policies and written procedures shall be approved by the governing body, administration, and medical staff of the licensee, where appropriate.

(f) Ensure that the written policies and procedures include, but are not limited to, all of the following:

(1) Scope of services.

(2) Procedures for the performance of the services provided.

(3) Quality assurance.

(4) Infection control.

(5) Medical record documentation of services provided, as appropriate.

(6) Transport of patients, including, but not limited to, method, special equipment, necessary personnel, and protection from inclement weather.

(7) Emergency services and evacuation plan for the mobile unit.

(A) A licensee using mobile services pursuant to this chapter shall specify in writing policies and procedures for emergencies including fire, natural disaster, and medical emergencies. In its policies and procedures, the mobile unit shall address the emergency plan required of the parent facility and state how the plans shall be coordinated.

(B) A licensee using mobile services pursuant to this chapter shall familiarize its employees and each patient with the policies and procedures adopted pursuant to subparagraph (A).

(C) A licensee using mobile services pursuant to this chapter shall maintain written transfer agreements that shall include, but shall not be limited to, provisions for communication with, and transportation to, one or more nearby hospitals and other health facilities as needed to meet medical emergencies. The mobile unit shall develop procedures that include personnel needed to assist in the transfer, as well as provisions for meeting medical needs to accommodate the emergency transfer.

(8) Location.

(9) Schedule of mobile unit services.

(g) Maintain clinical records on each patient, in accordance with regulations.

(h) Maintain a mobile unit services log that shall include, but shall

not be limited to, all of the following:

(1) Patient chart or identification number.

(2) Name, age, and sex of patient.

(3) Site, date, time, and as appropriate, duration of procedure.

1765.165. (a) For general acute care hospitals, mobile unit services shall not be utilized as a primary source for a basic hospital service, as defined in subdivision (a) of Section 1250, unless in response to a natural disaster or other emergency situation.

(b) The mobile services provided in a mobile unit operated by a parent facility shall be licensed to the parent facility, even though it may be operated pursuant to a contract. When a contract of this type exists with a licensed parent facility for the provision of mobile unit services, all of the following shall apply:

(1) Mobile units shall be treated as part of the parent facility for licensure purposes.

(2) Each parent facility shall document the designated service and staff that have administrative responsibility for the mobile unit.

(3) The parent facility shall maintain the administrative and professional responsibility for the mobile unit. All liabilities for noncompliance regarding the provisions of services in the mobile unit shall be that of the parent facility.

(4) Procedures and services to be provided in the mobile unit shall be in accordance with recognized acceptable standards of practice.

(5) Coordination with the owner of the mobile unit vehicle for availability of the vehicle at the site for required inspections shall be the responsibility of the parent facility.

1765.170. The mobile unit shall comply with all of the following:

(a) It shall have supplies and equipment to meet the needs of the patients served.

(b) Any mobile unit X-ray equipment shall be in compliance with the requirements in the California Radiation Control Regulations, Title 17, California Code of Regulations.

(c) The mobile unit shall have fire safety equipment as specified by the fire authority having jurisdiction, including but not limited to, at least two fire extinguishers of 2A:20 BC rating.

(d) Documented evidence of preventative maintenance and calibration procedures of mobile unit equipment shall conform to the manufacturer's specifications.

(e) Use of the equipment in mobile units shall conform to the manufacturer's specifications.

(f) The mobile unit shall have a telecommunications device.

1765.175. 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, rules and regulations as it determines may be necessary 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. Until the state department adopts regulations

relating to provision of services by a chronic hemodialysis clinic, a surgery clinic, or a rehabilitation clinic, mobile units licensed or seeking licensure, in these categories shall comply with federal certification standards for end stage renal disease clinics, ambulatory surgery clinics, or comprehensive outpatient rehabilitation facilities, as applicable.

SEC. 3. It is the intent of the Legislature by amending subdivision (p) of Section 1267.13 of the Health and Safety Code pursuant to Section 1 of this bill, to make the interim standards set forth in Section 1267.13 of the Health and Safety Code again operative on and after the effective date of this bill, and that those standards become inoperative upon the filing of regulations pursuant to Section 1267.13 of the Health and Safety Code with the Secretary of State.

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 1021

An act to add Chapter 7 (commencing with Section 20700) to Division 8 of the Business and Professions Code, relating to health.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Chapter 7 (commencing with Section 20700) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 7. INDUSTRIAL HYGIENIST DEFINITION AND REGISTRATION ACT

Article 1. General Provisions

20700. As used in this chapter:

(a) "Industrial hygiene" means the science and art devoted to the anticipation, recognition, evaluation, and control of environmental

factors or stresses which may cause sickness, impaired health and well-being, or significant discomfort and inefficiency among workers or among the citizens of a community.

(b) "Certified industrial hygienist (CIH)" means a person who has met the education, experience, and examination requirements of an industrial hygiene certification organization.

(c) "Industrial hygiene certification organization" means a professional organization of certified industrial hygienists that has been established to improve the practice and educational standards of the profession of industrial hygiene through a certification process, by certifying industrial hygienists through an examination administered by the certification organization. The organization shall have the certifying examinations evaluated by a national testing service and shall maintain certification criteria that are at least the equivalent of the American Board of Industrial Hygiene.

Article 2. Certification Stamp

20701. A certified industrial hygienist may obtain a stamp from an industrial hygiene certification organization, which shall include a number that uniquely identifies and bears the name of that certified industrial hygienist. The stamp certifies that the industrial hygienist has successfully passed an industrial hygiene examination and met the certification maintenance requirements required and approved by the industrial hygiene certification organization .

20702. All reports, opinions, or official documents prepared for submission to an employer, government agency, or other consumer by any certified industrial hygienist shall be affixed by a stamp, as specified in Section 20701, and signed by that certified industrial hygienist.

Article 3. Professional Practice

20703. No entity of state or local government shall by rule or otherwise regulate the practice of industrial hygiene by any certified industrial hygienist, except where authorized by state statute to regulate a specific activity that may include the practice of industrial hygiene.

Article 4. Unfair Business Practices

20704. It is an unfair business practice for any person to represent themselves as a "certified industrial hygienist" or a "CIH" unless they comply with the requirements of this chapter.

Article 5. Exemptions

20705. This act shall not prohibit:

(a) Any person legally regulated in this state under any other

licensing act or regulation from engaging in the activities permitted under his or her license, provided he or she does not represent himself or herself as a certified industrial hygienist or CIH.

(b) Professional experience or apprenticeship performed in order to meet certification requirements in this chapter.

(c) The practice of a student pursuing a course of professional education under the terms of this chapter, if these activities and services constitute a part of the student's supervised course of study.

CHAPTER 1022

An act to repeal and add Chapter 11.5 (commencing with Section 50800) of Part 2 of Division 31 of the Health and Safety Code, relating to housing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Chapter 11.5 (commencing with Section 50800) of Part 2 of Division 31 of the Health and Safety Code is repealed.

SEC. 2. Chapter 11.5 (commencing with Section 50800) is added to Part 2 of Division 31 of the Health and Safety Code, to read:

CHAPTER 11.5. EMERGENCY HOUSING AND ASSISTANCE PROGRAM

50800. (a) It is the intent of the Legislature to encourage the provision of shelter, with effective personal rehabilitation and self-sufficiency development services, to homeless persons at as low a cost and as quickly as possible, without compromising the health and safety of shelter occupants. It is also the intent of the Legislature to encourage the move of homeless persons from shelters to a self-supporting environment as soon as possible, to encourage provision of services for as many persons at risk of homelessness as possible, to encourage compatible and effective funding of homeless services, and to encourage coordination among public agencies that fund or provide services to homeless individuals.

(b) There is hereby created the Emergency Housing and Assistance Program.

(c) To the extent possible, the Emergency Housing and Assistance Program shall not conflict with the federal Stewart B. McKinney Homeless Assistance Act, as approved on July 22, 1987, cited as Public Law 100-77, as it is, from time to time, amended, and regulations promulgated thereunder by the United States Department of Housing and Urban Development, or its successor.

50800.5. (a) There is hereby created in the State Treasury the Emergency Housing and Assistance Fund. Notwithstanding Section 13340 of the Government Code, all money in the fund is continuously appropriated to the department to carry out the purposes of this chapter. Any repayments, interest, or new appropriations shall be deposited in the fund, notwithstanding Section 16305.7 of the Government Code. Money in the fund shall not be subject to transfer to any other fund pursuant to any provision of Part 2 (commencing with Section 16300) of Division 4 of Title 2 of the Government Code, except to the Surplus Money Investment Fund.

(b) All moneys in the Emergency Housing and Assistance Fund, created pursuant to Section 50800.5 as it existed prior to the effective date of the act that adds this chapter, shall be transferred, on the effective date of the act that adds this chapter, to the Emergency Housing and Assistance Fund created by subdivision (a).

(c) The department may require the transfer of moneys in the Emergency Housing and Assistance Fund to the Surplus Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code. All interest, dividends, and pecuniary gains from these investments shall accrue to the Emergency Housing and Assistance Fund, notwithstanding Section 16305.7 of the Government Code.

50801. As used in this chapter:

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

(b) "Designated local board" means a group, including social service providers and a representative of local government, that has met department requirements for distribution of grants allocated by the department pursuant to this chapter.

(c) "Director" means the Director of Housing and Community Development.

(d) "Eligible organization" means an agency of local government or a nonprofit corporation that provides, or contracts with community organizations to provide, emergency shelter or transitional housing, or both.

(e) "Emergency shelter" means housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay.

(f) "Nonurban county" means any county with a population of less than 200,000, as published in the most recent edition of Population Estimates of California Cities and Counties, E-1, prepared by the Department of Finance, Population Research Unit.

(g) "Region" means a county or a consortium of counties voluntarily banding together by action of a designated local board.

(h) "Transitional housing" means housing with supportive services for up to 24 months that is exclusively designated and targeted for recently homeless persons. Transitional housing

includes self-sufficiency development services, with the ultimate goal of moving recently homeless persons to permanent housing as quickly as possible, and limits rents and service fees to an ability-to-pay formula reasonably consistent with the United States Department of Housing and Urban Development's requirements for subsidized housing for low-income persons. Rents and service fees paid for transitional housing may be reserved, in whole or in part, to assist residents in moving to permanent housing.

(i) "Urban county" means any county that is not a nonurban county.

50801.5. (a) The department shall adopt regulations for the administration of the Emergency Housing and Assistance Program. The regulations shall govern the equitable distribution of funds in accordance with the intent and provisions of this chapter, and shall ensure that the program is administered in an effective and efficient manner. The regulations shall provide for reasonable delegation of authority to designated local boards, ensure that local priorities and criteria are reasonably designed to address the needs of homeless people, and ensure that designated local boards meet reasonable standards of inclusiveness, accountability, nondiscrimination, and integrity.

(b) The regulations adopted pursuant to this section shall ensure that emergency shelter and services shall be provided on a first-come, first-served basis for whatever time periods are established by the shelter. No individual or household may be denied shelter or services because of an inability to pay. Nothing in this provision shall be construed to preclude a shelter from accepting payment vouchers provided through any other public or private program so long as no shelter beds are reserved beyond sundown for that purpose. Notwithstanding Section 11135 of the Government Code, nothing in this section shall be construed to preclude a provider of emergency shelter or transitional housing from restricting occupancy on the basis of sex.

50802. (a) The department shall ensure that not less than 20 percent of the moneys in the Emergency Housing and Assistance Fund shall be allocated to nonurban counties during any given fiscal year.

(b) The amount of funds that the department allocates from the Emergency Housing and Assistance Fund to each region, excluding funds allocated pursuant to subdivision (a), shall be based upon a formula that accords at least 20 percent weight to each of the following factors:

(1) The relative number of persons in the region below the poverty line according to the most recent federal census, updated, if possible, with an estimate by the Department of Finance, compared to the total of the urban counties.

(2) The relative number of persons unemployed within each region, based on the most recent one-year period for which data is available, compared to the total of the urban counties.

(c) Grant funds shall be disbursed as expeditiously as possible by the department.

(d) The department shall use not more than 4 percent of the amount available for funds pursuant to this chapter to defray the department's administrative costs pursuant to this chapter.

50802.5. (a) The department shall issue a notice or notices of funding availability to potential applicants and designated local boards, as applicable, as soon as possible after funding becomes available for the Emergency Housing and Assistance Program. Each notice of funding availability shall indicate the amounts and types of funds available under this program.

(b) A designated local board, or the department in the absence of a designated local board, shall solicit, receive, and select among applications for grants pursuant to this chapter from eligible organizations through an open, fair, and competitive process. These applications shall be ranked and selected by a designated local board, or by the department in the absence of a designated local board.

(c) Notwithstanding subdivision (b), the department may restrict a designated local board from selecting any application requesting a grant for capital developments if the amount requested by the application exceeds the limits determined by the department, and the department determines that the designated local board is not qualified to evaluate the application. The department shall establish criteria for distinguishing between a designated local board that may be so restricted and a designated local board that would not be so restricted. A designated local board may appeal to the director, or to the director's designee, any decision made by the department pursuant to this subdivision.

(d) The department, or the designated local board, as applicable, shall not grant more than five hundred thousand dollars ($500,000) to any eligible organization within a region in a funding round even if the eligible organization has filed multiple applications.

(e) The department shall determine requirements of the grant contract and shall contract directly with the grant recipient. The department shall not delegate this function to the designated local boards.

(f) The designated local board shall regulate the performance of any grant contract within their region, subject to department oversight and requirements established by the department.

(g) The department shall not perform a secondary rating or ranking review on those grant applications that have been solicited, received, and selected by a designated local board according to a local ranking criterion that has been approved by the department.

50803. (a) Grants awarded by the department pursuant to this chapter shall be used by a grant recipient to defray costs of eligible activities defined in department regulations, including, but not limited to, any of the following activities:

(1) Operating facilities, including, but not limited to, operations staff salaries, maintenance, repair, utilities, equipment, and debt

reduction.

(2) Providing for capital development programs, such as acquisition, leasing, construction, and rehabilitation of sites for emergency shelter and transitional housing for homeless persons.

(3) Administrative costs.

(4) Operating expenses relating to supervising and counseling clients.

(5) Providing residential rental assistance.

(6) Leasing or renting rooms for provision of temporary shelter.

(b) Funds allocated to a nonurban county pursuant to subdivision (a) of Section 50802 may be used to pay the cost of leasing or renting individual units, hotel rooms, or motel rooms for use as emergency shelters. No more than 15 percent of the funds allocated to a region other than a nonurban county shall be expended for this purpose.

(c) By regulation, the department shall establish a level, not to exceed 5 percent of a grant award, which any eligible recipient may use to defray administrative costs.

50803.5. Each designated local board shall provide a process for appeal of its decisions and comply with the requirements of this chapter and the regulations promulgated hereunder.

50804. (a) Each designated local board shall submit to the department for approval, a local emergency shelter strategy for its region, describing the procedures for complying with requirements pursuant to this chapter and the regulations promulgated thereunder. The department shall establish, by regulation, the types of information that each designated local board shall include in the strategy, including, but not limited to, each of the following:

(1) A statement of goals and how goals will be achieved.

(2) A statement of priorities.

(3) A description of the application process and ranking criteria for the Emergency Housing and Assistance Program.

(4) Copies of application forms for the Emergency Housing and Assistance Program that the designated local board will use to evaluate requests for grants.

(b) The department shall establish a deadline, by which date the designated local board shall be required to submit a strategy for the department's review.

(c) Upon the department's approval of a strategy, the designated local board shall make the strategy broadly available to shelter and service providers and to other interested persons in its region.

50804.5. (a) Project budgets may be changed, within limits established by the department.

(b) Funds allocated to a region shall remain available for funding applications within the region for a time period or dollar limit to be specified by department regulations. The department may designate a time period or dollar limit for the distribution of capital development funds that is different from the time period or dollar limit for the distribution of noncapital development funds. When the designated local board is unable to distribute funds during the time

period designated by the department, the funds shall revert to the fund for distribution.

50805. (a) The director shall establish a statewide advisory body on emergency and transitional housing. The department shall consult with the advisory body in the development of regulations and guidelines for certification of designated local boards, requirements for the local emergency shelter strategies, assessment of statewide needs of homeless persons and providers of services to homeless persons, coordination of services and funds of state agencies, and general guidance and direction related to this chapter. The director shall establish, and the department shall begin consulting with, the advisory body within 30 days of the operative date of the act that adds this chapter.

(b) The advisory body established pursuant to this section shall be appointed by, and serve at the pleasure of, the director and shall represent a broad range of representatives of designated local boards, emergency shelter providers, and transitional housing providers from throughout the state. There shall be at least one member who is homeless or formerly homeless; at least one member who represents a statewide nonprofit advocacy organization concerned with homelessness and low-cost affordable housing; one member who represents a designated local board; one member who represents a federal interagency council concerned with homeless issues; one member representing state services for homeless persons; one member who is a residential building owner or manager; one member who is a commercial building owner or manager; and one member of the public. The department shall not use funds made available pursuant to this chapter to fund the activities of the advisory body.

50806. The department shall report annually to the Governor, and to the policy committees of the Legislature that review bills related to housing, regarding the performance of the Emergency Housing and Assistance Program. The department's report shall include a list that specifies the manner in which funds from the program were used in the previous fiscal year.

50806.5. The department may adopt emergency regulations to implement this chapter, with respect to award of funds and the administration of the program, to the extent necessary before the department issues the first notice of funding availability pursuant to Section 50802.5. The adoption of emergency 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. Any changes in regulations made by the department pursuant to this section shall be identified in the notice of funding availability published by the department pursuant to Section 50802.5.

SEC. 3. The Legislative Analyst shall, at the request of, and in accordance with the instructions of, the Joint Legislative Budget

Committee, prepare an evaluation of the programs established by Chapter 11.5 (commencing with Section 50800) of Part 2 of Division 31 of the Health and Safety Code. A sum sufficient to reimburse the Legislative Analyst for its reasonable costs in preparing the evaluation authorized by this section is hereby appropriated, without regard to fiscal years, from the Emergency Housing and Assistance Fund to the Legislative Analyst.

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

In order to ensure that state grants through the Emergency Housing and Assistance Fund may serve homeless and low-income persons in a more efficient and effective manner when the next round of funding becomes available, it is necessary that this act take effect immediately.

CHAPTER 1023

An act to add Section 5002.6 to the Vehicle Code, relating to vehicles.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 5002.6 is added to the Vehicle Code, to read:

5002.6. The Chancellor or a president of a campus, of the California State University, or the president, or a chancellor of a campus, of the University of California, who is regularly issued a state-owned vehicle may apply to the department for regular series license plates for that vehicle if a request for that issuance is made, in the manner specified by the department, and by the Trustees of the California State University or the Regents of the University of California, as applicable.

(b) Regular series license plates issued pursuant to subdivision (a) shall be surrendered to the department by the trustees or regents, as applicable, upon the reassignment of a vehicle, for which those plates have been issued, to a person other than the person who requested those plates.

CHAPTER 1024

An act to amend Sections 31630.5, 31631, 31633, and 33139 of the Water Code, relating to water.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 31630.5 of the Water Code is amended to read:

31630.5. As used in this chapter:

(a) "Annual" or "year" means a calendar year unless the context indicates a contrary meaning.

(b) "District" means the Coachella Valley Water District.

(c) "Fiscal year" means the period of July 1 through June 30, inclusive.

(d) "Production" or "produce" means the extraction of groundwater by pumping or any other method within the boundaries of the district or the diversion within the district of surface supplies which naturally replenish the groundwater supplies within the district and are used therein.

(e) "Producer" means any individual, partnership, association or group of individuals, lessee, firm, private corporation, or any public agency or public corporation, including, but not limited to, the Coachella Valley Water District.

(f) "Minimal pumper" means any producer who produces 25 or fewer acre-feet in any year.

(g) "Replenishment" and "replenishing" include incentive programs encouraging producers to use reclaimed water supplied by the district, or Colorado River water from the district's Coachella Branch Canal, for irrigation or other purposes, instead of groundwater.

(h) "Supplemental water" means water from the State Water Resources Development System, or from the Colorado River Aqueduct of the Metropolitan Water District of Southern California, or from any other source which is not part of the natural replenishment of the groundwater supplies within the district, including reclaimed water.

SEC. 2. Section 31631 of the Water Code is amended to read:

31631. By May 1 of each year the board shall have prepared and presented to it an engineering survey and report concerning the groundwater supplies within the district. The report shall include the condition of the groundwater supplies, the need for replenishment, and recommendations for any replenishment program, including the source and amount of replenishment water, the cost of purchasing or producing, transporting, and spreading this water, and the cost of "in lieu" programs, including incentives to use Colorado River water

or reclaimed water in place of groundwater. In connection with any proposed replenishment program, the report shall also describe the area or areas benefited, either directly or indirectly, the amount of water production produced in each area during the prior year, and shall recommend the amount of assessment to be levied upon all production within the benefited area or areas.

SEC. 3. Section 31633 of the Water Code is amended to read:

31633. The amount of any replenishment assessment levied within an area of benefit shall be established at the discretion of the board, except that no assessment shall exceed the sum of the following costs and charges:

(a) Those charges imposed under the contract between the district and the state for an imported water supply from the State Water Resources Development System consisting of all of the following:

(1) The variable operation, maintenance, power, and replacement component of the transportation charge.

(2) The off-aqueduct power facilities component of the transportation charge.

(3) The delta water charge.

(4) Any surplus water or unscheduled water charge.

(5) Sums paid by the district to the Desert Water Agency for payment of similar charges under a similar contract the agency has with the state as provided in the water management agreement of July 1, 1976, as amended.

(b) The cost of importing and recharging water from sources other than the State Water Resources Development System.

(c) The cost of treatment and distribution of reclaimed water for recharge or for direct use in lieu of groundwater.

(d) The cost of programs providing incentives to use reclaimed water or Colorado River water in place of groundwater.

SEC. 4. Section 33139 of the Water Code is amended to read:

33139. Notwithstanding anything contained in this part, the surviving district may provide for and carry on the construction, operation, and maintenance of works, improvements, and functions authorized by the Storm Water District Act of 1909 either as authorized in that act or as authorized by this division. The district may raise funds for these purposes in any manner authorized or permitted by either the Storm Water District Act of 1909 or this division, and is specifically authorized to raise funds by special assessment on benefited land in proportion to the benefits derived by the benefited lands.

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 1025

An act to add Section 23320.6 to, and to add and repeal Section 23320.7 of, the Business and Professions Code, and to add Section 26530.1 to the Health and Safety Code, relating to wine.

[Approved by Governor October 9, 1993. Filed with Secretary of State October 11, 1993.]

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

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

(a) The wine industry plays a significant role in California's economy, providing jobs and revenue, attracting foreign investment, promoting exports and tourism, and enhancing the state's image around the world.

(b) California's wine industry is a world leader in quality and production techniques, with California wines enjoying increasing popularity throughout the world.

(c) Past reports concerning minute traces of lead detectable in a handful of wines produced in other states and regions have prompted consumer concerns about the safety of wines generally.

(d) Testing by state and federal regulators has since demonstrated that the vast majority of wine sold in California contains lead at levels no higher than those often seen in many fresh fruits, vegetables, and other wholesome agricultural products, and that the levels of lead, if any, in California's wines are generally among the world's lowest.

(e) An industry-funded program already provides warnings advising pregnant women not to drink, utilizing point-of-sale and point-of-display notices that convey a uniform clear and reasonable warning message specified by the state's "Proposition 65" regulations.

(f) Compliance with a new more stringent limit on lead levels in wine will obviate any need for new warnings concerning lead that might dilute the impact and undermine the effectiveness of the uniform warnings now provided pursuant to existing federal laws and the state's "Proposition 65" regulations.

(g) This act, which shall be known, and may be cited, as the "Wine Safety Act" shall establish the world's most stringent limit on the maximum allowable levels of lead in wines sold in California, and shall establish a mechanism whereby the cost of ensuring industry compliance with the new standard is funded by California's wine producers and importers.

(h) To minimize the burden on interstate and foreign commerce,

it is the intent of the Legislature that the sampling method and testing protocol used by the State Department of Health Services to quantify levels of lead in wine shall be consistent with the testing protocol and, to the extent practicable, the sampling method that may be used by the federal Food and Drug Administration or the federal Bureau of Alcohol, Tobacco and Firearms to quantify levels of lead in wine.

SEC. 2. Section 23320.6 is added to the Business and Professions Code, to read:

23320.6. The Wine Safety Fund is hereby created as a special fund in the State Treasury, in trust, to the State Department of Health Services for the purpose of providing funds to better enable its Food and Drug Branch to carry out and supervise a program to ensure that levels of lead in wine sold in this state remain safe and within tolerances established by applicable laws and regulations, for the health and safety of the consuming public upon appropriation by the Legislature in the annual Budget Act. The fees collected pursuant to Section 23320.7 shall be sufficient to cover, but shall not exceed, the costs of administering the testing program conducted pursuant to this section. All moneys collected under Section 23320.7, including any interest accrued thereon, shall be deposited in the Wine Safety Fund.

SEC. 3. Section 23320.7 is added to the Business and Professions Code, to read:

23320.7. (a) Each winegrower or wine blender that has produced or blended wine for sale and consumption in California in the preceding calendar year, shall pay an annual fee, in addition to any other fees imposed by this chapter, in accordance with the following schedule:

Over 5,000 gallons to 20,000 gallons per year	$87.00 per year.
Over 20,000 gallons to 100,000 gallons per year	$163.00 per year.
Over 100,000 gallons to 200,000 gallons per year	$217.00 per year.
Over 200,000 gallons to 1,000,000 gallons per year	$325.00 per year.
For each 1,000,000 gallons or fraction thereof over 1,000,000 gallons, an additional	$217.00 per year.

(b) Each importer of wine that has imported wine for sale and consumption in California in the preceding calendar year, shall pay an annual fee of fifty dollars ($50) in addition to any other fees imposed by this chapter.

(c) This section is repealed, as of January 1, 2000, unless a later enacted statute, that becomes effective on or before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is

repealed.

SEC. 4. Section 26530.1 is added to the Health and Safety Code, to read:

26530.1. Any food is adulterated if it is wine and any one of the following conditions exists:

(a) It contains lead in concentrations exceeding 150 parts per billion, or in excess of a more stringent tolerance as may be established by federal law or regulation, unless it can be shown by the producer, or if not produced in California, by the licensed importer, that the wine was bottled before January 1, 1994.

(b) A metal foil capsule containing lead in excess of 0.3 percent by dry weight is affixed or attached to its container, unless it can be shown by the producer, or if not produced in California, by the licensed importer, that the wine was bottled before January 1, 1994.

(c) Notwithstanding any other rule or principle of law that may afford a private right of action to bring claims based on alleged violations of laws or standards, the right to commence and pursue civil or administrative actions to impose or collect fines, penalties, damages, or other remedies based on an alleged violation of the Wine Safety Act established pursuant to Senate Bill 1022 of the 1993–94 Regular Session shall be vested exclusively in the state, through the Food and Drug Branch of the State Department of Health Services and the Office of the Attorney General, and with local health officers or city attorneys or district attorneys otherwise empowered to prosecute violations of this division. Retailers of wine, including, but not limited to, "retailers" as defined in Section 23023 of the Business and Professions Code, or food facilities as defined in Section 27521, shall be entitled to all of the same protections for any violations of the Wine Safety Act established pursuant to Senate Bill 1022 of the 1993–94 Regular Session, as are afforded to food dealers pursuant to Chapter 3 (commencing with Section 26300). This subdivision does not apply to, limit, alter, or restrict any action for personal injury or wrongful death, or any action based upon a failure to warn.

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 1026

An act to repeal and add Article 9.5 (commencing with Section 73660) of Chapter 10 of Title 8 of the Government Code, relating to courts.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Article 9.5 (commencing with Section 73660) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 2. Article 9.5 (commencing with Section 73660) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 9.5. Humboldt Judicial District

73660. There is in the County of Humboldt a single municipal court district known as the Humboldt County Municipal Court District.

73660.5. The Humboldt County Municipal Court District consists of the following divisions embracing that territory which was within the specified judicial districts in the County of Humboldt as they existed on December 31, 1991, and as those divisions are thereafter modified by the board of supervisors after public hearing or by operation of law:

(a) The North Humboldt Division, comprising the territory within the former North Humboldt Judicial District.

(b) The Eureka Division, comprising the territory within the former Eureka Judicial District.

(c) The Eel River Division, comprising the territory within the former Eel River Judicial District.

73661. In order that the citizens of each division may have convenient access to the court, sufficient court facilities, including staff and other necessary personnel, shall be maintained in each division as follows, or as otherwise designated from time to time by the board of supervisors:

(a) In the North Humboldt Division, in the Town of Hoopa and in either the City of Arcata or the Town of McKinleyville.

(b) In the Eureka Division, in the City of Eureka.

(c) In the Eel River Division, in the Town of Garberville and the City of Fortuna.

73661.5. The number of judges in each division is as follows:

(a) North Humboldt Division—one.

(b) Eureka Division—two.

(c) Eel River Division—one.

73662. (a) Upon the establishment of the Humboldt County Municipal Court District, judges shall be eligible for office in the

district, as follows:

(1) In the North Humboldt Division, the judge of the North Humboldt Judicial District shall automatically become the judge of the North Humboldt Division.

(2) In the Eureka Division, the two judges of the Eureka Judicial District shall automatically become the two judges of the Eureka Division.

(3) In the Eel River Division, the judge of the Eel River Judicial District shall automatically become the judge of the Eel River Division.

(b) The time for election and qualification of the successor to any judge who becomes a judge of the district pursuant to this section, shall be that previously fixed by law for the election and qualification of the successors for the court and office superseded, had those courts not been superseded.

73662.5. For the purposes of the qualification and election of judges, the "division" referred to in this chapter is and shall continue to be the "district" referred to in subdivision (b) of Section 16 of Article VI of the California Constitution.

73663. Within each division, even in divisions having only one judge, there shall be a presiding judge.

73663.5. The judges of the district shall meet quarterly, and more often if necessary, upon the call in writing of any two judges. At the first meeting of each calendar year, the judges shall do all of the following:

(a) Adopt a districtwide bail schedule.

(b) Review the business of the district.

(c) 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 districts.

(d) Make such recommendations to the board of supervisors and to the Judicial Council as they deem desirable or necessary to promote the administration of justice in the courts of the district.

73664. (a) In each division of the municipal court district in Humboldt County, there shall be a clerk who shall be the administrative officer of the division and who shall be appointed by, and shall serve at the pleasure, of the judge or judges of each division with the concurrence of the board of supervisors.

(b) Upon the effective date of this article, all of the following shall occur:

(1) The clerk of the court of the North Humboldt Judicial District shall become the clerk of the court of the North Humboldt Division.

(2) The clerk/municipal court executive officer of the Eureka Judicial District shall become the clerk/municipal court executive officer of the Eureka Division.

(3) The clerk of the court of the Eel River Judicial District shall

become the clerk of the court of the Eel River Division.

73664.5. In addition to any other duties imposed on such officers by law, and as directed by the presiding judges, the administrative officers shall meet quarterly, and more often as necessary, for the following purposes:

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

(b) To prepare, coordinate, and administer the budget of the district.

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

(d) To initiate studies and prepare appropriate recommendations and reports to the presiding judges relating to the business of the district, including, but not limited to, such matters as standardization of forms and procedures and development and coordination of automated accounting and case processing systems.

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

73665. (a) Each administrative officer may appoint, in his or her division, with the approval of the presiding judge and the concurrence of the board of supervisors, the following deputies:

(1) In the North Humboldt Division, one senior court clerk (.80 full-time equivalent (FTE)), three courtroom clerks, and six court clerks I/II (5.30 FTE).

(2) In the Eureka Division, one deputy municipal court executive officer, four courtroom clerks, eight court clerks I/II, and one court hearing officer.

(3) In the Eel River Division, one senior court clerk, three courtroom clerks, and four court clerks I/II.

(b) This section is not intended, and shall not be construed, to limit the county from changing the number or types of positions set forth herein. The administrative officer of each division shall have the sole responsibility to coordinate the personnel practices of the division in compliance with the rules of the County of Humboldt, to provide for the conduct a program of in-service training for personnel of the division, and to prepare procedural guides for the personnel of the division.

73665.5. (a) There shall be one marshal for each division of the district. Upon the effective date of this chapter:

(1) The elected constable of the North Humboldt Judicial District shall continue in office as the marshal of the North Humboldt Division until the expiration of his or her current elected term of office.

(2) The elected marshal of the Eureka Judicial District shall continue in office as the marshal of the Eureka Division until the expiration of his or her current elected term of office.

(3) The elected constable on the Eel River Judicial District shall continue in office as the marshal of the Eel River Division until the expiration of his or her current elected term in office.

(4) The marshal may appoint in his or her division, with the approval of the presiding judge and the concurrence of the board of supervisors, the following officers:

(A) In the North Humboldt Division, one deputy marshal and one legal office assistant I/II.

(B) In the Eureka Division, one chief deputy marshal, three deputy marshals I/II, one senior legal office assistant, and one legal office assistant I/II.

(C) In the Eel River Division, one deputy marshal and one legal office assistant I/II.

This paragraph is not intended, and shall not be construed, to limit the county from changing the number or types of positions set forth herein.

(b) Notwithstanding any other provision of law, in the event of a vacancy in the position of marshal in any division, whether prior to or subsequent to the expiration of the then current term, an appointment to fill that vacancy shall be made by the presiding judge of that division with the concurrence of the board of supervisors. Each appointed marshal shall serve at the pleasure of the presiding judge and may be removed from office in accordance with any appropriate county personnel resolutions.

73665.6. (a) Before the expiration of the last of the elected marshals' terms in effect on the effective date of this section, the board of supervisors of Humboldt County may find, after holding a public hearing, that cost savings can be realized by consolidation of the three marshals' divisions into one countywide marshal's office. If that finding is made, it shall become effective upon the date that the last of those elected offices become vacant, whether because of the expiration of the term of office of an incumbent marshal, or a retirement, resignation, or otherwise. An election shall be held within 30 days of that finding among all of the judges of the municipal court to determine which of the incumbent division marshals shall be selected as the marshal of the consolidated district who shall serve at the pleasure of the judges. The outcome shall be determined by a simple majority of the votes cast. The registrar of voters of the county shall administer that election and tabulate the results thereof. The results of that election shall be reported within 15 days following the election by the registrar of voters to the board of supervisors and to the judges of the municipal court. When that marshal leaves office, the succeeding marshals shall be appointed by a majority vote of the judges of the municipal court.

(b) All employees of the divisional marshals' offices affected by a consolidation of those offices into a countywide marshal's office shall become employees of the consolidated office at their existing or equivalent classification, salaries, seniority, and benefits.

73666. (a) The officers 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 Humboldt and all such benefits and privileges which have been accrued to any incumbent officer or attaché of the superseded courts shall be retained.

(b) Subject to Section 72001, the compensation for any classification listed in Section 73665 shall be governed by the Humboldt County Salary Resolution and Memoranda of Understanding, if any, with the recognized labor organizations representing court employees in effect on January 1, 1988. The compensation and benefits for the position of marshal of the municipal court shall be set at the level of a sheriff's lieutenant plus 15 salary ranges.

73667. (a) Official reporters shall be appointed by the judges of each municipal court district pursuant to the provisions of Section 72194 and shall serve during the pleasure of the judge to whom he or she is assigned. The number of reporters so appointed shall not exceed at any one time the number of judges provided by law for the court.

(b) A judge of the municipal court may appoint an official reporter pro tempore to serve as the business of the court may require, when an official reporter is unavailable.

(c) The salaries of each regular official reporter and each official reporter pro tempore shall be as provided in Section 70127, except that such changes in compensation made pursuant to this section 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.

(d) (1) In addition to any fee otherwise required in a civil case in which the court orders a daily transcript necessitating the services of two phonographic reporters, the party requesting the daily transcript shall pay a fee per day equal to the per diem rate for official reporters pro tempore for the services of the second reporter for the first and each successive day.

(2) All fees paid under this subdivision shall be taxed as costs.

73668. All matters affecting the employment of the officers and attachés which are not specifically determined by this article or other provision of state law, including, but not limited to, the initial hiring rate for each position and the procedure for advancement to a higher step, shall be governed and regulated by the then current salary ordinance of the County of Humboldt and the rules of the Civil Service Commission of the County of Humboldt.

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 1027

An act to amend Section 711 of the Fish and Game Code, relating to fish and game.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 711 of the Fish and Game Code is amended to read:

711. It is the intent of the Legislature to ensure adequate funding from appropriate sources for the department. To this end, the Legislature finds and declares that:

(a) The costs of nongame fish and wildlife programs and free hunting and fishing license programs shall be provided annually in the Budget Act by appropriating money from the General Fund and sources other than the Fish and Game Preservation Fund to the department for these purposes.

(b) The costs of commercial fishing programs shall be provided out of revenues from commercial fishing taxes, license fees, and other revenues, from reimbursements and federal funds received for commercial fishing programs, and other funds appropriated by the Legislature for this purpose.

(c) The costs of hunting and sportfishing programs shall be provided out of hunting and sportfishing revenues and reimbursements and federal funds received for hunting and sportfishing programs, and other funds appropriated by the Legislature for this purpose. These revenues, reimbursements, and federal funds shall not be used to support commercial fishing programs, free hunting and fishing license programs, or nongame fish and wildlife programs.

(d) The costs of managing lands managed by the department and the costs of wildlife management programs shall be supplemented out of revenues in the Native Species Conservation and Enhancement Account in the Fish and Game Preservation Fund.

(e) The department shall conduct, or contract for, a review, at least every five years, of its programs to ensure consistency with this section.

(f) Hunting, sportfishing, and sport ocean fishing license fees shall be adjusted annually to an amount equal to that computed pursuant to Section 713. However, a substantial increase in the aggregate of hunting and sportfishing programs shall be reflected by appropriate amendments to the sections of this code that establish the base sport license fee levels. The inflationary index provided in Section 713 may

not be used to accommodate a substantial increase in the aggregate of hunting and sportfishing programs.

For purposes of this article, "substantial increase" means an increase in excess of 5 percent of the Fish and Game Preservation Fund portion of the department's current year support budget, excluding cost-of-living increases provided for salaries, staff benefits, and operating expenses.

CHAPTER 1028

An act to amend Section 32960 of the Financial Code, to amend Sections 40448.7, 40717, 40921.5, 41712, and 42311.1 of, to add Section 40500.1 to, to add Article 3 (commencing with Section 40130) to Chapter 2 of Part 3 of Division 26 of, and to add Article 3.5 (commencing with Section 42420) to Chapter 4 of Part 4 of Division 26 of, the Health and Safety Code, relating to the environment.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 32960 of the Financial Code is amended to read:

32960. This chapter shall become inoperative on July 1, 2001, and, as of January 1, 2002, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2002, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Article 3 (commencing with Section 40130) is added to Chapter 2 of Part 3 of Division 26 of the Health and Safety Code, to read:

Article 3. District Budget Adoption

40130. The Legislature hereby finds and declares as follows:

(a) It is in the public interest to ensure that districts adopt their budgets in an open process in order to educate the public of the costs and benefits of air quality improvement.

(b) The process required by this article shall be separate from other budget processes to ensure full opportunity for the public to participate in, and comment upon, a district's budget prior to adoption.

(c) This process also shall provide accountability to district boards and to districts in their budget processes.

40131. (a) Each district shall adopt its annual budget in accordance with the following requirements:

(1) The district shall prepare, and make available to the public at

least 30 days prior to public hearing, a summary of its budget and any supporting documents, including, but not limited to, a schedule of fees to be imposed by the district to fund its programs.

(2) The district shall notify each person who was subject to fees imposed by the district in the preceding year of the availability of the information described in paragraph (1).

(3) The district shall notice and hold a public hearing for the exclusive purpose of reviewing its budget and of providing the public with the opportunity to comment upon the proposed district budget. The public hearing required to be held pursuant to this section shall be separate from the hearing at which the district adopts its budget.

(b) This article shall not apply to the south coast district, which shall be governed by Article 8 (commencing with Section 40520) of Chapter 5.5.

SEC. 3. Section 40448.7 of the Health and Safety Code is amended to read:

40448.7. (a) (1) The south coast district shall annually allocate to the fund established pursuant to subdivision (b) not less than one million dollars ($1,000,000) of the funds received from civil and criminal penalties, out-of-court settlements, or other sources, for the purpose of guaranteeing or otherwise participating in the provision of financing assistance for lending programs of other public agencies or private lenders to small businesses for the purpose of complying with the south coast district regulations.

(2) If the balance in the fund established pursuant to subdivision (b) equals or exceeds four million dollars ($4,000,000), the south coast district shall not make that annual allocation to that fund.

(b) In carrying out this section, the south coast district shall establish a special small business assistance fund known as the Air Quality Assistance Fund for the purpose of setting aside funds to be used in underwriting, guaranteeing, or otherwise participating in the provision of financing assistance by other public agencies or private lenders. Moneys in the fund shall be invested and reinvested in the same manner as other surplus government funds and the proceeds deposited in the fund.

(c) In carrying out this section, and its responsibilities for the mitigation of socioeconomic impacts, the south coast district shall utilize, to the maximum extent, the financing instruments and administrative capacity of other public agencies and private lenders with respect to providing financing assistance, and shall endeavor to obtain the maximum leverage of its funds through guarantees and other forms of risk sharing with other public agencies and private lenders, in order to increase the availability of financing assistance to small businesses. The south coast district shall consider, and shall make available to public agencies and private lenders, relevant information contained in environmental and socioeconomic impact assessments conducted by the south coast district.

(d) Notwithstanding any other provision of law, the findings of any environmental audit or assessment conducted by or for a small

business pursuant to this section shall remain the property of the business.

(e) "Small business," for the purposes of this section, has the same meaning as defined by the federal Small Business Administration.

(f) Not later than January 1, 1993, the south coast district shall submit to the Legislature and the Governor a report which assesses the effectiveness of this section in increasing the availability of financial assistance to small businesses subject to the rules and regulations of the district.

(g) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

SEC. 4. Section 40500.1 is added to the Health and Safety Code, to read:

40500.1. Except as required to comply with the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.), fees assessed on stationary sources in the south coast district pursuant to Sections 40500 and 40510 shall not exceed, for any fiscal year, the actual costs of district programs pursuant to this article for the immediately preceding fiscal year with an adjustment not greater than the change in the annual California Consumer Price Index, as determined pursuant to Section 2212 of the Revenue and Taxation Code.

SEC. 5. Section 40717 of the Health and Safety Code is amended to read:

40717. (a) A district shall adopt, implement, and enforce transportation control measures for the attainment of state or federal ambient air quality standards to the extent necessary to comply with Section 40918, 40919, or 40920.

(b) A district which has entered into an agreement with a council of governments or a regional agency to jointly develop a plan for transportation control measures shall develop the plan in accordance with all of the following:

(1) The district shall establish the quantity of emission reductions from transportation sources that are necessary to attain state and federal ambient air standards. The state board shall, to the extent requested to do so by a district, assist a district in identifying the quantity of emission reductions necessary to comply with this paragraph.

(2) The council of governments or regional agency, in cooperation with the district and any other person or entity authorized by the council of governments or regional agency, shall develop and adopt a plan to control emissions from transportation sources and mobile sources which will achieve the emission reductions established under paragraph (1). The plan shall include, at a minimum, a schedule for implementing transportation control measures, identification of potential implementing agencies and any agreements entered into by agencies to implement portions of the plan, and procedures for monitoring the effectiveness of, and compliance with, the measures in the plan. The council of

governments or regional agency shall submit the plan to the district for its adoption according to a reasonable schedule developed by the district in consultation with the council of governments or regional agency.

(3) Upon receipt of the plan submitted by the council of governments or regional agency, the district shall review and approve or disapprove the plan in the following manner:

(A) The district shall review, adopt, and enforce the plan if it meets the criteria established by the district pursuant to paragraph (1) and has been submitted pursuant to the schedule established under paragraph (2).

(B) If the district determines that the plan does not meet the criteria established pursuant to paragraph (1), the district shall return the plan to the council of governments or regional agency with comments which identify the reasons the plan does not meet the criteria established pursuant to paragraph (1). Within 45 days, the council of governments or regional agency shall review the district's comments, revise the plan to meet the criteria established under paragraph (1), and resubmit the plan to the district. The district shall review and approve the revised plan if it meets the criteria established by the district pursuant to paragraph (1) and has been resubmitted to the district within 45 days.

(C) If the plan is not submitted pursuant to the schedule established under paragraph (2), or if a plan revised by a council of governments or regional agency and resubmitted to a district pursuant to this subparagraph does not meet the criteria established under paragraph (1), the district shall develop, adopt, and enforce an alternative plan for transportation control measures.

(4) Whenever the district revises its establishment of the quantity of emission reductions from transportation sources necessary to attain state and federal ambient air standards, the plan shall be revised, adopted, and enforced in accordance with paragraphs (1), (2), and (3).

(c) Subdivision (b) does not apply to the Sacramento County Air Pollution Control District. Chapter 1541 of the Statutes of 1988 shall govern preparation and enforcement of that plan for transportation control measures for the Sacramento district.

(d) Notwithstanding subdivision (b), a district located in a county of the third class shall develop a plan for transportation control measures as follows:

(1) The district, in consultation with the council of governments, shall develop, approve, and adopt criteria under which the plan shall be developed.

(2) The council of governments shall develop and adopt a plan for transportation control measures which meets the criteria established by the district, and shall submit the plan to the district for its review and adoption according to a reasonable schedule developed by the district in consultation with the council of governments.

(3) Upon receipt of the plan submitted by the council of

governments, the district shall review and approve the plan if it meets the criteria established by the district pursuant to paragraph (1) and has been submitted pursuant to the schedule established under paragraph (2). If the district determines that the plan does not meet the criteria established pursuant to paragraph (1) or if the plan is not submitted pursuant to the schedule established under paragraph (2), the district shall develop and adopt an alternative plan for transportation control measures.

(e) A district may delegate any function with respect to implementation of transportation control measures to any local agency, if all of the following conditions are met:

(1) The local agency submits to the district an implementation plan which provides adequate resources to adopt and enforce the measures, and the district approves the plan.

(2) The local agency adopts and implements measures at least as stringent as those in the district plan.

(3) The district adopts procedures to review the performance of the local agency in implementing the measures to ensure compliance with the district plan.

(f) A district may revoke an authority granted under this section if it determines that the performance of the local agency is in violation of this section or is otherwise inadequate to implement the district plan.

(g) For purposes of this section, "transportation control measures" means any strategy to reduce vehicle trips, vehicle use, vehicle miles traveled, vehicle idling, or traffic congestion for the purpose of reducing motor vehicle emissions.

SEC. 6. Section 40921.5 of the Health and Safety Code is amended to read:

40921.5. (a) For purposes of classifying ozone nonattainment areas pursuant to Sections 40918, 40919, 40920, and 40920.5, the terms moderate, serious, severe, and extreme shall be defined as follows:

(1) Moderate	greater than 0.09 to not more than 0.12 parts per million, inclusive.
(2) Serious	0.13 to 0.15 parts per million, inclusive.
(3) Severe	0.16 to 0.20 parts per million, inclusive.
(4) Extreme	greater than 0.20 parts per million.

(b) For the purposes of classifying carbon monoxide nonattainment areas under Sections 40918 and 40919, the terms moderate and serious shall be defined as follows:

(1) Moderate	greater than 9.0 to 12.7 parts per million, inclusive.
(2) Serious	greater than 12.7 parts per million.

(c) The state board shall determine the ambient concentration of each nonattainment area consistent with the designation criteria established pursuant to subdivision (e) of Section 39607. Classifications for ozone shall be based upon the calendar years 1989 to 1991, inclusive. Classifications for carbon monoxide shall be based upon the 1989–90 and 1990–91 winter seasons.

SEC. 7. Section 41712 of the Health and Safety Code is amended to read:

41712. (a) The state board shall adopt regulations to achieve the maximum feasible reduction in reactive organic compounds emitted by consumer products, if the state board determines that adequate data exists for it to adopt the regulations.

(b) The state board shall not adopt regulations pursuant to subdivision (a) unless the regulations are technologically and commercially feasible, and necessary to carry out this division. The state board shall consider the effect that the regulations proposed for health benefit products will have on the efficacy of those products in killing or inactivating agents of infectious diseases such as viruses, bacteria, and fungi, and the impact the regulations will have on the availability of health benefit products to California consumers.

(c) For purposes of this section, a "consumer product" means a chemically formulated product used by household and institutional consumers, including, but not limited to, detergents; cleaning compounds; polishes; floor finishes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; aerosol paints; and automotive specialty products; but does not include other paint products, furniture coatings, or architectural coatings.

(d) (1) Prior to adopting regulations pursuant to this section governing health benefit products, including, but not limited to, disinfectants, the state board shall consider any recommendations received from federal, state, or local public health agencies and medical experts in the field of public health.

(2) Within 30 days after the adoption of any regulation pursuant to this section governing health benefit products, the state board shall prepare and submit to the Legislature and the Governor a report which summarizes any recommendations received pursuant to paragraph (1) and any conclusions made by the state board concerning the recommendations.

(3) For purposes of this subdivision, the following definitions apply:

(A) "Health benefit product" means an antimicrobial product registered with the Environmental Protection Agency.

(B) "Medical expert" means a physician, including a pediatrician, a microbiologist, or a scientist involved in research related to infectious disease and infection control.

(e) A district shall adopt no regulation relating to a consumer product which is different than any regulation adopted by the state board for that purpose.

(f) (1) It is the intent of the Legislature that air pollution control standards affecting the formulation of aerosol paints and limiting the emissions of reactive organic compounds resulting from the use of aerosol paints be set solely by the state board to ensure uniform standards applicable on a statewide basis. A district shall not adopt or enforce any regulation regarding the reactive organic compound content of, or emissions from, aerosol paints until such time as the state board has adopted a regulation regarding those paints, and any district regulation shall not be different than the state board regulation. A district may observe and enforce a state board regulation regarding aerosol paints in the same manner as a district regulation limiting the issuance of air contaminants. This subdivision shall not apply to any district that has adopted a rule or regulation regarding aerosol paints pursuant to an order of a federal court, until such time as the federal court has authorized the district to observe and enforce the state board regulation in lieu of the district regulation.

(2) On or before January 1, 1995, the state board shall adopt regulations requiring the maximum feasible reduction in reactive organic compounds emitted from the use of aerosol paints. The regulations shall establish final limits and require full compliance not later than December 31, 1999, and shall establish interim limits prior to that date resulting in reductions in reactive organic compounds. For the purposes of this subdivision, "maximum feasible reduction in reactive organic compounds emitted" means at least a 60 percent reduction in the emissions of reactive organic compounds resulting from the use of aerosol paints, calculated with respect to the 1989 baseline year.

(3) On or before December 31, 1998, the state board shall conduct a public hearing on the technological or commercial feasibility of achieving full compliance with the final limits by December 31, 1999. If the state board determines that a 60 percent reduction in emissions of reactive organic compounds from the use of aerosol paints is not technologically or commercially feasible by December 31, 1999, it may grant an extension of time not to exceed five years. During any such extension of time, the most stringent interim limits shall be applicable. Any regulation adopted by the state board shall include a provision authorizing the time extension and requiring a public hearing on technological or commercial feasibility consistent with this subdivision. The state board shall seek to ensure that the final limits for aerosol paints established pursuant to this subdivision do not become federally enforceable prior to the effective date established by the state board for these limits, including any

extension granted under this subdivision.

(4) Reductions required for aerosol paints under this subdivision are not intended to apply to any other consumer product and the regulation of aerosol paints is not subject to subdivision (b).

SEC. 8. Section 42311.1 of the Health and Safety Code is amended to read:

42311.1. (a) Contemporaneously with the annual State Budget, the state board shall prepare a report on the sources of funding for each district with an annual budget which exceeds one million dollars ($1,000,000). The report shall include all of the following:

(1) The annual budget of each district, based upon the most recent fiscal year for which data are available.

(2) A description of each district's budgetary process, including, but not limited to, criteria for allocating costs.

(3) A description of current funding sources for district programs, including, but not limited to, fees, state subventions, federal grants, and local tax revenues, and the approximate amount each source contributes to the district's annual budget.

(4) A comparison of the fees paid by different industries within each district, to the extent these data are available.

(5) A description of program needs, if any, which are not met by current funding levels.

(6) For a district which adopts a schedule of fees for issuance of permits for activities described under Section 42311.2, a comparison between the fees paid by persons or entities issued a permit and district administrative costs for issuing and enforcing those permits.

(7) A fee system to identify the costs and revenues associated with each of the major services and programs of each district, to identify the services and programs supported in whole or in part by each type of fee and how the costs are allocated among fees, and to assess whether the fee system includes a program consistent with the requirements of paragraph (3) of subdivision (b) of Section 7661a of Title 42 of the United States Code.

(8) A statement of district revenues derived from enforcement activities, including a report of how much revenue, as a percentage of a district's overall budget, is derived from fines and penalties levied by the district.

(b) Every district included within subdivision (a) shall provide data and analyses to the state board for inclusion in the report.

(c) The state board shall consult with districts and other interested parties prior to preparing the report required under subdivision (a).

(d) Upon adoption of the report described in subdivision (a), the state board shall transmit copies of the report to the Governor and the Legislature.

(e) This section shall become inoperative on July 1, 1997, and, as of January 1, 1998, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1998, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 9. Article 3.5 (commencing with Section 42420) is added to Chapter 4 of Part 4 of Division 26 of the Health and Safety Code, to read:

Article 3.5. Compliance Programs

42420. The Legislature hereby finds and declares as follows:

(a) District enforcement programs should be prioritized to ensure that the imposition of civil and criminal penalties is commensurate with the severity of the violation.

(b) Districts shall endeavor to establish, where appropriate, alternatives to civil or criminal penalties for those circumstances in which the violation neither contributes to, nor potentially conceals, an emission that significantly contributes to unhealthful air quality.

42421. Each district which has a population of one million or more shall establish a compliance program that shall consist of all of the following elements:

(a) Procedures to ensure the consistent issuance of notices of compliance and notices of violations.

(b) A compliance assistance program to provide information to small businesses with regard to statutes and district rules and regulations to which they are subject and to assist them in identifying the most efficient and least costly means of complying with those statutes and rules and regulations.

(c) Settlement agreement procedures whereby persons who are in violation of those statutes or district rules or regulations may agree to take actions to improve air quality in lieu of paying monetary fines or penalties.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. 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 1029

An act to amend Section 40717 of, and to add and repeal Section 39613 of, the Health and Safety Code, relating to air pollution.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 39613 is added to the Health and Safety Code, to read:

39613. (a) The state board shall convene a technical review group to devise and adopt definitions of terms as they relate to employer-based trip reduction, for recommendation to the state board, for statewide use for purposes of this division and Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 of the Government Code.

(b) The technical review group shall be composed of 15 members appointed by the state board, as follows:

(1) A representative of a district located in northern California.

(2) A representative of a district located in southern California.

(3) A representative of a county congestion management agency located in northern California.

(4) A representative of a county congestion management agency located in southern California.

(5) Three representatives of environmental organizations.

(6) A representative of a regional rideshare matching agency.

(7) A representative of the state Chamber of Commerce.

(8) A representative of a statewide retail group.

(9) A representative of a statewide manufacturing association.

(10) A representative of a statewide organization representing financial institutions.

(11) A representative of a statewide telecommunications company or regional public utility.

(12) Two representatives of labor unions.

(c) The terms that are to be defined by the technical review group shall include all of the following:

(1) Average vehicle ridership (AVR) calculations.

(2) Carpool.

(3) Compressed workweek.

(4) Contract employee.

(5) Credit for alternative fuels.

(6) Credit for low-emission and zero-emission vehicles.

(7) Disabled employee.

(8) Employee.

(9) Employee transportation coordinator.

(10) Employer.

(11) Part-time employee.

(12) Peak period.
(13) Probationary employee.
(14) Satellite worksite.
(15) Seasonal employee.
(16) Standardized data reporting requirements.
(17) Telecommuting.
(18) Temporary employee.
(19) Vanpool.
(20) Worksite employee threshold.
(21) Any other terms which the technical review group or the state board recommends for definition.

(d) The technical review group may consult with other state agencies, including, but not limited to, the Department of Transportation, regarding definitions of terms.

(e) On or before April 1, 1994, the technical review group shall submit its recommended definitions to the state board.

(f) On the basis of the recommendations of the technical review group, on or before June 30, 1994, the state board shall adopt definitions which the state board determines are needed with regard to employer-based trip reductions.

(g) It is the intent of the Legislature to recommend that districts and county congestion management agencies identify and adopt standardized data reporting requirements, as may be defined pursuant to paragraph (16) of subdivision (c).

(h) 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.

SEC. 2. Section 40717 of the Health and Safety Code is amended to read:

40717. (a) A district shall adopt, implement, and enforce transportation control measures for the attainment of state or federal ambient air quality standards to the extent necessary to comply with Section 40918, 40919, or 40920.

(b) A district which has entered into an agreement with a council of governments or a regional agency to jointly develop a plan for transportation control measures shall develop the plan in accordance with all of the following:

(1) The district shall establish the quantity of emission reductions from transportation sources necessary to attain state and federal ambient air standards.

(2) The council of governments or regional agency, in cooperation with the district and any other person or entity authorized by the council of governments or regional agency, shall develop and adopt a plan to control emissions from transportation sources which will achieve the emission reductions established under paragraph (1). The plan shall include, at a minimum, a schedule for implementing transportation control measures, identification of potential implementing agencies and any agreements entered into

by agencies to implement portions of the plan, and procedures for monitoring the effectiveness of and compliance with the measures in the plan. The council of governments or regional agency shall submit the plan to the district for its adoption according to a reasonable schedule developed by the district in consultation with the council of governments or regional agency.

(3) Upon receipt of the plan submitted by the council of governments or regional agency, the district shall review and approve or disapprove the plan in the following manner:

(A) The district shall review, adopt, and enforce the plan if it meets the criteria established by the district pursuant to paragraph (1) and has been submitted pursuant to the schedule established under paragraph (2).

(B) If the district determines that the plan does not meet the criteria established pursuant to paragraph (1), the district shall return the plan to the council of governments or regional agency with comments which identify the reasons the plan does not meet the criteria established pursuant to paragraph (1). Within 45 days, the council of governments or regional agency shall review the district's comments, revise the plan to meet the criteria established under paragraph (1), and resubmit the plan to the district. The district shall review and approve the revised plan if it meets the criteria established by the district pursuant to paragraph (1) and has been resubmitted to the district within 45 days.

(C) If the plan is not submitted pursuant to the schedule established under paragraph (2), or if a plan revised by a council of governments or regional agency and resubmitted to a district pursuant to this subparagraph does not meet the criteria established under paragraph (1), the district shall develop, adopt, and enforce an alternative plan for transportation control measures.

(4) Whenever the district revises its establishment of the quantity of emission reductions from transportation sources necessary to attain state and federal ambient air standards, the plan shall be revised, adopted, and enforced in accordance with paragraphs (1), (2), and (3).

(c) Subdivision (b) shall not apply to the Sacramento district. Chapter 10 (commencing with Section 40950) shall govern preparation and enforcement of that plan for transportation control measures for the Sacramento district.

(d) Notwithstanding subdivision (b), a district located in a county of the third class shall develop a plan for transportation control measures as follows:

(1) The district, in consultation with the council of governments, shall develop, approve, and adopt criteria under which the plan shall be developed.

(2) The council of governments shall develop and adopt a plan for transportation control measures which meets the criteria established by the district, and shall submit the plan to the district for its review and adoption according to a reasonable schedule developed by the

district in consultation with the council of governments.

(3) Upon receipt of the plan submitted by the council of governments, the district shall review and approve the plan if it meets the criteria established by the district pursuant to paragraph (1) and has been submitted pursuant to the schedule established under paragraph (2). If the district determines that the plan does not meet the criteria established pursuant to paragraph (1) or if the plan is not submitted pursuant to the schedule established under paragraph (2), the district shall develop and adopt an alternative plan for transportation control measures.

(e) A district may delegate any function with respect to the implementation of transportation control measures to any local agency, if all of the following conditions are met:

(1) The local agency submits to the district an implementation plan that provides adequate resources to adopt and enforce the measures, and the district approves the plan.

(2) The local agency adopts and implements measures at least as stringent as those in the district plan.

(3) The district adopts procedures to review the performance of the local agency in implementing the measures to ensure compliance with the district plan.

(4) Multiple site employers with more than one regulated worksite in the district have the option of complying with the district rule and reporting directly to the district. Employers that exercise this option shall be exempt from the local agency trip reduction measure.

(f) A district may revoke an authority granted under this section if it determines that the performance of the local agency is in violation of this section or otherwise inadequate to implement the district plan.

(g) For purposes of this section, "transportation control measures" means any strategy to reduce vehicle trips, vehicle use, vehicle miles traveled, vehicle idling, or traffic congestion for the purpose of reducing motor vehicle emissions.

(h) Nothing in this section shall preclude a local agency from implementing a transportation control measure that exceeds the requirements imposed by an air pollution control district or an air quality management district if otherwise authorized by law.

CHAPTER 1030

An act to add Section 14114 to the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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 few years, technology dependent children have emerged as a unique service population, distinguished by the chronicity and medical technology needs of the group.

(b) In determining placement and treatment needs of technology dependent children, an effort should be made to place the child in the least costly and least restrictive level of care that still provides for the child's medical safety and dignity.

(c) It is the ultimate goal of the Legislature to ensure that a true continuum of care is available to address the individual developmental and medical needs of technology dependent children.

SEC. 2. Section 14114 is added to the Welfare and Institutions Code, to read:

14114. (a) (1) Notwithstanding any other provision of this chapter, for the provision of benefits to any technology dependent child who is placed at a lower cost facility or at the child's home, reimbursement for the lower cost facility or home-based services shall be made on the basis of actual, allowable, reasonable costs, in accordance with medicare cost reimbursement principles, as applied to economically and efficiently operated technologies, if the overall cost to the state would decrease. Nothing in this section precludes reimbursement for services to technology dependent children receiving care in the home.

(2) Paragraph (1) shall apply to all medical services covered under this chapter that are related to the needs arising from a child's technological dependence.

(3) Effective July 1, 1994, the department shall implement paragraph (1) concurrent with its application for federal financial participation if the reimbursement will result in cost savings to the state.

(4) The department shall not implement paragraph (3) if the department commences implementation of a pediatric care program as described in Section 3 of the act adding this section prior to July 1, 1994, pursuant to the adoption of regulations and the receipt of any necessary federal approvals.

(b) The department shall compile the number of technology dependent children for whom payments are made under this

section, and the reason for the determination to make the payments under this section.

(c) For purposes of this section, "technology dependent child" means a person under 21 years of age who uses a medical technology that compensates for the loss of normal use of a vital body function, and all of the following apply:

(1) He or she requires around-the-clock availability of skilled nursing care that is more intensive than is provided to the majority of patients in a nursing facility licensed as a skilled nursing facility and, in the absence of a pediatric subacute unit, can be provided only in an acute care licensed hospital bed, including daily physician visits.

(2) He or she does not require the services of an acute care hospital, including daily physician visits.

(3) Either of the following applies:

(A) He or she is dependent at least part of each day on mechanical ventilation.

(B) He or she is dependent on device-based respiratory, nutritional, or pharmaceutical medical supports, including, but not necessarily limited to, peritoneal dialysis, tracheostomy tube care, nasogastromic, gastrostomy, or other enteral tube feedings, or intravenous administration of nutritional substance.

(d) Reimbursement for services provided pursuant to this section shall be made only to a facility that meets all of the following service criteria:

(1) The facility ensures that a sufficient number of registered nurses are available seven days a week, 24 hours a day, to provide skilled nursing care, and that such other licensed vocational nurses and certified nurses aides are available as are necessary to ensure a safe level of care with some dignity.

(2) (A) The facility ensures that the provision of developmental services are appropriate to the needs of each individual child.

(B) For purposes of subparagraph (A), developmental services include, but need not be limited to, recreational therapy, occupational therapy, physical therapy, and psychosocial services.

(C) Those developmental services provided pursuant to subparagraph (A) shall be provided under the direction of a qualified mental retardation professional, as defined by federal regulations, who has not less than two years of pediatric experience, except as otherwise provided by the department.

(3) The facility ensures that the provision of pediatric dietary services is under the direction of a registered dietitian.

(e) The department shall, except as otherwise provided in this section, implement this section only to the extent full federal financial participation is available through an approved state plan amendment for services to the population defined in this section.

(f) This section shall be repealed on January 1, 1996, or the date that the department commences implementation, after the adoption of regulations and the receipt of any necessary federal approvals, of the pediatric service continuum described in Section 4 of the act that

added this section to the Welfare and Institutions Code, whichever is earlier.

(g) This section shall become operative on January 1, 1994.

SEC. 3. (a) (1) The State Department of Health Services shall convene a workgroup to address the policy issues related to the development of a pediatric service continuum. The workgroup shall seek input from clinicians and other interested and knowledgeable parties, and shall develop emergency regulations and a reimbursement structure for services to technology dependent children with special needs no later than April 1, 1994.

(2) The department shall continue the efforts of the workgroup beyond April 1, 1994, to address the policy issues related to the development of other services necessary to define and provide a pediatric service continuum that addresses the needs of other children with special health care needs. Those services, subject to the availability of federal financial participation, may include, but are not limited to, the provision of pediatric day health and respite care facility services, as defined in Section 1760.2 of the Health and Safety Code, and congregate living health facility services, as defined in subdivision (i) of Section 1250 of the Health and Safety Code.

(b) The State Department of Health Services shall report the results of the workgroup to the appropriate committees of the Legislature upon development of the regulations and reimbursement structure pursuant to subdivision (a).

SEC. 4. The State Department of Health Services shall adopt emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the initial implementation of this act. The adoption of initial regulations pursuant to this section shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, or safety. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, emergency regulations adopted by the State Department of Health Services in order to implement this act shall not be subject to the review and approval of the Office of Administrative Law. These regulations shall become effective immediately upon filing with the Secretary of State. Initial emergency regulations adopted pursuant to this section shall remain in effect for no more than 180 days.

CHAPTER 1031

An act to amend Section 33126 of the Education Code, relating to schools.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 33126 of the Education Code is amended to read:

33126. In order to promote a model statewide standard of instructional accountability and conditions for teaching and learning, the Superintendent of Public Instruction shall, by March 1, 1989, develop and present to the State Board of Education for adoption a statewide model school accountability report card.

(a) The model school accountability report card shall include, but is not limited to, assessment of the following school conditions:

(1) Student achievement in and progress toward meeting reading, writing, arithmetic and other academic goals.

(2) Progress toward reducing drop-out rates.

(3) Estimated expenditures per student and types of services funded.

(4) Progress toward reducing class sizes and teaching loads.

(5) Any assignment of teachers outside their subject areas of competence.

(6) Quality and currency of textbooks and other instructional materials.

(7) The availability of qualified personnel to provide counseling and other student support services.

(8) Availability of qualified substitute teachers.

(9) Safety, cleanliness, and adequacy of school facilities.

(10) Adequacy of teacher evaluations and opportunities for professional improvement.

(11) Classroom discipline and climate for learning.

(12) Teacher and staff training, and curriculum improvement programs.

(13) Quality of school instruction and leadership.

(14) The degree to which students are prepared to enter the work force.

(b) In developing the statewide model school accountability report, the Superintendent of Public Instruction shall consult with a Task Force on Instructional Improvement, to be appointed by the superintendent, composed of practicing classroom teachers, school administrators, parents, school board members, classified employees, and educational research specialists. However, the majority of the task force shall consist of practicing classroom teachers.

SEC. 2. In addition to the task force identified pursuant to

subdivision (b) of Section 33126 of the Education Code, the Superintendent of Public Instruction shall consult with representatives of business and organized labor in the development of the components of the model school accountability report card required pursuant to paragraph (14) of subdivision (a) of Section 33126 of the Education Code.

SEC. 3. The Legislature finds and declares that this act furthers the purposes of the Classroom Instructional Improvement and Accountability 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 1032

An act to amend Section 16857 of, and to add Section 16852.5 to, the Government Code, to add Section 999.10 to the Military and Veterans Code, and to amend Section 10115.10 of, and to add Sections 2001, 10108.7, and 10115.12 to, the Public Contract Code, relating to public contracts.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 16852.5 is added to the Government Code, to read:

16852.5. (a) Any awarding department taking bids in connection with the award of any contract shall provide, in the general conditions under which bids will be received, that any person making a bid or offer to perform a contract shall, in his or her bid or offer, set forth the following information:

(1) The name and the location of the place of business of each subcontractor certified as a minority, women, or disabled veteran business enterprise who will perform work or labor or render service to the prime contractor in connection with the performance of the contract and who will be used by the prime contractor to fulfill minority, women, and disabled veteran business enterprise

participation goals.

(2) The portion of work that will be done by each subcontractor under paragraph (1). The prime contractor shall list only one subcontractor for each portion of work as is defined by the prime contractor in his or her bid or offer.

(b) The Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code) shall apply to the information required by subdivision (a) relating to subcontractors certified as minority, women, and disabled veteran business enterprises.

(c) For purposes of this section, "subcontractor" and "prime contractor" shall have the same meaning as those terms are defined in Section 4113 of the Public Contract Code.

SEC. 2. Section 16857 of the Government Code is amended to read:

16857. (a) It shall be unlawful for a person to:

(1) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain, acceptance or certification as a minority, women, or disabled veteran business enterprise, for the purposes of this chapter.

(2) Willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a state official or employee for the purpose of influencing the acceptance or certification or denial of acceptance or certification of any entity as a minority, women, or disabled veteran business enterprise.

(3) Willfully and knowingly obstruct, impede, or attempt to obstruct or impede, any state official or employee who is investigating the qualifications of a business entity which has requested acceptance or certification as a minority, women, or disabled veteran business enterprise.

(4) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain, public moneys to which the person or firm is not entitled under this chapter.

(5) Establish, or cooperate in the establishment of, or exercise control over, a firm found to have violated any of paragraphs (1) to (4), inclusive. Any person or firm who violates this paragraph is guilty of a misdemeanor and shall be liable for a civil penalty not to exceed fifty thousand dollars ($50,000) for the first violation, and a civil penalty not to exceed two hundred thousand dollars ($200,000) for each additional or subsequent violation.

(6) This section shall not apply to minority and women business enterprise programs conducted by public utility companies pursuant to the California Public Utilities Commission's General Order 156.

(b) Any person who violates paragraphs (1) to (4), inclusive, of subdivision (a) is guilty of a misdemeanor and shall be liable for a civil penalty not to exceed five thousand dollars ($5,000) for the first

violation, and a civil penalty not to exceed twenty thousand dollars ($20,000) for each additional or subsequent violation.

(c) Any person or firm that violates subdivision (a) shall, in addition to the penalties provided for in subdivision (b), be suspended from bidding on, or participating as either a contractor or subcontractor in, any contract awarded by the state for a period of not less than 30 days nor more than one year. However, for an additional or subsequent violation, the period of suspension shall be extended for a period of up to three years. Any person or firm that fails to satisfy the penalties imposed pursuant to subdivisions (b) and (c) shall be prohibited from further contracting with the state until the penalties are satisfied.

(d) The awarding department shall report all alleged violations of this section to the Office of Small and Minority Business. The office shall subsequently report all alleged violations to the Attorney General who shall determine whether to bring a civil action against any person or firm for violation of this section.

(e) The office shall monitor the status of all reported violations and shall maintain and make available to all state departments a central listing of all firms and persons who have been determined to have committed violations resulting in suspension.

(f) No awarding department shall enter into any contract with any person or firm suspended for violating this section during the period of the person's or firm's suspension. No awarding department shall award a contract to any contractor utilizing the services of any person or firm as a subcontractor suspended for violating this section during the period of the person's or firm's suspension.

(g) The awarding department shall check the central listing provided by the office to verify that the person, firm, or contractor to whom the contract is being awarded, or any person, or firm, being utilized as a subcontractor by that person, firm, or contractor, is not under suspension for violating this section.

SEC. 3. Section 999.10 is added to the Military and Veterans Code, to read:

999.10. (a) Any awarding department taking bids in connection with the award of any contract shall provide, in the general conditions under which bids will be received, that any person making a bid or offer to perform a contract shall, in his or her bid or offer, set forth the following information:

(1) The name and the location of the place of business of each subcontractor certified as a disabled veteran business enterprise who will perform work or labor or render service to the prime contractor in connection with the performance of the contract and who will be used by the prime contractor to fulfill disabled veteran business enterprise participation goals.

(2) The portion of work that will be done by each subcontractor under paragraph (1). Except in cases of emergency where a contract is necessary for the immediate preservation of the public health, welfare, or safety, or protection of state property, the prime

contractor shall list only one subcontractor for each portion of work as is defined by the prime contractor in his or her bid or offer.

(b) The Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code) shall apply to the information required by subdivision (a) relating to subcontractors certified as disabled veteran business enterprises.

(c) For purposes of this section, "subcontractor" and "prime contractor" shall have the same meaning as those terms are defined in Section 4113 of the Public Contract Code.

(d) As used in this section, "contract" does not include a contract negotiated pursuant to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

SEC. 4. Section 2001 is added to the Public Contract Code, to read:

2001. (a) Any local agency, as defined in subdivision (d) of Section 2000, that requires that contracts be awarded to the lowest responsible bidder meeting, or making a good faith effort to meet, participation goals for minority, women, or disabled veteran business enterprises shall provide in the general conditions under which bids will be received, that any person making a bid or offer to perform a contract shall, in his or her bid or offer, set forth the following information:

(1) The name and the location of the place of business of each subcontractor certified as a minority, women, or disabled veteran business enterprise who will perform work or labor or render service to the prime contractor in connection with the performance of the contract and who will be used by the prime contractor to fulfill minority, women, and disabled veteran business enterprise participation goals.

(2) The portion of work that will be done by each subcontractor under paragraph (1). The prime contractor shall list only one subcontractor for each portion of work as is defined by the prime contractor in his or her bid or offer.

(b) The Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) shall apply to the information required by subdivision (a) relating to subcontractors certified as minority, women, or disabled veteran business enterprises.

(c) For purposes of this section, "subcontractor" and "prime contractor" shall have the same meaning as those terms are defined in Section 4113.

(d) As used in this section, "contract" does not include a contract negotiated pursuant to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

SEC. 5. Section 10108.7 is added to the Public Contract Code, to read:

10108.7. (a) The Department of Corrections shall provide in the general conditions under which bids will be received, that any

person making a bid or offer to perform a contract shall, in his or her bid or offer, set forth the following information:

(1) The name and the location of the place of business of each subcontractor certified as a minority, women, or disabled veteran business enterprise who will perform work or labor or render service to the prime contractor in connection with the performance of the contract and who will be used by the prime contractor to fulfill minority, women, and disabled veteran business enterprise participation goals.

(2) The portion of work that will be done by each subcontractor under paragraph (1). The prime contractor shall list only one subcontractor for each portion of work as is defined by the prime contractor in his or her bid or offer.

(b) The Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 shall apply to the information required by subdivision (a) relating to subcontractors certified as minority, women, or disabled veteran business enterprises.

(c) For purposes of this section, "subcontractor" and "prime contractor" shall have the same meaning as those terms are defined in Section 4113.

(d) As used in this section, "contract" does not include a contract negotiated pursuant to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

SEC. 6. Section 10115.10 of the Public Contract Code is amended to read:

10115.10. (a) It shall be unlawful for a person or firm to:

(1) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain, acceptance or certification as a minority, women, or disabled veteran business enterprise, for the purposes of this article.

(2) Willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a state official or employee for the purpose of influencing the acceptance or certification or denial of acceptance or certification of any entity as a minority, women, or disabled veteran business enterprise.

(3) Willfully and knowingly obstruct, impede, or attempt to obstruct or impede, any state official or employee who is investigating the qualifications of a business entity which has requested acceptance or certification as a minority, women, or disabled veteran business enterprise.

(4) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person or firm in fraudulently obtaining or attempting to obtain, public moneys to which the person is not entitled under this article.

(5) Establish, or cooperate in the establishment of, or exercise control over, a firm found to have violated any of paragraphs (1) to

(4), inclusive. Any person or firm who violates this paragraph is guilty of a misdemeanor and shall be liable for a civil penalty not to exceed fifty thousand dollars ($50,000) for the first violation, and a civil penalty not to exceed two hundred thousand dollars ($200,000) for each additional, or subsequent violation.

(6) This section shall not apply to minority and women business enterprise programs conducted by public utility companies pursuant to the California Public Utilities Commission's General Order 156.

(b) Any person who violates paragraphs (1) to (4), inclusive, of subdivision (a) is guilty of a misdemeanor and shall be liable for a civil penalty not to exceed five thousand dollars ($5,000) for the first violation, and a civil penalty not to exceed twenty thousand dollars ($20,000) for each additional or subsequent violation.

(c) Any person or firm that violates subdivision (a) shall, in addition to the penalties provided for in subdivision (b), be suspended from bidding on, or participating as either a contractor, subcontractor, or supplier in, any state contract or project for a period of not less than 30 days nor more than one year. However, for an additional or subsequent violation the period of suspension shall be extended for a period of up to three years. Any person or firm that fails to satisfy the penalties imposed pursuant to subdivisions (b) and (c) shall be prohibited from further contracting with the state until the penalties are satisfied.

(d) The awarding department shall report all alleged violations of this section to the Office of Small and Minority Business. The office shall subsequently report all alleged violations to the Attorney General who shall determine whether to bring a civil action against any person or firm for violation of this section.

(e) The office shall monitor the status of all reported violations and shall maintain and make available to all state departments a central listing of all firms and persons who have been determined to have committed violations resulting in suspension.

(f) No awarding department shall enter into any contract with any person or firm suspended for violating this section during the period of the person's or firm's suspension. No awarding department shall award a contract to any contractor utilizing the services of any person or firm as a subcontractor suspended for violating this section during the period of the person's or firm's suspension.

(g) The awarding department shall check the central listing provided by the office to verify that the person, firm, or contractor to whom the contract is being awarded, or any person or firm being utilized as a subcontractor by that person, firm, or contractor, is not under suspension for violating this section.

SEC. 7. Section 10115.12 is added to the Public Contract Code, to read:

10115.12. (a) Any awarding department taking bids in connection with the award of any contract shall provide in the general conditions under which bids will be received, that any person making a bid or offer to perform a contract shall, in his or her

bid or offer, set forth the following information:

(1) The name and the location of the place of business of each subcontractor certified as a minority, women, or disabled veteran business enterprise who will perform work or labor or render service to the prime contractor in connection with the performance of the contract and who will be used by the prime contractor to fulfill minority, women, and disabled veteran business enterprise participation goals.

(2) The portion of work that will be done by each subcontractor under paragraph (1). Except in cases of emergency where a contract is necessary for the immediate preservation of the public health, welfare, or safety, or protection of state property, the prime contractor shall list only one subcontractor for each portion of work as is defined by the prime contractor in his or her bid or offer.

(b) The Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 shall apply to the information required by subdivision (a) relating to subcontractors certified as minority, women, or disabled veteran business enterprises.

(c) For purposes of this section, "subcontractor" and "prime contractor" shall have the same meaning as those terms are defined in Section 4113.

(d) As used in this section, "contract" does not include a contract negotiated pursuant to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the 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 1033

An act to add Division 25.2 (commencing with Section 38070) to, and to add and repeal Section 38077.1 of, the Health and Safety Code, relating to direct service contracts.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Division 25.2 (commencing with Section 38070) is added to the Health and Safety Code, to read:

DIVISION 25.2. STATE DEPARTMENT OF HEALTH SERVICES COOPERATIVE AGREEMENT ACT

CHAPTER 1. GENERAL PROVISIONS

38070. This act shall be known and may be cited as the State Department of Health Services Cooperative Agreement Act.

38071. The purposes of this division are:

(a) To simplify the administration of public health programs by the State Department of Health Services.

(b) To reduce the administrative cost of public health programs to the department.

(c) To encourage units of state and local government and nonprofit organizations to attempt bold new solutions to local public health problems.

38072. For purposes of this division, the following definitions shall apply:

(a) "Cooperative agreement" means an agreement between the department and a unit of local government, any other unit of state government, or a nonprofit organization that provides for a contract under any of the following programs:

(1) California AIDS Program (Chapter 1.16 (commencing with Section 199.70) of Part 1 of Division 1).

(2) Health of Seasonal Agricultural and Migratory Workers (Chapter 2 (commencing with Section 1181) of Part 6 of Division 1).

(3) American Indian Health Services (Chapter 3 (commencing with Section 1182) of Part 6 of Division 1).

(4) Rural Health Services Development (Chapter 4 (commencing with Section 1183) of Part 6 of Division 1).

(5) Grants-In-Aid for Clinics (Chapter 5 (commencing with Section 1187) of Part 6 of Division 1).

(6) Expanded Access to Primary Care (Part 6.9 (commencing with Section 1189.101) of Division 1).

(7) Birth Defects Monitoring Program (Division 9.5 (commencing with Section 10800)).

(8) Maternal and child health programs, including, but not limited to, (Article 2 (commencing with Section 248) and Article 3 (commencing with Section 300) of Part 1 of Division 1).

(9) Special Supplemental Food Program for Women, Infants, and Children (Article 3.3 (commencing with Section 310) of Part 1 of Division 1).

(10) Perinatal Health Care (Article 2.6 (commencing with Section 289) of Part 1 of Division 1).

(11) Family planning services (Section 14503 of the Welfare and

Institutions Code).

(12) Hereditary Disorders Programs (Chapter 1.5 (commencing with Section 150) of Part 1 of Division 1).

(13) Other public health programs for the protection, preservation, and advancement of public health authorized pursuant to Section 215 or pursuant to an annual Budget Act provision.

(b) "Department" means the State Department of Health Services.

38073. The department shall comply with Sections 38030, 38031, 38032, 38035, and 38036, Chapter 3 (commencing with Section 38020) and Chapter 5 (commencing with Section 38040) of Division 25, and the grievance and appeal provisions set forth in Section 38036, Division 25.1 (commencing with Section 38050), and Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code.

38074. (a) Cooperative agreements shall be procured by means of a request for application or a request for proposal, whichever is applicable, as determined by the department.

(b) A procurement by a request for application is one where the department has funds, regardless of the source, that it seeks to distribute to those entities or organizations specified in Section 38072, that meet the criteria and standards stated in the request for application. A distinguishing feature of a request for application is that, unlike a request for proposal, a request for application is a request where multiple awards are to be made based on the information provided in the application and evaluated against the methodology and criteria specified in the request for application.

(c) All request for proposal cooperative agreement awards shall comply with the requirements of Section 10344 of the Public Contract Code.

(d) A cooperative agreement shall be for a period of up to three years.

(e) A cooperative agreement for a one-year period may provide for up to two annual extensions.

(f) A cooperative agreement may be procured without a request for application or a request for proposal under either of the following circumstances:

(1) When the amount of the cooperative agreement is less than fifty thousand dollars ($50,000) annually. A nonprofit organization shall receive only one of these awards during each fiscal year.

(2) When the amount of the cooperative agreement is less than two hundred thousand dollars ($200,000) a year and from a program that awards five or fewer grants per year.

38075. The department, at its discretion, may enter into a single cooperative agreement with a single contractor based upon the contractor's applications submitted in response to requests for application from several programs.

38076. In administering cooperative agreements, the program staff shall prepare all requests for proposals and requests for

applications, evaluate the proposals and applications received, make the awards, and monitor progress of recipients of awards.

38077. (a) The department shall use only one or more of the following payments systems for cooperative agreements:

(1) Allowable costs up to a maximum amount.

(2) Fixed payment per unit of service.

(3) Fixed monthly payment.

(4) Fixed price agreement.

(b) If the allowable cost payment system is used, the cooperative agreement shall contain a line item budget for the cooperative agreement project, and both of the following shall apply:

(1) Except as required by other funding sources, including, but not limited to, the federal government or private foundations, the line item budget shall specify aggregate costs for the following and no other categories:

(A) Personnel, including, but not limited to, salary, wages, and fringe benefits.

(B) Operating expenses, other than personnel, including, but not limited to, rent, depreciation, use allowance, supplies, utilities, and other operating costs.

(C) Capital expenditures to be paid for by the cooperative agreement.

(D) Other costs as specified in the agreement.

(E) A fixed indirect cost amount or rate.

(2) A nonprofit organization or unit of state or local government that is a party with the department in a cooperative agreement may propose, in writing, scope of work revisions or changes. The contractor shall be notified in writing within 30 calendar days when proposed revisions are approved or disapproved by the department. If written notification does not occur within this time period, the proposed revisions or changes shall be deemed approved.

38077.1. (a) The department may require additional reporting of the budget data contained within the consolidated line item budget described in paragraph (1) of subdivision (c) of Section 38077.

(b) The department shall be notified, through the regular submission of a monthly invoice, of any changes in the additional information required by subdivision (a). If invoices are submitted less frequently than monthly, the department shall be notified within 30 days of any changes in the additional information required by subdivision (a).

(c) Any change in the additional information required by subdivision (a) shall not be considered a contract amendment and shall not require department approval.

(d) This section shall become inoperative on June 30, 1996, and, as of January 1, 1997, is repealed unless a later enacted statute, which becomes effective on or before January 1, 1997, deletes or extends the dates on which it becomes inoperative and is repealed.

38077.3. (a) The department shall develop uniform cooperative

agreement formats containing standardized agreement language. Each uniform format shall be developed with the participation of the affected parties. The purpose of the uniform formats shall be to consolidate and simplify administrative and programmatic requirements, maintain systemwide consistency, develop procedures that promote ease of use by clients, streamline processes, eliminate unnecessary paperwork, and ensure fiscal accountability. Uniform formats shall be outcome oriented and conducive to the business and operational needs of all parties to the extent practical.

(b) For purposes of this section "standardized agreement language" means language that constitutes terms and conditions of performance necessitated by sound contract management and compliance practices, including, but not limited to, payment and invoicing systems and procedures, record management requirements, and programmatic reporting requirements. Excluded from this definition are scopes of work, line item budgets, funding related provisions, preprinted generic exhibits, and cancellation or amendment clauses.

(c) The department may form working groups including representatives of all affected parties to implement this section.

(d) After finalization of uniform cooperative agreement formats, no unilateral change to standardized agreement language may be implemented without making the changes available for public comment. These changes include changes caused by programmatic decisions, control agency requirements, and administrative needs.

(e) Nothing in this section shall be construed to prevent or delay changes necessitated by state or federal statute or regulations.

38078. All of the following shall apply to cooperative agreements:

(a) The department or contractor may terminate, upon a minimum of 30 days written notice, any cooperative agreement.

(b) The department may reject a request for proposal or a request for application response based on an entity's or organization's failure to comply with contracted requirements in prior contracts or cooperative agreements with the department.

(c) The organization or unit of state and local government shall be liable to return any funds for failure to comply with the requirements of the cooperative agreement.

38078.5. (a) A cooperative agreement involving the purchase of electronic data processing hardware, software, or services, or telecommunication goods and services, up to a purchase amount of fifty thousand dollars ($50,000), shall be exempt from Chapter 3 (commencing with Section 12100) and Chapter 3.5 (commencing with Section 12120) of Part 2 of Division 2 of the Public Contract Code, and from Part 1 (commencing with Section 11000) of Division 3 of Title 2 of the Government Code.

(b) A cooperative agreement with a unit of local or state government that requires the purchase of capital equipment shall utilize the contractor's existing procurement systems for the purchase of equipment.

(c) A cooperative agreement with a nonprofit organization that provides for capital expenditures as part of a line item budget shall utilize a procurement system for the purchase of equipment under a cooperative agreement that meets the following standards:

(1) The nonprofit organization shall maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement contract in which, to his or her knowledge, he or she has a financial interest.

(2) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open and free competition.

(3) Procurements shall be conducted in a manner that provides for all of the following:

(A) Avoidance of the purchasing of unnecessary or duplicate items.

(B) Solicitation for capital expenditures based upon a clear and accurate description of the technical requirements of the capital goods to be procured.

(C) The taking of positive steps to utilize small, minority, women, or veteran owned businesses.

(d) Notwithstanding subdivisions (a), (b), and (c), the Director of General Services may exempt from those requirements any purchases in excess of fifty thousand dollars ($50,000) annually of capital equipment, and electronic data processing and telecommunications goods and services made under a cooperative agreement for which, in his or her judgment, the exemption is appropriate and in the best interests of the state. Written notice of an exemption shall be given to the Controller.

(e) Subdivision (a) shall become inoperative on June 30, 1997.

38079. (a) All cooperative agreements, regardless of the size of the contracting nonprofit organization, shall be subject to the late payment provisions set forth in Section 926.15 of the Government Code.

(b) In implementing this division, the department shall have the authority of, and be subject to, the provisions set forth in Chapter 1.1 (commencing with Section 1180.101) of Part 6 of Division 1, except that those provisions shall apply to all cooperative agreements, not only those agreements with clinics. However, notwithstanding Section 1180.121, moneys in the Clinic Revolving Fund of the State Department of Health Services shall be used for purposes of this division only upon appropriation of funds by the Legislature for that purpose.

38080. When the department awards a cooperative agreement pursuant to Section 38074, prior to execution of the agreement, the department may do the following:

(a) Certify to the Controller that a cooperative agreement has been awarded, the name of the organization or agency to which the award has been made, the amount approved by the department for

funding the cooperative agreement, and any other information as may be required by the Controller.

(b) Present a claim to the Controller for payment to the organization or agency, from an appropriation available for such purpose, of an amount not exceeding 25 percent of the funding approved for the cooperative agreement.

38081.1. (a) Cooperative agreements shall be subject to review and approval by the Department of General Services pursuant to Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code, except as follows:

(1) Changes in the scope of work approved under paragraph (2) of subdivision (b) of Section 38077.

(2) For allowable cost agreements, changes in line item budgets of up to 10 percent of the annual total, not to exceed fifty thousand dollars ($50,000), so long as the contract total does not increase or decrease.

(3) Agreements, and amendments to those agreements, under programs expressly exempted from the review and approval of the Department of General Services pursuant to statute, including, but not limited to, those exemptions granted prior to January 1, 1994.

(b) (1) A nonprofit organization or governmental agency that is awarded a cooperative agreement shall not be subject to the minority and women business and disabled veterans participation goals set forth in Article 1.5 (commencing with Section 10115 of Chapter 1 of Part 2 of Division 2 of the Public Contract Code with respect to that portion of the cooperative agreement budget that is for personnel related costs of the cooperative agreement, as determined by the department.

(2) A nonprofit organization or governmental agency that is awarded a cooperative agreement shall also be exempt from the participation goals described in paragraph (1) when the cooperative agreement meets any of the following criteria:

(A) The amount of the cooperative agreement is one hundred thousand dollars ($100,000) or less annually.

(B) In the case of a nonprofit organization, the nonprofit organization to be awarded the cooperative agreement has a board of directors of which at least 51 percent of the members are any combination of women, minorities, and disabled veterans.

(C) Cooperative agreements that result from requests for application.

(c) The Director of General Services may exempt from his or her approval or from approval of the department any cooperative agreements for which, in his or her judgment, the exemption is appropriate and in the best interests of the state. Written notice of an exemption shall be given to the Controller.

(d) Subdivision (b) shall become inoperative on June 30, 1997.

SEC. 2. Nothing in this act shall affect any cooperative agreement entered into between the state, the United States Government, and the state primary care association in accordance

with subdivision (h) of Section 254c of Title 42 of the United States Code.

CHAPTER 1034

An act to amend Section 10115.5 of, and to add Section 10115.13 to, the Public Contract Code, relating to state contracts.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 10115.5 of the Public Contract Code is amended to read:

10115.5. (a) Notwithstanding Section 7550.5 of the Government Code, on January 1 of each year, each awarding department shall report to the Governor and the Legislature on the level of participation by minority, women, and disabled veteran business enterprises in contracts as identified in this article for the fiscal year beginning July 1 and ending June 30. In addition, the report shall contain the levels of participation by minority, women, and disabled veteran business enterprises for the following categories of contracts:

(1) Construction.

(2) Purchases of materials, supplies, and equipment.

(3) Professional services.

(4) All contracts for a dollar amount of less than twenty-five thousand dollars ($25,000).

(b) If the established goals are not being met, the awarding department shall report the reasons for its inability to achieve the standards and identify remedial steps it shall take.

SEC. 2. Section 10115.13 is added to the Public Contract Code, to read:

10115.13. Notwithstanding any other provision of law, contracts awarded by any state agency, department, officer, or other state governmental entity for the purchase of general public advertisements shall have statewide participation goals of not less than 15 percent for minority business enterprises, not less than five percent for women business enterprises, and three percent for disabled veteran business enterprises. These goals apply to the overall dollar amount expended each year by the awarding state agency, department, offices, or other state governmental entity.

CHAPTER 1035

An act to amend Sections 432, 435, and 632 of, to repeal Sections 441 and 443 of, and to add Sections 409.5 and 432.5 to, the Public Utilities Code, relating to public utilities.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 409.5 is added to the Public Utilities Code, to read:

409.5. The commission shall maintain those records as are necessary to account separately for all fees and charges, including the fees authorized by Section 431, received from each class of utility subject to Article 3 (commencing with Section 431) and remitted pursuant to Section 409.

SEC. 2. Section 432 of the Public Utilities Code is amended to read:

432. The commission shall establish the fee pursuant to Section 431 with the approval of the Department of Finance and in accordance with all of the following:

(a) In its annual budget request, the commission shall specify both of the following:

(1) The amount of its budget to be financed by the fee.

(2) The dollar allocation of the amount of its budget shall be financed by the fee by each class of public utility subject to the fee. The fee allocation among classes of public utilities shall reflect expenditures by the commission on regulatory and other authorized activities affecting each respective class, and shall bear the same ratio that the commission's workload for each class of public utility subject to the fee bears to the commission's total workload for all public utilities subject to the fee.

(b) The commission may establish different and distinct methods of assessing fees for each class of public utility, if the revenues collected are consistent with paragraph (2) of subdivision (a), except that the commission shall establish a uniform charge per kilowatt hour for sales in kilowatt hours for the class of electrical corporations and a uniform charge per therm for sales in therms for the class of gas corporations.

(c) Within each class of public utility subject to the fee, the commission shall allocate among the members of the class the amount of its budget to be financed by the fee using the following methods:

(1) For electrical corporations, the ratio that each corporation's sales in kilowatt hours bears to the total sales in kilowatt hours for the class.

(2) For gas corporations, the ratio that each corporation's sales in

therms bears to the total sales in therms for the class.

(3) For telephone and telegraph corporations, the ratio that each corporation's gross intrastate revenues bears to the total gross intrastate revenues for the class. If the commission determines that there is a need for consultants or advisory services to assist in determining the reasonableness of capital expenditures for a telephone corporation, the commission may adjust the fees within the class so that the expenses for the consultants and advisory services are fully allocated to that telephone corporation.

(4) For water and sewer system corporations, the ratio that each corporation's gross intrastate revenues bears to the total gross intrastate revenues for the class.

(5) For all other public utilities, an appropriate measurement methodology determined by the commission.

(d) Every public utility belonging to more than one class shall be subject to the fee for each class of which it is a member.

(e) For every public utility with annual gross intrastate revenues of seven hundred fifty thousand dollars ($750,000) or less, the commission shall annually establish uniform fees to be paid by each such public utility, if the revenues collected thereby are consistent with paragraph (2) of subdivision (a) and subdivision (c).

SEC. 3. Section 432.5 is added to the Public Utilities Code, to read:

432.5. (a) The commission shall report to the Legislature the collections from each class of utility and expenditures, both direct and indirect, for regulatory and other authorized commission activities affecting each class. Where expenditures are for overhead, allocations of services common to several classes, or for commission-wide activities, the methods used to calculate the expenditures attributed to the class shall be described in reasonable detail.

(b) The report shall be furnished to the Legislature within 60 days after the end of the fiscal year, and shall be subject to audit. The commission shall maintain information and reports necessary to perform an audit pursuant to this section.

SEC. 4. Section 435 of the Public Utilities Code is amended to read:

435. As used in this article:

(a) "Class" means a group of public utilities as specified by the commission for purposes of establishing fees pursuant to this article. The commission shall create separate classes for the following: electrical corporations, gas corporations, heat corporations, water corporations, sewer system corporations, and telephone and telegraph corporations.

(b) "Fee" means that monetary amount determined in accordance with this article.

(c) "Gross intrastate revenues" means those revenues from a public utility subject to the jurisdiction of the commission and accounted for according to the uniform system of accounts

maintained by the commission. For purposes of this article, the amount of gross intrastate revenues of a public utility subject to the jurisdiction of the commission shall be the gross intrastate operating revenues set forth in the annual report of the public utility to the commission.

(d) "Sales in kilowatt hours" means sales in kilowatt hours, subject to the jurisdiction of the commission, for service directly to customers and subscribers of each electrical corporation, and shall not include interdepartmental sales or transfers and sales to other privately owned or publicly owned public utilities furnishing electricity.

(e) "Sales in therms" means deliveries of gas in therms, without regard to ownership of the gas, subject to the jurisdiction of the commission, directly to customers and subscribers of each gas corporation, except interdepartmental sales or transfers and sales to other privately owned or publicly owned public utilities furnishing electricity, gas, or heat.

SEC. 5. Section 441 of the Public Utilities Code is repealed.

SEC. 6. Section 443 of the Public Utilities Code is repealed.

SEC. 7. Section 632 of the Public Utilities Code is amended to read:

632. For purposes of entering into contracts for consultant or advisory services, the requirements of Sections 11042 and 14615 of the Government Code and Sections 10295 and 10318 of the Public Contract Code apply to the activities of the commission, except when the commission makes a finding that extraordinary circumstances justify expedited contracting for consultant or advisory services.

CHAPTER 1036

An act to amend Section 19314 of, and to add Sections 19310.5, 19313.5, 19313.8, 19445, 19446, and 19447 to, the Food and Agricultural Code, and to add Section 27507 to the Health and Safety Code, relating to food.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 19310.5 is added to the Food and Agricultural Code, to read:

19310.5. It is unlawful for any person who is not a registered transporter or licensed renderer of inedible kitchen grease to transport that product from any place within this state to any place outside the borders of this state.

SEC. 2. Section 19313.5 is added to the Food and Agricultural Code, to read:

19313.5. It is unlawful for any person to steal, misappropriate, contaminate, or damage inedible kitchen grease, or containers thereof.

SEC. 3. Section 19313.8 is added to the Food and Agricultural Code, to read:

19313.8. No licensed renderer, registered transporter, or any other person shall take possession of inedible kitchen grease from an unregistered transporter or knowingly take possession of stolen inedible kitchen grease.

SEC. 4. Section 19314 of the Food and Agricultural Code is amended to read:

19314. The department may, after notice and hearing, suspend or revoke a registration certificate or a renderer's license if, at any time, it finds any of the following has occurred:

(a) The registrant or licensee has sold or offered for sale to an unlicensed person, any inedible kitchen grease.

(b) The registrant or licensee has stolen, misappropriated, contaminated, or damaged inedible kitchen grease or containers thereof.

(c) The registrant or licensee has violated any provision of this article or any regulations adopted to implement this article.

(d) The registrant or licensee has taken possession of inedible kitchen grease from an unregistered transporter or has knowingly taken possession of inedible kitchen grease that has been stolen.

SEC. 5. Section 19445 is added to the Food and Agricultural Code, to read:

19445. (a) In lieu of levying a civil penalty pursuant to Section 19447, and in lieu of seeking prosecution, upon complaint of the director, the Attorney General may bring an action for civil penalties in any court of competent jurisdiction in this state against any person who violates Article 6 (commencing with Section 19300), Article 6.5 (commencing with Section 19310), or any regulation adopted pursuant to those articles. The civil penalty imposed shall not exceed ten thousand dollars ($10,000) for each violation.

(b) Any funds recovered by the director pursuant to this section shall be deposited in the General Fund.

SEC. 6. Section 19446 is added to the Food and Agricultural Code, to read:

19446. In addition to any other remedies provided by this chapter, but in lieu of seeking prosecution of any violation of Article 6 (commencing with Section 19300) or Article 6.5 (commencing with Section 19310) as a misdemeanor, the director may seek recovery of a civil penalty pursuant to Section 19445 or levy civil penalties pursuant to Section 19447.

SEC. 7. Section 19447 is added to the Food and Agricultural Code, to read:

19447. (a) In lieu of any civil action pursuant to Section 19445, and in lieu of seeking prosecution, the director may levy a civil penalty against a person who violates Article 6 (commencing with

Section 19300), Article 6.5 (commencing with Section 19310), or any regulation adopted pursuant to those articles, in an amount not to exceed 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 granted an opportunity to be heard. This shall include the right to review evidence and a right to present evidence on his or her own behalf.

(c) Any person upon whom a civil penalty is levied may appeal to the director within 10 days of the date of receiving notification of the penalty, as follows:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent and shall state the grounds for the appeal.

(2) Any party may, at the time of filing the appeal, or within 10 days thereafter, 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 made.

(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 prior to the date set therefor. This time requirement may be altered by an agreement between the director and the person appealing the penalty.

(5) The director shall decide the appeal on any oral or written arguments, 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. A copy of the director's decision shall be delivered or mailed to the appellant.

(7) The director may sustain the decision, modify the decision by reducing the amount of the penalty levied, or reverse the decision.

(8) A review of the decision of the director may be sought by the appellant pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) Any funds recovered by the director pursuant to this section shall be deposited in the General Fund.

SEC. 8. Section 27507 is added to the Health and Safety Code, to read:

27507. All animal byproducts and inedible kitchen grease disposed of by any food facility, except restaurants, shall be transported by a renderer licensed under Section 19300 of the Food and Agricultural Code, or a registered transporter of inedible kitchen grease, licensed under Section 19310 of the Food and Agricultural Code. Nothing in this section prevents a food facility from transporting its own animal byproducts in its own vehicles to a central collection point. For the purposes of this section, inedible kitchen grease does not include grease recovered from an interceptor.

"Restaurant," as used in this section, means any coffeeshop, cafeteria, short-order cafe, luncheonette, tavern, cocktail lounge,

sandwich stand, soda fountain, private and public school cafeteria or eating establishment, in-plant or employee eating establishment, studio facility, dinnerhouse, delicatessen, commissary, hotel or motel food service operation, and any other eating establishment, organization, club, including veterans' club, boardinghouse, guesthouse, or political subdivision, which gives, sells, or offers for sale, food to the public, guests, patrons, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering functions.

SEC. 9. Nothing in Section 27507 of the Health and Safety Code, as added by Section 8 of this act, is intended to repeal or render ineffective any provision of Chapter 5 (commencing with Section 19200) of Part 3 of Division 9 of the Food and Agricultural Code.

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 1037

An act to add Sections 44344.3, 44344.5, 44344.7, and 44380.1 to the Health and Safety Code, relating to air pollution.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 44344.3 is added to the Health and Safety Code, to read:

44344.3. (a) A facility shall be granted an exemption by a district from further compliance with this part after meeting all of the following criteria:

(1) The facility was required to comply with this part only as a result of its particulate matter emissions.

(2) The facility has participated in, utilized data derived from, or is eligible to utilize data derived from, approved pooled source testing.

(3) The facility has submitted an emissions inventory plan and report that was subsequently accepted and approved.

(4) The facility has been designated by the district as a low priority facility under the guidelines set forth pursuant to this part

for facility prioritization, and facility emissions do not present a significant health risk as specified in subdivision (b) of Section 44362.

(5) The facility handles, processes, stores, or distributes bulk agricultural commodities or handles, feeds, or rears livestock.

(b) Subdivision (a) does not apply to a facility that, because of information provided pursuant to Section 44344.7, is reclassified as an intermediate or high priority facility by the district.

(c) The operator of a facility that has been granted an exemption pursuant to this section shall biennially submit a statement to the district for the district's review, with a copy of the most recent emissions inventory for the facility, indicating that, except as to matters for which an emissions inventory update has been or will be submitted pursuant to Section 44344.7, there has been no significant change in facility operations or activities. The district shall not impose any fee upon the operator with regard to the submission of the statement.

SEC. 2. Section 44344.5 is added to the Health and Safety Code, to read:

44344.5. The operator of any new facility that previously has not been subject to this part shall prepare and submit an emissions inventory plan and report.

SEC. 3. Section 44344.7 is added to the Health and Safety Code, to read:

44344.7. The operator of a facility exempted pursuant to subdivision (a) of Section 44344.3 shall submit an emissions inventory update for those sources and substances for which a change in activities or operations has occurred, as follows:

(a) The facility emits a newly listed substance.

(b) A sensitive receptor has been established or constructed on or after January 1, 1994, within 500 meters of the facility.

(c) The facility emits a substance for which the potency factor has increased.

(d) The facility has begun emission of a listed substance not included in the previous emissions inventory.

SEC. 4. Section 44380.1 is added to the Health and Safety Code, to read:

44380.1. A facility shall be granted an exemption by a district from paying a fee in accordance with Section 44380 if all of the following criteria are met:

(a) The facility primarily handles, processes, stores, or distributes bulk agricultural commodities or handles, feeds, or rears livestock.

(b) The facility was required to comply with this part only as a result of its particulate matter emissions.

(c) The fee schedule adopted by the district or the state board for these types of facilities is not solely based on toxic emissions weighted for potency or toxicity.

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 1038

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

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

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

11346.53. (a) (1) State agencies proposing to adopt or amend any administrative regulation shall assess the potential for adverse economic impact on California business enterprises and individuals, avoiding the imposition of unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements. For purposes of this paragraph, assessing the potential for adverse economic impact shall require agencies, when adopting new regulations or reviewing or amending existing regulations, to adhere to the following requirements, to the extent that these requirements do not conflict with other state or federal laws:

(A) The regulations shall be based on adequate information concerning the need for, and consequences of, proposed governmental action.

(B) The state agency, prior to submitting regulations to the Office of Administrative Law, shall consider the impact on business when initiating, processing, and adopting regulations with consideration of industries affected.

It is not the intent of this section to impose additional criteria on agencies, above that which exists in current law, in assessing adverse economic impact on California business enterprises, but only to assure that the assessment is made early in the process of initiation and development of proposed regulations or amendments to regulations.

(2) If a state agency, in proposing to adopt or amend any administrative regulation, determines that the action may have a significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states, it shall include the following information in the notice of proposed action:

(A) Identification of the types of businesses that would be

affected.

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

(C) The following statement: "The (name of agency) finds that the (adoption/amendment) of this regulation may have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. The (name of agency) (has/has not) considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

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

(ii) Consolidation or simplification of compliance and reporting requirements for businesses.

(iii) The use of performance standards rather than prescriptive standards.

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

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

(c) If a state agency, in adopting or amending any administrative regulation, determines that the action will not have a significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states, it shall make a declaration to that effect in the notice of proposed action. In making this finding, the agency shall provide, in the record, facts, evidence, documents or testimony, or other evidence upon which the agency relies to support that finding.

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

(e) A state agency shall also include in the notice of proposed action a statement of the potential cost impact of the proposed action on private persons or businesses directly affected, as considered by the agency during the regulatory development process.

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

(f) No administrative regulation which requires a report shall apply to businesses unless the state agency adopting the regulation

makes a finding that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.

This subdivision, as revised in 1992, applies only to administrative regulations adopted on or after January 1, 1993.

(g) For purposes of evaluating the impact on the ability of California businesses to compete with businesses in other states, an agency shall consider, but not be limited to, information supplied by interested parties.

CHAPTER 1039

An act to add Section 23027 to the Government Code, relating to taxation.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 23027 is added to the Government Code, to read:

23027. The board of supervisors of any county may impose a special tax pursuant to Article 3.5 (commencing with Section 50075) of Chapter 1 of Part 1 of Division 1 of Title 5 and any other procedures as may be applicable. The special taxes shall be applied uniformly to all taxpayers or all real property within the county, or any involved portion thereof, except that unimproved property may be taxed at a lower rate than improved property.

CHAPTER 1040

An act to amend Section 238 of the Public Utilities Code, relating to public utilities.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 238 of the Public Utilities Code is amended to read:

238. (a) "Vessel" includes every species of watercraft, by whatsoever power operated, which is owned, controlled, operated or managed for public use in the transportation of persons or property, except rowboats, sailing boats, barges under 20 tons dead weight carrying capacity, and vessels which are both under the burden of five tons net register and under 30 feet in length. However, a vessel

which is under the burden of five tons net register but is 30 or more feet in length is not a "vessel" for the purpose of this section if it is used to provide ship-to-shore services by which stores, supplies, spares, passengers, or crew of oceangoing ships are transported to or from ship and shore and payment for such services is made by, or arranged through, the oceangoing shipping company (commonly referred to as water taxi services).

(b) Nothing in this code except those provisions relating to the regulation of rates shall apply to the transportation by a water carrier of commodities in bulk when the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three such commodities. This subsection shall apply only in the case of commodities, in bulk which are loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count. For the purposes of this subsection two or more vessels while navigated as a unit shall be considered to be a single vessel.

(c) Nothing in this code shall apply to the transportation by water of liquid cargoes in bulk in tank vessels designed for use exclusively in such service.

(d) Any person or corporation lawfully engaged in business in the transportation of persons or property during the entire one-year period preceding March 1, 1993, and continuously thereafter, and which, solely by virtue of the amendment to subdivision (a) made by the act that adds this subdivision, will become subject to commission regulation as a common carrier by vessel, shall file with the commission, prior to March 1, 1994, an application for a certificate of public convenience and necessity to operate as a common carrier by vessel. However, in lieu of all other fees required by law, the applicant shall pay a fee of fifty dollars ($50). The commission shall issue the certificate without further proceedings authorizing operation over the specific routes or within the specific area which conforms to proof of actual service in the transportation of persons or property as produced by the applicant with respect to its operations during the entire one-year period preceding March 1, 1993, and continuously thereafter.

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 1041

An act to amend Sections 44344 and 44391 of the Health and Safety Code, relating to air pollution.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 44344 of the Health and Safety Code is amended to read:

44344. Except as provided in Section 44391, emissions inventories developed pursuant to this chapter shall be updated every four years, in accordance with the procedures established by the state board. Those updates shall take into consideration improvements in measurement techniques and advancing knowledge concerning the types and toxicity of hazardous material released or potentially released.

SEC. 2. Section 44391 of the Health and Safety Code is amended to read:

44391. (a) Whenever a health risk assessment approved pursuant to Chapter 4 (commencing with Section 44360) indicates, in the judgment of the district, that there is a significant risk associated with the emissions from a facility, the facility operator shall conduct an airborne toxic risk reduction audit and develop a plan to implement airborne toxic risk reduction measures that will result in the reduction of emissions from the facility to a level below the significant risk level within five years of the date the plan is submitted to the district. The facility operator shall implement measures set forth in the plan in accordance with this chapter.

(b) The period to implement the plan required by subdivision (a) may be shortened by the district if it finds that it is technically feasible and economically practicable to implement the plan to reduce emissions below the significant risk level more quickly or if it finds that the emissions from the facility pose an unreasonable health risk.

(c) A district may lengthen the period to implement the plan required by subdivision (a) by up to an additional five years if it finds that a period longer than five years will not result in an unreasonable risk to public health and that requiring implementation of the plan within five years places an unreasonable economic burden on the facility operator or is not technically feasible.

(d) (1) The state board and districts shall provide assistance to smaller businesses that have inadequate technical and financial resources for obtaining information, assessing risk reduction methods, and developing and applying risk reduction techniques.

(2) Risk reduction audits and plans for any industry subject to this chapter which is comprised mainly of small businesses using

substantially similar technology may be completed by a self-conducted audit and checklist developed by the state board. The state board, in coordination with the districts, shall provide a copy of the audit and checklist to small businesses within those industries to assist them to meet the requirements of this chapter.

(e) The audit and plan shall contain all the information required by Section 44392.

(f) The plan shall be submitted to the district, within six months of a district's determination of significant risk, for review of completeness. Operators of facilities that have been notified prior to January 1, 1993, that there is a significant risk associated with emissions from the facility shall submit the plan by July 1, 1993. The district's review of completeness shall include a substantive analysis of the emission reduction measures included in the plan, and the ability of those measures to achieve emission reduction goals as quickly as feasible as provided in subdivisions (a) and (b).

(g) The district shall find the audit and plan to be satisfactory within three months if it meets the requirements of this chapter, including, but not limited to, subdivision (f). If the district determines that the audit and plan does not meet those requirements, the district shall remand the audit and plan to the facility specifying the deficiencies identified by the district. A facility operator shall submit a revised audit and plan addressing the deficiencies identified by the district within 90 days of receipt of a deficiency notice.

(h) Progress on the emission reductions achieved by the plan shall be reported to the district in emissions inventory updates. Emissions inventory updates shall be prepared as required by the audit and plan found to be satisfactory by the district pursuant to subdivision (g).

(i) If new information becomes available after the initial risk reduction audit and plan, on air toxics risks posed by a facility, or emission reduction technologies that may be used by a facility that would significantly impact risks to exposed persons, the district may require the plan to be updated and resubmitted to the district.

(j) This section does not authorize the emission of a toxic air contaminant in violation of an airborne toxic control measure adopted pursuant to Chapter 3.5 (commencing with Section 39650) or in violation of Section 41700.

CHAPTER 1042

An act to add Article 7.5 (commencing with Section 3537.10) to Chapter 7.7 of Division 2 of the Business and Professions Code, relating to physician assistants.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

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

(a) Approximately one-third of all doctors in the United States are family practitioners and only one-sixth of all medical school graduates are pursuing degrees in family practice.

(b) There has been a massive shift in the proportion of physicians in family practice since 1911 when the ratio was 50/50. This ratio began to change in 1962.

(c) Despite the growth in the number of physicians over the last 30 years, to the current figure of 600,000, there continue to be large urban and rural areas that suffer from a shortage of family practitioners.

(d) Several national reports have underscored the severe shortage of family practitioners and a major surplus of medical specialists.

(e) The continued surplus of specialists escalates the cost of physician services and medical care of patients undergoing more detailed medical examinations.

(f) The implementation of any form of universal health insurance cannot be pursued until sufficient numbers of family practitioners are able to provide care.

(g) In California, more than 40 percent of the Latino population is uninsured. This is three times the percentage of non-Latino uninsured in the state.

(h) Over the next decade, California's population is expected to add 6.3 million residents, primarily from immigration. An estimated one-third of these immigrants will come from other states and two-thirds from foreign countries.

(i) 31.5 percent of California's population speak a foreign language, and more than 50 percent of these persons cannot speak English very well.

(j) Experts have forecasted that the shortage of family practitioners cannot be corrected immediately due to neglect, the decreasing ratio of family practitioners to specialists, and the growing number of monolingual patients and uninsured.

(k) There is an urgent need to facilitate improving the supply of more medical practitioners who can provide relief for the growing demand for medical care and the shortage in the capacity to provide

that care.

SEC. 2. It is the intent of the Legislature to allow international medical graduates to take the written examination for licensure as a physician assistant required under Section 3517 of the Business and Professions Code, in order to provide relief for the growing demand for medical care and the shortage in the capacity to provide that care.

SEC. 3. Article 7.5 (commencing with Section 3537.10) is added to Chapter 7.7 of Division 2 of the Business and Professions Code, to read:

Article 7.5. International Medical Graduate Physician Assistants

3537.10. (a) Subject to the other provisions of this article, the Office of Statewide Health Planning and Development, hereafter in this article referred to as the office, shall coordinate the establishment of an international medical graduate physician assistant training program, to be conducted at an appropriate educational institution or institutions. The goal of the program shall be to place as many international medical graduate physician assistants in medically underserved areas as possible in order to provide greater access to care for the growing population of medically indigent and underserved. The method for accomplishing this goal shall be to train foreign medical graduates to become licensed as physician assistants at no cost to the participants in return for a commitment from the participants to serve full-time in underserved areas for a four-year period.

(b) By February 1, 1994, or one month after federal funds to implement this article become available, whichever occurs later, the office shall establish a training program advisory task force. The task force shall be comprised of representatives from all of the following groups:

(1) Physician assistant program directors.
(2) Foreign medical graduates.
(3) The California Academy of Physician Assistants.
(4) Nonprofit community health center directors.
(5) Physicians.
(6) The committee, at the committee's option.

The office may, instead, serve solely as a consultant to the task force.

(c) The task force shall do all of the following:

(1) Develop a recommended curriculum for the training program that shall be from 12 to 15 months in duration and shall, at a minimum, meet curriculum standards consistent with the committee's regulations. The program shall be subject to the committee's approval. By April 1, 1994, or three months after federal funds to implement this article become available, whichever occurs later, the curriculum shall be presented by the office to the Committee on Allied Health Education and Accreditation of the

American Medical Association, or its successor organization, for approval.

(2) Develop recommended admission criteria for participation in the pilot and ongoing program.

(3) Assist in development of linkages with academic institutions for the purpose of monitoring and evaluating the pilot program.

3537.15. (a) Prior to establishment of an ongoing international medical graduate physician assistant training program, the Office of Statewide Health Planning and Development shall coordinate the establishment of a pilot program commencing September 1, 1994, or eight months after federal funds to implement this article become available, whichever occurs later, to test the validity and effectiveness of the recommended training curriculum developed by the task force. The task force shall, with the advice and assistance of the academic institutions offering the pilot program curriculum, and subject to their approval, select 10 international medical graduates to participate in the pilot program.

(b) After two classes have graduated from the pilot program, the task force, with the advice and assistance of the academic institutions, shall evaluate the results of the pilot program, to determine whether a permanent program should be established. The office may modify curriculum as needed and make appropriate revisions in order to ensure program integrity and compliance with established standards. Any permanent international medical graduate physician assistant training program shall commence at the beginning of the year following the completion of the evaluation.

3537.20. Any person who has satisfactorily completed the program established by this article shall be eligible for licensure by the committee as a "physician assistant" if the person has complied with all of the following requirements:

(a) Has successfully completed the written examination required under Section 3517.

(b) Has successfully completed the Test of English as a Foreign Language (TOEFL).

3537.25. Both the pilot and the ongoing training program shall provide training at no cost to the participants in return for a written, enforceable agreement by the participants to, upon obtaining licensure under this article, serve a minimum of four years as a full-time physician assistant in an area of California designated by the Office of Statewide Health Planning and Development as a medically underserved area pursuant to Section 3537.35.

3537.30. (a) The Legislature recognizes that the goal of this program would be compromised if participants do not observe their commitments under this program to provide the required service in a medically underserved area. The goal of this program would not be met if all that it accomplished was merely to license physician assistants that served populations that are not medically underserved.

(b) Since damages would be difficult or impossible to ascertain in

the event of default by the participant, this section shall set forth the extent of liquidated damages that shall be recoverable by the program in the case of default.

(c) In the case of default by a participant who has successfully completed the program and has obtained licensure under this article, the program shall collect the following damages from the participant:

(1) The total cost expended by the program for the training of the applicant, and interest thereon from the date of default.

(2) The total amount needed for the program to seek cover as set forth in subdivision (b) of Section 3537.35.

(3) The costs of enforcement, including, but not limited to, the costs of collecting the liquidated damages, the costs of litigation, and attorney's fees.

(d) The Attorney General may represent the office, or the committee, or both in any litigation necessitated by this article, or, if the Attorney General declines, the office, or the committee, or both may hire other counsel for this purpose.

(e) Funds collected pursuant to subdivision (c) shall be allocated as follows:

(1) Costs of training recovered pursuant to paragraph (1) of subdivision (c) shall be allocated to the office to be used upon appropriation for the continuing training program pursuant to this article.

(2) Costs of seeking cover recovered pursuant to paragraph (2) of subdivision (c) shall be deposited in the Physician Assistant Training Fund established pursuant to Section 3537.40 for the purposes of providing grants pursuant to subdivision (c) of Section 3537.35.

(3) Costs of enforcement recovered pursuant to paragraph (3) of subdivision (c) shall be allocated between the office, and the Attorney General, or other counsel, according to actual costs.

3537.35. The Office of Statewide Health Planning and Development shall, in addition to other duties described in this article, do all of the following:

(a) Determine those areas of the state that are medically underserved in that they have a higher percentage of medically underserved and indigent persons and would benefit from the services of additional persons licensed as physician assistants.

(b) Determine the total cost of seeking cover as specified in paragraph (2) of subdivision (c) of Section 3537.30. To determine the cost, the office shall study the market forces that are at work creating the scarcity of these physician assistants in these medically underserved areas, and determine the annual level of additional funding that would be required by a health facility, clinic, or other health care provider in those areas to motivate a physician assistant to serve full-time in those underserved areas. This amount shall be calculated so that when added to the prevailing rate for these services in the underserved area, would make these positions so attractive that physician assistants would be motivated to serve in

those areas. This amount, which shall equal the cost to the office to place a qualified physician assistant in the underserved area, times four years shall be the total cost of seeking cover.

(c) Provide grants, as funds become available in the Physician Assistant Training Fund, to applicant health care providers that provide services in medically underserved areas for the purpose of funding additional full-time physician assistant positions in those areas to provide services in lieu of defaulting physician assistants. Participating providers shall use these grants to attract physician assistants that are from outside the area and shall demonstrate that the grant actually increases the number of physician assistants serving the underserved population. The grantee shall demonstrate that the grant did not merely shift a physician assistant from one medically underserved area to another, but rather, resulted in a net increase in the number of physician assistants serving the underserved population as a whole. Licensees under this article shall not directly or indirectly receive grants under this section.

3537.40. The Physician Assistant Training Fund is hereby created in the State Treasury for the purpose of receipt of funds collected pursuant to paragraph (2) of subdivision (c) of Section 3537.30. The Physician Assistant Training Fund shall be available to the Office of Statewide Health Planning and Development for the purpose of providing grants pursuant to subdivision (c) of Section 3537.35, upon appropriation by the Legislature.

3537.45. The program established pursuant to this article shall not be funded, directly or indirectly, from an increase in the fees charged to physician assistants, supervising physicians, or physician assistant training programs pursuant to Section 3521, 3521.1, or 3521.2. This article does not excuse physician assistants trained pursuant to this article or their supervising physicians from paying the fees established pursuant to Section 3521 or 3521.1.

3537.50. No General Fund revenues shall be expended to carry out this article. The implementation of the pilot program and, if applicable, the permanent program established by this article shall be contingent upon the availability of federal funds, which do not divert or detract from funds currently utilized to underwrite existing physician assistant training programs or to fund existing functions of the committee. The new funding shall be sufficient to cover the full additional cost to the educational institution or institutions that establish the program or programs, the cost of tuition and attendance for the students in the program or programs, and any additional costs, including enforcement costs, that the office or the committee incurs as a result of implementing this article. Nothing in this article shall be construed as imposing any obligations upon the office, the committee, or any physician assistant training program in the absence of adequate funding as described in this section. Nothing in this article shall be construed either as precluding applicants for the program established by this article from seeking state or federal scholarship funds, or state and federal loan repayment funds

available to physician assistant students, or as requiring that any applicants be granted preference in the award of those funds. Nothing in this article shall be construed as impairing the autonomy of any institution that offers a physician assistant training program.

CHAPTER 1043

An act to amend Section 980 of the Military and Veterans Code, relating to veterans.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 980 of the Military and Veterans Code is amended to read:

980. (a) As used in this chapter, "veteran" means any of the following:

(1) Any citizen of the United States who served in the active military, naval, or air service of the United States on or after April 6, 1917, and prior to November 12, 1918; received an honorable discharge or was released from active duty under honorable conditions; was, at the time of entry into active duty, a native of or a bona fide resident of this state or, if a minor at that time, entered active duty while in this state; and had lived in this state for six months immediately preceding entry into active duty.

(2) Any person who served in the active military, naval, or air service of the United States for a period of not less than 90 consecutive days or was discharged from the service due to a service-connected disability within that 90-day period; received an honorable discharge or was released from active duty under honorable conditions; was at the time of entry into active duty a native of or bona fide resident of this state or, if a minor at that time, entered active duty while in this state and had lived in this state for six months immediately preceding entry into active duty; and performed any portion of that service during any of the following periods:

(A) On or after December 7, 1941, and prior to January 1, 1947.

(B) On or after June 27, 1950, and prior to February 1, 1955.

(C) On or after August 5, 1964, and prior to May 8, 1975.

(D) On or after August 2, 1990, to and including the date on which the territories in and around the Arabian Peninsula cease to be designated as a place where the armed forces of the United States are engaged in combat, as described in Executive Order 12744 of the President of the United States. It is the intent of the Legislature, in enacting this subparagraph, that the benefits provided by this chapter shall be available to all veterans who were on active duty in

the armed forces of the United States or who were called to active duty in the reserves or National Guard during the pendency of the deployment of forces for Operation Desert Shield or Desert Storm, which resulted in Executive Order 12744, irrespective of whether these veterans served overseas or in the United States.

(E) At any time, in a campaign or expedition for service in which a medal has been authorized by the government of the United States, regardless of the number of days served on active duty.

(F) At any time in Somalia, or in direct support of the troops in Somalia, including, but not limited to, persons stationed on ships of the United States armed forces conducting support activities offshore in the vicinity of Somalia, during Operation Restore Hope, regardless of the number of days served.

(3) Any member of the reserves or National Guard who is called to, and released from, active duty, regardless of the number of days served; called during any period when a presidential executive order specifies the United States is engaged in combat; received an honorable discharge or was released from active duty under honorable conditions; was at the time of entry into active duty a native of, or bona fide resident of this state or, if a minor at that time, entered active duty while in this state and had lived in this state for six months immediately preceding entry into active duty.

(b) This chapter does not include any of the following:

(1) A person who was separated from the armed forces under other than honorable conditions.

(2) A person who was separated from the armed forces on account of alienage.

(3) A person who performed no military duty whatever or refused to wear the uniform.

(4) A person who has received from another state a bonus, compensation, or benefit, the prerequisite of which is service in the armed forces, which service is the basis for the claim of benefits under this chapter.

(5) A person who served only in an auxiliary or reserve component of the armed forces whose service therein did not provide an exemption from the operation of the Selective Training and Service Act of 1940 (54 Stat. 885, as amended).

(6) A person whose service with the armed forces was due to temporary active duty orders for the sole purpose of training duty, processing, or a physical examination.

(7) A person whose only service during a qualifying period was as a student at a military academy and who, for any reason, failed to complete the course of study and subsequently did not serve on active duty.

SEC. 2. Section 980 of the Military and Veterans Code is amended to read:

980. (a) As used in this chapter, "veteran" means any of the following:

(1) Any citizen of the United States who served in the active

military, naval, or air service of the United States on or after April 6, 1917, and prior to November 12, 1918, and who received an honorable discharge or was released from active duty under honorable conditions.

(2) Any person who did all of the following:

(A) Served in the active military, naval, or air service of the United States for a period of not less than 90 consecutive days or was discharged from the service due to a service-connected disability within that 90-day period.

(B) Received an honorable discharge or was released from active duty under honorable conditions.

(C) Performed any portion of that service during any of the following periods:

(i) On or after December 7, 1941, and prior to January 1, 1947.

(ii) On or after June 27, 1950, and prior to February 1, 1955.

(iii) On or after August 5, 1964, and prior to May 8, 1975.

(iv) On or after August 2, 1990, to and including the date on which the territories in and around the Arabian Peninsula cease to be designated as a place where the armed forces of the United States are engaged in combat, as described in Executive Order 12744 of the President of the United States. It is the intent of the Legislature, in enacting this clause, that the benefits provided by this chapter shall be available to all veterans who were on active duty in the armed forces of the United States or who were called to active duty in the reserves or National Guard during the pendency of the deployment of forces for Operation Desert Shield or Desert Storm, which resulted in Executive Order 12744, irrespective of whether these veterans served overseas or in the United States.

(v) At any time, in a campaign or expedition for service in which a medal has been authorized by the government of the United States, regardless of the number of days served on active duty.

(vi) At any time in Somalia, or in direct support of the troops in Somalia, including, but not limited to, persons stationed on ships of the United States armed forces conducting support activities offshore in the vicinity of Somalia, during Operation Restore Hope, regardless of the number of days served.

(3) Any member of the reserves or National Guard who does all the following:

(A) Is called to, and released from, active duty, regardless of the number of days served.

(B) Is called during any period when a presidential executive order specifies the United States is engaged in combat.

(C) Has received an honorable discharge or was released from active duty under honorable conditions.

(4) Any person who did all of the following:

(A) Served in the Merchant Marine Service of the United States.

(B) Has been granted veteran status by the United States Secretary of Defense under Title IV of the GI Improvement Act of 1977 (Public Law 95-202, as amended).

(b) For purposes of this chapter "veteran" does not include any of the following:

(1) A person who was separated from the armed forces under other than honorable conditions.

(2) A person who was separated from the armed forces on account of alienage.

(3) A person who performed no military duty whatever or refused to wear the uniform.

(4) A person who served only in an auxiliary or reserve component of the armed forces whose service therein did not provide an exemption from the operation of the Selective Training and Service Act of 1940 (54 Stat. 885, as amended).

(5) A person whose service with the armed forces was due to temporary active duty orders for the sole purpose of training duty, processing, or a physical examination.

(6) A person whose only service during a qualifying period was as a student at a military academy and who, for any reason, failed to complete the course of study and subsequently did not serve on active duty.

SEC. 3. Section 2 of this bill incorporates amendments to Section 980 of the Military and Veterans Code proposed by both this bill, SB 603, and SB 837. It shall only become operative if (1) this bill and SB 603, or this bill and SB 837, or all three, are enacted and become effective on or before January 1, 1994, (2) each bill enacted amends Section 980 of the Military and Veterans Code, and (3) this bill is enacted after SB 603 and SB 837, or either if only one of those bills is enacted, in which case Section 980 of the Military and Veterans Code, as amended by SB 603, or SB 837, or both, shall remain operative only until the operative date of this bill, at which time Section 2 of this bill shall become operative, and in which case Section 1 of this bill shall not become operative.

CHAPTER 1044

An act to amend Section 1185 of the Civil Code, and to amend Sections 8211, 8219.5 and 12197.1 of the Government Code, relating to notaries public.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 1185 of the Civil Code is amended to read:

1185. (a) The acknowledgment of an instrument shall not be taken unless the officer taking it personally knows, or has satisfactory evidence that the person making the acknowledgment is, the individual who is described in and who executed the instrument.

(b) For purposes of this article, "personally knows" means having an acquaintance, derived from association with the individual in relation to other people and based upon a chain of circumstances surrounding the individual, which establishes the individual's identity with at least reasonable certainty.

(c) For the purposes of this section "satisfactory evidence" means the absence of any information, evidence, or other circumstances which would lead a reasonable person to believe that the person making the acknowledgment is not the individual he or she claims to be and any one of the following:

(1) The oath or affirmation of a credible witness personally known to the officer that the person making the acknowledgment is personally known to the witness and that each of the following are true:

(A) The person making the acknowledgment is the person named in the document.

(B) The person making the acknowledgment is personally known to the witness.

(C) That it is the reasonable belief of the witness that the circumstances of the person making the acknowledgment are such that it would be very difficult or impossible for that person to obtain another form of identification.

(D) The person making the acknowledgment does not possess any of the identification documents named in paragraphs (3) and (4).

(E) The witness does not have a financial interest in the document being acknowledged and is not named in the document.

(2) The oath or affirmation under penalty of perjury of two credible witnesses, whose identities are proven to the officer upon the presentation of satisfactory evidence, that each statement in paragraph (1) of this subdivision is true.

(3) Reasonable reliance on the presentation to the officer of any one of the following, if the document is current or has been issued within five years:

(A) An identification card or driver's license issued by the California Department of Motor Vehicles.

(B) A passport issued by the Department of State of the United States.

(4) Reasonable reliance on the presentation of any one of the following, provided that a document specified in subparagraphs (A) to (E), inclusive, shall either be current or have been issued within five years and shall contain a photograph and description of the person named on it, shall be signed by the person, shall bear a serial or other identifying number, and, in the event that the document is a passport, shall have been stamped by the United States Immigration and Naturalization Service:

(A) A passport issued by a foreign government.

(B) A driver's license issued by a state other than California or by a Canadian or Mexican public agency authorized to issue drivers'

licenses.

(C) An identification card issued by a state other than California.

(D) An identification card issued by any branch of the armed forces of the United States.

(E) An inmate identification card issued on or after January 1, 1988, by the Department of Corrections, if the inmate is in custody.

(F) An inmate identification card issued prior to January 1, 1988, by the Department of Corrections, if the inmate is in custody.

(d) An officer who has taken an acknowledgment pursuant to this section shall be presumed to have operated in accordance with the provisions of law.

(e) Any party who files an action for damages based on the failure of the officer to establish the proper identity of the person making the acknowledgment shall have the burden of proof in establishing the negligence or misconduct of the officer.

(f) Any person convicted of perjury under this section shall forfeit any financial interest in the document.

SEC. 2. Section 8211 of the Government Code is amended to read:

8211. Fees charged by a notary public for the following services shall not exceed the fees prescribed by this section.

(a) For taking an acknowledgment or proof of a deed, or other instrument, to include the seal and the writing of the certificate, the sum of ten dollars ($10) for each signature taken.

(b) For administering an oath or affirmation to one person and executing the jurat, including the seal, the sum of ten dollars ($10).

(c) For all services rendered in connection with the taking of any deposition, the sum of twenty dollars ($20), and in addition thereto, the sum of five dollars ($5) for administering the oath to the witness and the sum of five dollars ($5) for the certificate to such deposition.

(d) For every protest for the nonpayment of a promissory note or for the nonpayment or nonacceptance of a bill of exchange, draft, or check, the sum of ten dollars ($10).

(e) For serving every notice of nonpayment of a promissory note or of nonpayment or nonacceptance of a bill of exchange, order, draft, or check, the sum of five dollars ($5).

(f) For recording every protest, the sum of five dollars ($5).

(g) No fee shall be charged to notarize signatures on absentee ballot identification envelopes or other voting materials.

SEC. 3. Section 8219.5 of the Government Code is amended to read:

8219.5. (a) Every notary public who is not an attorney who advertises the services of a notary public in a language other than English by signs or other means of written communication, with the exception of a single desk plaque, shall post with that advertisement a notice in English and in the other language which sets forth the following:

(1) This statement: I am not an attorney and, therefore, cannot give legal advice about immigration or any other legal matters.

(2) The fees set by statute which a notary public may charge.

(b) The notice required by subdivision (a) shall be printed and posted as prescribed by the Secretary of State.

(c) Literal translation of the phrase "notary public" into Spanish is prohibited. For purposes of this subdivision, "literal translation" of a word or phrase from one language to another means the translation of a word or phrase without regard to the true meaning of the word or phrase in the language which is being translated.

(d) The Secretary of State shall suspend for a period of not less than one year or revoke the commission of any notary public who fails to comply with subdivision (a), provided, however, that on the third offense the license of such notary public shall be revoked permanently.

SEC. 4. Section 12197.1 of the Government Code is amended to read:

12197.1. The Secretary of State shall establish by regulation an application, examination, and commission fee which shall not exceed the amount necessary to cover the costs of commissioning notaries public and the enforcement of laws governing notaries public. The fee shall not exceed one hundred dollars ($100) per commission.

CHAPTER 1045

An act to amend Section 98.9 of the Revenue and Taxation Code, relating to local government finance.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 98.9 of the Revenue and Taxation Code is amended to read:

98.9. Notwithstanding any other provision of law, commencing with the 1988–89 fiscal year, property tax assessed value attributable to unitary and operating nonunitary property, as defined in Sections 723 and 723.1, which is assessed by the State Board of Equalization shall be allocated by county as provided in Section 756, and the assessed value and revenues attributable to that allocation shall be allocated within each county as follows:

(a) Each county shall establish one countywide tax rate area. The assessed value of all unitary and operating nonunitary property shall be assigned to this tax rate area. No other property shall be assigned to this tax rate area.

(b) Property assigned to the tax rate area created by subdivision (a) shall be taxed at a rate equal to the sum of the following two rates:

(1) A rate determined by dividing the county's total ad valorem tax levies for the secured roll, including levies made pursuant to

Section 100, for the prior year, exclusive of levies for debt service, by the county's total ad valorem secured roll assessed value for the prior year.

(2) A rate determined as follows:

(A) By dividing the county's total ad valorem tax levies for unitary and operating nonunitary property for the prior year debt service only by the county's total unitary and operating nonunitary assessed value for the prior year.

(B) Beginning with the 1989–90 fiscal year, adjusting the rate determined pursuant to subparagraph (A) by the percentage change between the two preceding fiscal years in the county's ad valorem debt service levy for the secured roll, not including unitary and operating nonunitary debt service.

(c) The property tax revenue derived from the assessed value assigned to the countywide tax rate area pursuant to subdivision (a) by the use of the tax rate determined in paragraph (1) of subdivision (b) shall be allocated as follows:

(1) For the 1988–89 fiscal year and each fiscal year thereafter, each taxing jurisdiction shall be allocated an amount of property tax revenue equal to 102 percent of the amount of the aggregate property tax revenue it received from all unitary and operating nonunitary property in the prior fiscal year, exclusive of revenue attributable to levies for debt service.

(2) If the amount of property tax revenue available for allocation in the current fiscal year is insufficient to make the allocations required by paragraph (1), the amount of revenue to be allocated to each taxing jurisdiction shall be prorated based on a factor determined by dividing the total amount of property tax revenue available to all taxing jurisdictions from unitary and operating nonunitary property in the current year, exclusive of revenue attributable to levies for debt service, by the total amount of property tax revenue received by all taxing jurisdictions from unitary and operating nonunitary property in the prior fiscal year, exclusive of revenue attributable to levies for debt service.

(3) If the amount of property tax revenue available for allocation to all taxing jurisdictions in the current fiscal year from unitary and operating nonunitary property, exclusive of revenue attributable to levies for debt service, exceeds 102 percent of the property tax revenue received by all taxing jurisdictions from all unitary and operating nonunitary property in the prior fiscal year, exclusive of revenue attributable to levies for debt service, the amount of revenue in excess of 102 percent shall be allocated to all taxing jurisdictions in the county by a ratio determined by dividing each taxing jurisdiction's share of the county's total ad valorem tax levies for the secured roll for the prior year, exclusive of levies for debt service, by the county's total ad valorem tax levies for the secured roll for the prior year, exclusive of levies for debt service.

(d) The property tax revenue derived from the assessed value assigned to the countywide tax rate area pursuant to subdivision (a)

by the use of the tax rate determined in paragraph (2) of subdivision (b) shall be allocated as follows:

(1) An amount shall be computed for each taxing jurisdiction which shall be determined by multiplying the amounts required in the current year pursuant to subdivisions (a) and (c) of Section 93 by that percentage which shall be determined by dividing the amount of property tax revenue the jurisdiction received in the prior year from unitary property and operating nonunitary property by the total amount of property tax revenue the jurisdiction received in the prior year from all property.

(2) The amount of property tax revenue available for allocation pursuant to this subdivision shall be allocated among taxing jurisdictions in the proportion that the amount computed for each taxing jurisdiction pursuant to paragraph (1) bears to the total amount computed pursuant to paragraph (1) for all taxing jurisdictions.

(3) If a taxing jurisdiction is levying a tax rate for debt service for the first time in the current fiscal year, for purposes of determining the percentage specified in paragraph (1), that percentage shall be the percentage determined by dividing the amount of property tax revenue received by that taxing jurisdiction in the prior year pursuant to subdivision (c) from unitary and operating nonunitary property by the total amount of property tax revenue received by that taxing jurisdiction in the prior year from all property within the taxing jurisdiction.

(e) For purposes of this section:

(1) "The county's total ad valorem tax levies for the secured roll" means all ad valorem tax levies for the county's secured roll, including the general tax levy, levies for debt service (including land only and land and improvement rates), and levies for redevelopment agencies.

(2) "The county's total ad valorem secured roll" means the county's local roll, after all exemptions except the homeowner's exemption, and the county's utility roll.

(3) "Taxing jurisdiction" includes a redevelopment agency, and a Special District Augmentation Fund created pursuant to Section 98.6.

(f) The assessed value of the unitary and operating nonunitary property shall be kept separate for each state assessee throughout the allocation process.

(g) Each state assessee shall be issued only one tax bill for all unitary and operating nonunitary property within the county.

(h) This section does not apply to unitary property of regulated railway companies.

(i) This section does not apply to property which on July 1, 1987, was undeveloped and owned by a utility and which is located within a city, county, or city and county which adopts a resolution stating that the property is subject to a development plan or agreement and that this section shall not apply to that property, and the city, county,

or city and county transmits a copy of that resolution, including a legal description of the property, to the State Board of Equalization and the county's auditor-controller prior to January 1, 1988.

(j) (1) For property that on July 1, 1990, was undeveloped and owned by a utility and that is located within a city, county, or city and county that adopts a resolution stating that the property is subject to a development plan or agreement and that this subdivision applies to that property, and the city, county, or city and county transmits a copy of that resolution, including a legal description of the property, to the county auditor prior to August 1, 1991, the allocation of property tax revenues derived with respect to that property pursuant to Sections 97, 97.35, 97.36, 97.41, 97.5, and 97.65, shall be subject to the allocation required by paragraph (2).

(2) The county auditor shall annually allocate to a city, county, or city and county, that has adopted and transmitted a resolution pursuant to paragraph (1), the amount of property tax revenues derived with respect to the property described in paragraph (1) that would be allocated to that city, county, or city and county if that property were subject to assessment by the county assessor. In order to provide the allocations required by this paragraph, the county auditor shall make any necessary pro rata reductions in allocations to local agencies other than that city, county, or city and county adopting and transmitting a resolution pursuant to paragraph (1), of property tax revenues derived with respect to the property described in paragraph (1).

(k) (1) For property subject to this section that is owned by a utility that serves no more than two counties and is located within a city, county, or city and county that adopts a resolution stating that the property is subject to a development plan or agreement for new construction and the city, county, or city and county transmits a copy of that resolution, including a legal description of the property, to the State Board of Equalization and the county auditor prior to January 1, 1995, the allocation of property tax revenues derived with respect to that property pursuant to Sections 97, 97.35, 97.36, 97.41, and 97.65 shall be subject to the requirements of paragraph (2) until December 31, 2004.

(2) If the city, county, or city and county has adopted and transmitted a resolution pursuant to paragraph (1), the county auditor shall annually allocate the property tax revenue attributable to the new construction described in the development plan or agreement, as if that new construction were subject to assessment by the county assessor, according to the following formula:

(A) An amount of property tax revenue to school entities, as defined in subdivision (f) of Section 95, equivalent to the same percentage the school entities received in the prior fiscal year of the property tax revenues paid by the utility in the county in which the property described in paragraph (1) is located.

(B) An amount of property tax revenue to the county in which the property is located equivalent to the same percentage the county

received in the prior fiscal year of the property tax revenues paid by the utility in the county in which the property described in paragraph (1) is located. The county shall distribute those property tax revenues to the county general fund, the county library district, the county flood control district, the county sanitation districts, and the county service areas.

(C) The property tax revenue remaining after the allocations described in subparagraphs (A) and (B) are made shall be distributed to the city in which the property described in paragraph (1) is located.

(3) In order to provide the allocations required by paragraph (2), the county auditor shall make any necessary pro rata reductions in allocations of property taxes attributable to the property specified in paragraph (1) to jurisdictions other than those receiving an allocation under paragraph (2).

(4) The allocation required by this subdivision shall not apply to property tax revenues allocated on or after December 31, 2004.

SEC. 2. 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 1046

An act to amend Section 11346.5 of, and to add Section 11346.6 to, the Government Code, relating to public agencies.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 11346.5 of the Government Code is amended to read:

11346.5. (a) The notice of proposed adoption, amendment, or repeal of a regulation shall include:

(1) A statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation.

(2) Reference to the authority under which the regulation is proposed and a reference to the particular code sections or other provisions of law which are being implemented, interpreted, or made specific.

(3) An informative digest containing a concise and clear summary of existing laws and regulations, if any, related directly to the

proposed action and the effect of the proposed action. The informative digest shall be drafted in a format similar to the Legislative Counsel's digest on legislative bills. If the proposed action differs substantially from an existing comparable federal regulation or statute, the informative digest shall also include a brief description of the significant differences and the full citation of the federal regulations or statutes and a summary of agency efforts to minimize duplication and conflicts pursuant to Section 11346.6, if applicable, and subdivision (f) of Section 11349.

(4) Any other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

(5) A determination as to whether the regulation imposes a mandate on local agencies or school districts and, if so, whether the mandate requires state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4.

(6) An estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.

For purposes of this section, "cost or savings" means additional costs or savings, both direct and indirect, which a public agency necessarily incurs in reasonable compliance with regulations.

(7) A statement that the adopting agency must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

(8) The name and telephone number of the agency officer to whom inquiries concerning the proposed administrative action may be directed.

(9) The date by which comments submitted in writing must be received to present statements, arguments, or contentions in writing relating to the proposed action in order for them to be considered by the state agency before it adopts, amends, or repeals a regulation.

(10) Reference to the fact that the agency proposing the action has prepared a statement of the reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action, pursuant to subdivision (b).

(11) A statement that if a public hearing is not scheduled, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Section 11346.8.

(12) A statement indicating that the full text of a regulation changed pursuant to Section 11346.8 will be available for at least 15

days prior to the date on which the agency adopts, amends, or repeals the resulting regulation.

(b) The agency officer designated in paragraph (8) of subdivision (a) shall make available to the public upon request the express terms of the proposed action using underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations. The officer shall also make available to the public upon request the location of public records, including reports, documentation, and other materials, related to the proposed action.

(c) This section shall not be construed in any manner which results in the invalidation of a regulation because of the alleged inadequacy of the notice content or the summary or cost estimates if there has been substantial compliance with those requirements.

SEC. 2. Section 11346.6 is added to the Government Code, to read:

11346.6. (a) Departments, boards, and commissions within the Environmental Protection Agency, the Resources Agency, and the office of the State Fire Marshal may adopt regulations which are different from regulations contained in the Code of Federal Regulations addressing the same issues upon a finding by the public entity adopting the regulations of one or more of the following justifications:

(1) The differing state regulations are authorized by state law.

(2) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.

(b) In making the findings set forth in subdivision (a), the public entity adopting the regulations shall also describe its efforts, in connection with the proposed regulations, to avoid unnecessary duplication or conflicts with federal regulations.

CHAPTER 1047

An act to add Chapter 9 (commencing with Section 35240) to Part 4 of Division 13 of the Water Code, relating to water districts.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Chapter 9 (commencing with Section 35240) is added to Part 4 of Division 13 of the Water Code, to read:

CHAPTER 9. METHOD OF ELECTION FOR THE SANTA MARGARITA WATER DISTRICT

35240. This chapter shall apply only to the Santa Margarita Water District. For purposes of this chapter, "district" means the Santa

Margarita Water District.

35241. Notwithstanding any other provision of law, or the bylaws of the district, all elections within the district, including elections for director and elections that are required by law to authorize any special taxes or bonded indebtedness, shall be conducted as resident voter elections in accordance with this chapter. Nothing in this chapter shall be construed to require resident voter approval of bonds where voter approval is not required under the statutory or constitutional provisions in effect prior to January 1, 1994.

35242. Qualified voters within the district shall be residents of, and registered voters in, the district.

35243. All directors elected after January 1, 1994, shall be residents of the district and shall be registered at the time of their election and during their term of office.

35244. Directors of the district shall be elected on an at-large basis unless the board of directors determines that directors shall be elected by divisions. The term "by divisions" as used in this chapter means the election of directors by voters of the division alone.

35245. Notwithstanding any other provision of law, the board of directors may at any time establish divisions within the district in accordance with the provisions of this chapter. If the board of directors decides to establish divisions, all of the following shall apply:

(a) The board of directors shall, by resolution, divide the district into as many divisions as there are directors and assign a number to each division. Divisions shall be as nearly equal in population as practicable.

(b) After approving the election of directors by divisions, the board of directors shall, by resolution, not less than 120 days prior to the next general district election, designate which divisions shall elect directors at that election to succeed the directors whose terms then expire. The remaining divisions shall elect directors at the general district election next following that election.

(c) Each director elected by division shall be a resident of that division.

(d) The board of directors may, by resolution, at any time after initially dividing the district into divisions, but not less than 120 days before a general district election, change the boundaries of the divisions to keep them as nearly equal in population as practicable.

35246. (a) At the first general district election following January 1, 1994, all directors shall be elected. The terms of office of those directors who are in office on January 1, 1994, shall be shortened and shall expire upon the election and qualification of their successors at that first general district election described in this subdivision. In that first district election and in all subsequent elections, the form of the ballot and the conduct of the election shall be governed by the Uniform District Election Law (Part 3 (commencing with Section 23500) of Division 14 of the Elections Code) for resident voting elections.

(b) Immediately following the general district election described

in subdivision (a), the directors so elected at that election shall determine by lot as to those two directors who shall serve two-year terms and as to the three directors who shall serve four-year terms. Except as provided in this subdivision, all directors shall serve four-year terms.

35247. This chapter does not in any way invalidate any act of the district, its directors, or its officers and employees made or performed while the district was operating as a landowner voting district.

35248. This chapter does not affect any acts or proceedings heretofore taken for the authorization, issuance, or sale of any bonds of the district in any manner provided by law prior to January 1, 1994, or affect the ability of the district to sell and issue any bond heretofore authorized. For the purposes of this chapter, "bonds" includes notes and any other evidences of indebtedness.

35249. Notwithstanding any other provision of law, the board of directors may at any time alter, repeal, or amend the district's bylaws by a majority vote. Any alteration, repeal, or amendment to the bylaws shall be recorded with the county recorder of each affected county.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of the district. The facts constituting the special circumstances that distinguish the district from other districts formed under this division are its greater population and nonagricultural land uses.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. 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 add Section 17705.11 to the Education Code, relating to schools.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 17705.11 is added to the Education Code, to read:

17705.11. (a) Any school district with an average daily attendance of less than 2,501 pupils may apply to the State Allocation Board for a loan to cover the project activities of the first or second phase, as those phases were defined on July 1, 1993, of a project funded under this chapter. The loan shall not be utilized for the purchase of real property and shall be repaid by the school district either through a dedication of fees or charges levied pursuant to Section 53080 of the Government Code until the loan is repaid or upon receiving the project funding at the construction phase, but, in any event, the loan shall be repaid within five years from the date on which the board makes the loan. In addition to the other methods of repayment specified in this subdivision, the board may also notify the Controller if a school district is 90 days late in making loan repayments, in which case the Controller shall reduce the apportionments to which the school district is otherwise entitled under Section 42238 as necessary to recover past due payments and any current payments.

(b) Any school district accepting a loan pursuant to this section shall continue to be subject to the local matching share requirement pursuant to Section 17705.5 until the loan is repaid under a payment schedule established by the board.

(c) The board shall charge an interest amount for the loan. For any loan provided from January 1, 1994, to December 31, 1994, the interest rate shall be the interest rate charged for the last sale of state school construction bonds sold during 1993. For any loan provided on or after January 1, 1995, the interest rate shall be determined by the board, but may not be lower than the rate charged in 1994.

(d) The board may make loans under this section to the extent that the board determines that funds are available for that purpose. The total annual maximum funds that may be loaned under this section is ten million dollars ($10,000,000) per fiscal year.

(e) The board may make loans under this section only for those projects and phases that have met all of the eligibility standards of the board and receive approval for an apportionment, but for which apportionment funds are not available. In any event, the amount of the loan shall not exceed the amount that would have been eligible for apportionment.

CHAPTER 1049

An act to add Sections 440.10, 440.20, 440.30, 440.40 and 440.50 to the Health and Safety Code, relating to health facilities.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 440.10 is added to Part 1.7 (commencing with Section 440.10) of Division 1 of the Health and Safety Code, to read:

440.10. "Health facility," as used in this chapter, means any general acute care hospital required to be licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.

SEC. 2. Section 440.20 is added to the Health and Safety Code, to read:

440.20. Within seven days after completion of the patient's itemized bill, every health facility shall provide to the primary attending health care practitioner a copy, upon written request specifying the individual patient, of the complete itemized charges for services rendered by the health facility to the health care practitioner's patient when the primary attending health care practitioner is not employed by the health facility nor is a member of an integrated group practice that provided the health facility services.

SEC. 3. Section 440.30 is added to the Health and Safety Code, to read:

440.30. The primary attending health care practitioner's written request to the health facility shall specify the records to be copied pursuant to Section 440.20 and shall include a fee to defray the cost of copying, not to exceed twenty-five cents ($0.25) per page, plus any reasonable costs of clerical services incurred in locating and making the records available.

SEC. 4. Section 440.40 is added to the Health and Safety Code, to read:

440.40. The primary attending health care practitioner shall obtain prior written consent from each patient for whom a billing is requested, authorizing the release of the patient's billing. A copy of this signed patient consent form shall be forwarded to the health care facility as part of the written request for itemized billings.

SEC. 5. Section 440.50 is added to the Health and Safety Code, to read:

440.50. No information, other than the itemized billing set forth in Section 440.20, that is prohibited from being released by any other provision of law shall be made available pursuant to Section 440.20.

CHAPTER 1050

An act to amend Sections 12240 and 12242 of the Business and Professions Code, relating to weights and measures.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 12240 of the Business and Professions Code is amended to read:

12240. (a) The board of supervisors may, by ordinance, charge an annual device registration fee to recover the costs of inspecting or testing weighing and measuring devices required of the county sealer pursuant to Section 12210, and to recover the cost of carrying out Section 12211, except as provided in subdivision (h). The fee shall not exceed the following:

(1) The county's total cost of actually inspecting or testing the devices, as required by law.

(2) The amount prescribed in the Table of Maximum Annual Charges set forth in subdivision (e).

(3) In the case of mobilehome parks, recreational vehicle parks, and apartment complexes described in subdivision (f), the amount set forth in subdivision (f).

(4) For weighing devices with capacities of 20,000 pounds or greater, the amount set forth in subdivision (g).

(b) The county may collect the fees biennially, in which case they shall not exceed twice the amount of an annual fee. The ordinance shall be adopted pursuant to Article 7 (commencing with Section 25120) of Chapter 1 of Part 2 of Division 2 of Title 2 of the Government Code.

(c) Retail gasoline pump meters, for which the above fees are assessed, shall be inspected as frequently as required by regulation, but not less than once every two years.

(d) Livestock scales, animal scales, and scales used primarily for weighing feed and seed, for which the above fees are assessed, shall be inspected as frequently as required by regulation.

(e) Table of Maximum Annual Charges:

Number of Devices	Charge Per Location
1 to 3	$ 40
4 to 9	$ 80
10 to 19	$120
20 to 25	$160
Over 25	$200

(f) Mobilehome parks, recreational vehicle parks, and apartment

complexes, where the owner of the park or complex owns and is responsible for the utility meters, shall pay a maximum annual fee of sixty dollars ($60) per park or complex, and a fee of up to two dollars ($2) per device per space or apartment. Mobilehome parks, recreational vehicle parks, and apartment complexes for which the above fees are assessed, shall be inspected and tested as frequently as required by regulation.

(g) For weighing devices with capacities of 20,000 pounds or greater, the registration fee shall be two hundred dollars ($200) per device. Motortruck scales are exempt from the fees imposed pursuant to this subdivision but shall be charged an annual device registration fee pursuant to paragraph (1) of subdivision (a).

(h) This section does not apply to farm milk tanks.

(i) A scale or device used in a certified farmers' market, as defined by Section 27512 of the Health and Safety Code, is not required to be registered in the county where the market is conducted, if the scale or device has an unexpired seal for the current year, issued by a licensed county sealer.

SEC. 2. Section 12242 of the Business and Professions Code is amended to read:

12242. The revenue from any fee charged pursuant to Section 12240 shall be deposited in the general fund of the county and used solely for the activities required by Sections 12210 and 12211.

CHAPTER 1051

An act to add Section 52616.20 to the Education Code, relating to adult education.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 52616.20 is added to the Education Code, to read:

52616.20. For purposes of calculating a school district's authorized adult education average daily attendance pursuant to Section 52616.17, average daily attendance for concurrently enrolled high school pupils in adult education programs for districts that currently are party to an adult education joint powers agreement established prior to January 1, 1963, shall be based upon the aggregate average daily attendance of all participating districts' pupils in grades 9 to 12, inclusive. Notwithstanding this section, the average daily attendance for concurrently enrolled high school pupils in the Covina-Valley Unified School District, operated by the Tri-Community Adult Education joint powers authority, shall not exceed the average daily attendance for concurrently enrolled high

school pupils in the Covina-Valley Unified School District for the 1992-93 fiscal year.

CHAPTER 1052

An act to amend Sections 1357.50 and 1357.51 of the Health and Safety Code, and to amend Sections 10198.6 and 10198.7 of the Insurance Code, relating to health care coverage.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 1357.50 of the Health and Safety Code is amended to read:

1357.50. For purposes of this article:

(a) "Health benefit plan" means any individual or group, insurance policy or health care service plan contract, that provides medical, hospital, and surgical benefits. The term does not include accident only, credit, disability income, coverage of Medicare services pursuant to contracts with the United States government, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(b) "Late enrollee" means an eligible employee or dependent who has declined health coverage under a health benefit plan offered through employment or sponsored by an employer at the time of the initial enrollment period provided under the terms of the health benefit plan, and who subsequently requests enrollment in a health benefit plan of that employer; provided that the initial enrollment period shall be a period of at least 30 days. However, an eligible employee or dependent shall not be considered a late enrollee if any of the following is applicable:

(1) The individual meets all of the following requirements:

(A) The individual was covered under another employer health benefit plan at the time the individual was eligible to enroll.

(B) The individual certified, at the time of the initial enrollment that coverage under another employer health benefit plan was the reason for declining enrollment provided that, if the individual was covered under another employer health plan, the individual was given the opportunity to make the certification required by this subdivision and was notified that failure to do so could result in later treatment as a late enrollee.

(C) The individual has lost or will lose coverage under another employer health benefit plan as a result of termination of employment of the individual or of a person through whom the individual was covered as a dependent, change in employment status of the individual or of a person through whom the individual was covered as a dependent, termination of the other plan's coverage, cessation of an employer's contribution toward an employee or dependent's coverage, death of a person through whom the individual was covered as a dependent, or divorce.

(D) The individual requests enrollment within 30 days after termination of coverage, or cessation of employer contribution toward coverage provided under another employer health benefit plan.

(2) The individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period.

(3) A court has ordered that coverage be provided for a spouse or minor child under a covered employee's health benefit plan and request for enrollment is made within 30 days after issuance of the court order.

(4) The plan cannot produce a written statement from the employer stating that, prior to declining coverage, the individual or the person through whom the individual was eligible to be covered as a dependent was provided with, and signed acknowledgment of, explicit written notice in bold type specifying that failure to elect coverage during the initial enrollment period permits the plan to impose, at the time of the individual's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion, unless the individual meets the criteria specified in paragraph (1), (2), or (3).

(c) "Preexisting condition provision" means a contract provision that excludes coverage for charges or expenses incurred during a specified period following the enrollee's effective date of coverage, as to a condition for which medical advice, diagnosis, care, or treatment was recommended or received during a specified period immediately preceding the effective date of coverage.

(d) "Qualifying prior coverage" means:

(1) Any individual or group policy, contract or program, that is written or administered by a disability insurance company, nonprofit hospital service plan, health care service plan, fraternal benefits society, self-insured employer plan, or any other entity, in this state or elsewhere, and that arranges or provides medical, hospital and surgical coverage not designed to supplement other private or governmental plans. The term includes continuation or conversion coverage but does not include accident only, credit, disability income, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which

benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(2) The federal Medicare program pursuant to Title XVIII of the Social Security Act.

(3) The medicaid program pursuant to Title XIX of the Social Security Act.

(4) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital and surgical care.

(e) "Waivered condition" means a contract provision that excludes coverage for charges or expenses incurred during a specified period of time for one or more specific, identified, medical conditions.

SEC. 2. Section 1357.51 of the Health and Safety Code is amended to read:

1357.51. (a) No plan contract that covers three or more enrollees shall exclude coverage for any individual on the basis of a preexisting condition provision for a period greater than six months following the individual's effective date of coverage. Preexisting condition provisions contained in plan contracts may relate only to conditions for which medical advice, diagnosis, care, or treatment, including use of prescription drugs, was recommended or received from a licensed health practitioner during the six months immediately preceding the effective date of coverage.

(b) No plan contract that covers one or two individuals shall exclude coverage on the basis of a preexisting condition provision for a period greater than 12 months following the individual's effective date of coverage, nor shall limit or exclude coverage for a specific enrollee by type of illness, treatment, medical condition, or accident, except for satisfaction of a preexisting condition clause pursuant to this article. Preexisting condition provisions contained in plan contracts may relate only to conditions for which medical advice, diagnosis, care, or treatment, including use of prescription drugs, was recommended or received from a licensed health practitioner during the 12 months immediately preceding the effective date of coverage.

(c) A plan that does not utilize a preexisting condition provision may impose a waiting period not to exceed 60 days, before the coverage issued subject to this article shall become effective. During the waiting period, the plan is not required to provide health care services and no premium shall be charged to the subscriber or enrollee.

(d) A plan that does not utilize a preexisting condition provision in plan contracts that cover one or two individuals may impose a contract provision excluding coverage for waivered conditions. No plan may exclude coverage on the basis of a waivered condition for a period greater than 12 months following the individual's effective date of coverage. A waivered condition provision contained in plan contracts may relate only to conditions for which medical advice,

diagnosis, care, or treatment, including use of prescription drugs, was recommended or received from a licensed health practitioner during the 12 months immediately preceding the effective date of coverage.

(e) In determining whether a preexisting condition provision, a waivered condition provision, or a waiting period applies to any enrollee, a plan shall credit the time the enrollee was covered under qualifying prior coverage, provided the enrollee becomes eligible for coverage under the succeeding plan contract within 30 days of termination of prior coverage, exclusive of any waiting period, and applies for coverage under the succeeding plan within the applicable enrollment period.

However, if a person's employment has ended, the availability of health coverage offered through employment or sponsored by an employer has terminated, or an employer's contribution toward health coverage has terminated, a plan shall credit the time the person was covered under qualifying prior coverage if the person becomes eligible for health coverage offered through employment or sponsored by an employer within 90 days, exclusive of any waiting period, and applies for coverage under the succeeding plan contract within the applicable enrollment period.

(f) No plan shall exclude late enrollees from coverage for more than 12 months from the date of the late enrollee's application for coverage. No plan shall require any premium or other periodic charge to be paid by or on behalf of a late enrollee during the period of exclusion from coverage permitted by this subdivision.

SEC. 3. Section 10198.6 of the Insurance Code is amended to read:

10198.6. For purposes of this article:

(a) "Health benefit plan" means any group or individual policy or contract that provides medical, hospital, and surgical benefits. The term does not include accident only, credit, disability income, coverage of Medicare services pursuant to contracts with the United States government, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(b) "Late enrollee" means an eligible employee or dependent who has declined health coverage under a health benefit plan offered through employment or sponsored by an employer at the time of the initial enrollment period provided under the terms of the health benefit plan, and who subsequently requests enrollment in a health benefit plan of that employer; provided that the initial enrollment period shall be a period of at least 30 days. However, an eligible employee or dependent shall not be considered a late enrollee if any of the following is applicable:

(1) The individual meets all of the following requirements:

(A) The individual was covered under another employer health benefit plan at the time the individual was eligible to enroll.

(B) The individual certified, at the time of the initial enrollment that coverage under another employer health benefit plan was the reason for declining enrollment provided that, if the individual was covered under another employer health plan, the individual was given the opportunity to make the certification required by this subdivision and was notified that failure to do so could result in later treatment as a late enrollee.

(C) The individual has lost or will lose coverage under another employer health benefit plan as a result of termination of employment of the individual or of a person through whom the individual was covered as a dependent, change in employment status of the individual or of a person through whom the individual was covered as a dependent, termination of the other plan's coverage, cessation of an employer's contribution toward an employee or dependent's coverage, death of a person through whom the individual was covered as a dependent, or divorce.

(D) The individual requests enrollment within 30 days after termination of coverage, or cessation of employer contribution toward coverage provided under another employer health benefit plan.

(2) The individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period.

(3) A court has ordered that coverage be provided for a spouse or minor child under a covered employee's health benefit plan and request for enrollment is made within 30 days after issuance of the court order.

(4) The carrier cannot produce a written statement from the employer stating that, prior to declining coverage, the individual or the person through whom the individual was eligible to be covered as a dependent was provided with, and signed acknowledgment of, explicit written notice in bold type specifying that failure to elect coverage during the initial enrollment period permits the carrier to impose, at the time of the individual's later decision to elect coverage, an exclusion from coverage for a period of twelve months as well as a six month preexisting condition exclusion, unless the individual meets the criteria specified in paragraphs (1), (2), or (3).

(c) "Preexisting condition provision" means a policy provision that excludes coverage for charges or expenses incurred during a specified period following the insured's effective date of coverage, as to a condition for which medical advice, diagnosis, care, or treatment was recommended or received during a specified period immediately preceding the effective date of coverage.

(d) "Qualifying prior coverage" means:

(1) Any individual or group policy, contract or program, that is written or administered by a disability insurance company, nonprofit

hospital service plan, health care service plan, fraternal benefits society, self-insured employer plan, or any other entity, in this state or elsewhere, and that arranges or provides medical, hospital, and surgical coverage not designed to supplement other private or governmental plans. The term includes continuation or conversion coverage but does not include accident only, credit, disability income, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(2) The federal Medicare program pursuant to Title XVIII of the Social Security Act.

(3) The medicaid program pursuant to Title XIX of the Social Security Act.

(4) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital and surgical care.

SEC. 4. Section 10198.7 of the Insurance Code is amended to read:

10198.7. (a) No health benefit plan that covers three or more persons and that is issued, renewed, or written by any insurer, nonprofit hospital service plan, self-insured employee welfare benefit plan, fraternal benefits society, or any other entity shall exclude coverage for any individual on the basis of a preexisting condition provision for a period greater than six months following the individual's effective date of coverage, nor shall limit or exclude coverage for a specific insured person by type of illness, treatment, medical condition, or accident except for satisfaction of a preexisting clause pursuant to this article. Preexisting condition provisions contained in health benefit plans may relate only to conditions for which medical advice, diagnosis, care, or treatment, including use of prescription drugs, was recommended or received from a licensed health practitioner during the six months immediately preceding the effective date of coverage.

(b) No health benefit plan that covers one or two individuals and that is issued, renewed, or written by any insurer, nonprofit hospital service plan, self-insured employee welfare benefit plan, fraternal benefits society, or any other entity shall exclude coverage on the basis of a preexisting condition provision for a period greater than 12 months following the individual's effective date of coverage, nor shall limit or exclude coverage for a specific insured person by type of illness, treatment, medical condition, or accident, except for satisfaction of a preexisting condition clause pursuant to this article. Preexisting condition provisions contained in health benefit plans may relate only to conditions for which medical advice, diagnosis, care, or treatment, including use of prescription drugs, was recommended or received from a licensed health practitioner

during the 12 months immediately preceding the effective date of coverage.

(c) A carrier that does not utilize a preexisting condition provision may impose a waiting period not to exceed 60 days, before the coverage issued subject to this article shall become effective. During the waiting period, the carrier is not required to provide health care services and no premium shall be charged to the subscriber or enrollee.

(d) A carrier that does not utilize a preexisting condition provision in health plans that cover one or two individuals may impose a contract provision excluding coverage for waivered conditions. No carrier may exclude coverage on the basis of a waivered condition for a period greater than 12 months following the individual's effective date of coverage. A waivered condition provision contained in health benefit plans may relate only to conditions for which medical advice, diagnosis, care, or treatment, including use of prescription drugs, was recommended or received from a licensed health practitioner during the 12 months immediately preceding the effective date of coverage.

(e) In determining whether a preexisting condition provision, a waivered condition provision, or a waiting period applies to any person, all health benefit plans shall credit the time the person was covered under qualifying prior coverage, provided the person becomes eligible for coverage under the succeeding health benefit plan within 30 days of termination of prior coverage, exclusive of any waiting period, and applies for coverage under the succeeding plan within the applicable enrollment period. However, if a person's employment has ended, the availability of health coverage offered through employment or sponsored by an employer has terminated or, an employer's contribution toward health coverage has terminated, a carrier shall credit the time the person was covered under qualifying prior coverage if the person becomes eligible for health coverage offered through employment or sponsored by an employer within 90 days, exclusive of any waiting period, and applies for coverage under the succeeding plan within the applicable enrollment period.

(f) No health benefit plan that covers three or more persons and that is issued, renewed, or written by any insurer, nonprofit hospital service plan, self-insured employee welfare benefit plan, fraternal benefits society, or any other entity may exclude late enrollees from coverage for more than 12 months from the date of the late enrollee's application for coverage. No insurer, nonprofit hospital service plan, self-insured employee welfare benefit plan, fraternal benefits society, or any other entity shall require any premium or other periodic charge to be paid by or on behalf of a late enrollee during the period of exclusion from coverage permitted by this subdivision.

(g) Any entity providing aggregate or specific stop loss coverage or any other assumption of risk with reference to a health benefit plan shall provide that the plan meets all requirements of this article

concerning waiting periods, preexisting condition provisions, and late enrollees.

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 1053

An act to amend Section 69 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 69 of the Revenue and Taxation Code is amended to read:

69. (a) Notwithstanding any other provision of law, pursuant to Section 2 of Article XIII A of the Constitution, the base year value of property which is substantially damaged or destroyed by a disaster, as declared by the Governor, may be transferred to comparable property within the same county which is acquired or newly constructed within three years after the disaster as a replacement for the substantially damaged or destroyed property. At the time the base year value of the substantially damaged or destroyed property is transferred to the replacement property, the substantially damaged or destroyed property shall be reassessed at its full cash value; however, the substantially damaged or destroyed property shall retain its base year value notwithstanding the transfer authorized by this section. If the owner or owners of substantially damaged or destroyed property receive property tax relief under this section, that property shall not be eligible for property tax relief under subdivision (c) of Section 70 in the event of its reconstruction.

(b) The replacement base year value of the replacement property acquired shall be determined in accordance with this section.

The following procedure shall be used by the assessor in determining the appropriate replacement base year value of comparable replacement property:

(1) If the full cash value of the comparable replacement property does not exceed 120 percent of the full cash value of the property

substantially damaged or destroyed, then the adjusted base year value of the property substantially damaged or destroyed shall be transferred to the comparable replacement property as its replacement base year value.

(2) If the full cash value of the replacement property exceeds 120 percent of the full cash value of the property substantially damaged or destroyed, then the amount of the full cash value over 120 percent of the full cash value of the property substantially damaged or destroyed shall be added to the adjusted base year value of the property substantially damaged or destroyed. The sum of these amounts shall become the replacement property's replacement base year value.

(3) If the full cash value of the comparable replacement property is less than the adjusted base year value of the property substantially damaged or destroyed, then that lower value shall become the replacement property's base year value.

(4) The full cash value of the property substantially damaged or destroyed shall be the amount of its full cash value immediately prior to its substantial damage or destruction, as determined by the county assessor of the county in which the property is located.

(c) For purposes of this section:

(1) Property is substantially damaged or destroyed if it sustains physical damage amounting to more than 50 percent of its full cash value immediately prior to the disaster. Damage includes a diminution in the value of property as a result of restricted access to the property where the restricted access was caused by the disaster and is permanent in nature.

(2) Replacement property is comparable to the property substantially damaged or destroyed if it is similar in size, utility, and function to the property which it replaces.

(A) Property is similar in function if the replacement property is subject to similar governmental restrictions, such as zoning.

(B) Both the size and utility of property are interrelated and associated with value. Property is similar in size and utility only to the extent that the replacement property is, or is intended to be, used in the same manner as the property substantially damaged or destroyed and its full cash value does not exceed 120 percent of the full cash value of the property substantially damaged or destroyed.

(i) A replacement property or any portion thereof used or intended to be used for a purpose substantially different than the use made of the property substantially damaged or destroyed shall to the extent of the dissimilar use be considered not similar in utility.

(ii) A replacement property or portion thereof which satisfies the use requirement but has a full cash value which exceeds 120 percent of the full cash value of the property substantially damaged or destroyed shall be considered, to the extent of the excess, not similar in utility and size.

(C) To the extent that replacement property, or any portion thereof, is not similar in function, size, and utility, the property, or

portion thereof, shall be considered to have undergone a change in ownership when the replacement property is acquired or newly constructed.

(3) "Disaster" means a major misfortune or calamity in an area subsequently proclaimed by the Governor to be in a state of disaster as a result of the misfortune or calamity.

(d) (1) This section shall apply to any comparable replacement property acquired or newly constructed on or after July 1, 1985.

(2) The amendments made by the act adding this paragraph shall apply to any comparable replacement property that is acquired or newly constructed as a replacement for property substantially damaged or destroyed by a disaster occurring on or after October 20, 1991, and to the determination of base year values for the 1991–92 fiscal year and fiscal years thereafter.

(e) Only the owner or owners of the property substantially damaged or destroyed, whether one or more individuals, partnerships, corporations, other legal entities, or a combination thereof, shall receive property tax relief under this section. Relief under this section shall be granted to an owner or owners of substantially damaged or destroyed property obtaining title to replacement property. The acquisition of an ownership interest in a legal entity which, directly or indirectly, owns real property is not an acquisition of comparable property.

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 1054

An act to amend Sections 4980.01, 4980.03, 4980.35, 4980.37, 4980.38, 4980.40, 4980.43, 4980.45, 4980.48, and 4982 of, to repeal Section 4980.47 of, and to repeal and add Section 4980.42 of, the Business and Professions Code, relating to marriage, family, and child counselors.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 4980.01 of the Business and Professions Code is amended to read:

4980.01. (a) Nothing in this chapter shall be construed to constrict, limit, or withdraw the Medical Practice Act, the Social Work Licensing Law, the Nursing Practice Act, or the Psychology Licensing Act.

(b) This chapter shall not apply to any priest, rabbi, or minister of the gospel of any religious denomination when performing counseling services as part of his or her pastoral or professional duties, or to any person who is admitted to practice law in the state,

or who is licensed to practice medicine, when providing counseling services as part of his or her professional practice.

(c) This chapter shall not apply to an employee of a governmental entity or of a school, college, or university, or of an institution both nonprofit and charitable if his or her practice is performed solely under the supervision of the entity, school, or organization by which he or she is employed, and if he or she performs those functions as part of the position for which he or she is employed.

(d) Notwithstanding subdivisions (b) and (c) all persons registered as interns or licensed under this chapter shall not be exempt from this chapter or the jurisdiction of the board.

SEC. 2. Section 4980.03 of the Business and Professions Code is amended to read:

4980.03. (a) "Board," as used in this chapter, means the Board of Behavioral Science Examiners.

(b) "Intern," as used in this chapter, means an unlicensed person who has earned his or her master's or doctor's degree qualifying him or her for licensure and is registered with the board.

(c) "Trainee," as used in this chapter, means an unlicensed person who is currently enrolled in a master's or doctor's degree program, as specified in Section 4980.40, that is designed to qualify him or her for licensure under this chapter, and who has completed no less than 12 semester units or 18 quarter units of coursework in any qualifying degree program.

(d) "Advertise," as used in this chapter, includes, but is not limited to, the issuance of any card, sign, or device to any person, or the causing, permitting, or allowing of any sign or marking on, or in, any building or structure, or in any newspaper or magazine or in any directory, or any printed matter whatsoever, with or without any limiting qualification. It also includes business solicitations communicated by radio or television broadcasting. Signs within church buildings or notices in church bulletins mailed to a congregation shall not be construed as advertising within the meaning of this chapter.

SEC. 3. Section 4980.35 of the Business and Professions Code is amended to read:

4980.35. (a) The Legislature acknowledges that the basic obligation to provide a complete and accurate application for a marriage, family, and child counseling license lies with the applicant. At the same time, the Legislature recognizes that an effort should be made by the board to ensure that persons who enter degree programs and supervisorial training settings that meet the requirements of this chapter are enabled to discern the requirements for licensing and to take the examination when they have completed their educational and experience requirements.

(b) In order that the board, the educational institutions, and the supervisors who monitor the education and experience of applicants for licensure may develop greater cooperation, the board shall do all of the following:

(1) Apply a portion of its limited resources specifically to the task of communicating information about its activities, the requirements and qualifications for licensure, and the practice of marriage, family, and child counseling to the relevant educational institutions, supervisors, professional associations, applicants, trainees, interns, and the consuming public.

(2) Develop policies and procedures to assist educational institutions in meeting the curricula requirements of Section 4980.40 and any regulations adopted pursuant to that section, so that those educational institutions may better provide assurance to their students that the curriculum offered to fulfill the educational requirements for licensure will meet those requirements at the time of the student's application for licensure.

(3) Notify applicants in the application procedure when applications are incomplete, inaccurate, or deficient, and inform applicants of any remediation, reconsideration, or appeal procedures that may be applicable.

(4) Undertake, or cause to be undertaken, further comprehensive review, in consultation with educational institutions, professional associations, supervisors, interns, and trainees, of the supervision of interns and trainees, which shall include, but not be limited to, the following, and shall propose regulations regarding the supervision of interns and trainees which may include, but not be limited to, the following:

(A) Supervisor qualifications.

(B) Continuing education requirements of supervisors.

(C) Registration or licensing of supervisors, or both.

(D) Responsibilities of supervisors in general.

(E) The board's authority in cases of noncompliance or negligence by supervisors.

(F) The intern's and trainee's need for guidance in selecting well-balanced and high quality professional training opportunities within his or her community.

(G) The role of the supervisor in advising and encouraging his or her intern or trainee regarding the necessity or value and appropriateness of the intern or trainee engaging in personal psychotherapy, so as to enable the intern or trainee to become a more competent marriage, family, and child counselor.

SEC. 4. Section 4980.37 of the Business and Professions Code is amended to read:

4980.37. (a) In order to provide an integrated course of study and appropriate professional training, while allowing for innovation and individuality in the education of marriage, family, and child counselors, a degree program which meets the educational qualifications for licensure shall include all of the following:

(1) Provide an integrated course of study that trains students generally in the diagnosis, assessment, prognosis, and treatment of mental disorders.

(2) Prepare students to be familiar with the broad range of

matters that may arise within marriage and family relationships.

(3) Train students specifically in the application of marriage and family relationship counseling principles and methods.

(4) Encourage students to develop those personal qualities that are intimately related to the counseling situation such as integrity, sensitivity, flexibility, insight, compassion, and personal presence.

(5) Teach students a variety of effective psychotherapeutic techniques and modalities that may be utilized to improve, restore, or maintain healthy individual, couple, and family relationships.

(6) Permit an emphasis or specialization that may address any one or more of the unique and complex array of human problems, symptoms, and needs of Californians served by marriage, family, and child counselors.

(7) Prepare students to be familiar with cross-cultural mores and values, including a familiarity with the wide range of racial and ethnic backgrounds common among California's population, including, but not limited to, Blacks, Hispanics, Asians, and Native Americans.

(b) Educational institutions are encouraged to design the practica required by subdivision (b) of Section 4980.40 to include marriage, family, and child counseling experience in low-income and multicultural mental health settings.

SEC. 5. Section 4980.38 of the Business and Professions Code is amended to read:

4980.38. (a) Each educational institution preparing applicants to qualify for licensure shall notify each of its students by means of its public documents or otherwise in writing that its degree program is designed to meet the requirement of Section 4980.37 and shall certify to the board that it has so notified its students.

(b) In addition to all the other requirements for licensure, each applicant shall submit to the board a certification by the chief academic officer, or his or her designee, of the applicant's educational institution that the applicant has fulfilled the requirements enumerated in Sections 4980.37 and 4980.40, and subdivisions (a) and (d) of Section 4980.41.

(c) An applicant for an intern registration who has completed a program to update his or her degree in accordance with subdivision (k) of Section 4980.40 shall furnish to the board certification by the chief academic officer of a school, college, or university accredited by the Western Association of Schools and Colleges, or from a school, college, or university meeting accreditation standards comparable to those of the Western Association of Schools and Colleges, that the applicant has successfully completed all academic work necessary to comply with the current educational requirements for licensure as a marriage, family, and child counselor.

SEC. 6. Section 4980.40 of the Business and Professions Code is amended to read:

4980.40. To qualify for a license an applicant shall have all the following qualifications:

(a) Applicants applying for licensure on or after January 1, 1988, shall possess a doctor's or master's degree in marriage, family, and child counseling, marital and family therapy, psychology, clinical psychology, counseling psychology, counseling with an emphasis in marriage, family, and child counseling, or social work with an emphasis in clinical social work, obtained from a school, college, or university accredited by the Western Association of Schools and Colleges, the Northwest Association of Secondary and Higher Schools, or an essentially equivalent accrediting agency, as determined by the board, or approved by the Council for Private Postsecondary and Vocational Education, pursuant to subdivision (d) of Section 94310 of the Education Code. For purposes of this chapter, the term "approved by the Council for Private Postsecondary and Vocational Education" shall not include temporary, conditional, or any other type of interim approval. In order to qualify for licensure pursuant to this subdivision, any doctor's or master's degree program shall contain no less than 48 semester or 72 quarter units of instruction. The instruction shall include no less than 12 semester units or 18 quarter units of coursework in the areas of marriage, family, and child counseling, and marital and family systems approaches to treatment.

The coursework shall include all of the following areas:

(1) The salient theories of a variety of psychotherapeutic orientations directly related to marriage, family, and child counseling, and marital and family systems approaches to treatment.

(2) Theories of marriage and family therapy and how they can be utilized in order to intervene therapeutically with couples, families, adults, children, and groups.

(3) Developmental issues and life events from infancy to old age and their effect upon individuals, couples, and family relationships. This may include coursework that focuses on specific family life events and the psychological, psychotherapeutic, and health implications that arise within couples and families, including, but not limited to, childbirth, child rearing, childhood, adolescence, adulthood, marriage, divorce, blended families, stepparenting, and geropsychology.

(4) A variety of approaches to the treatment of children.

The board may, by regulation, further define the content requirements of required courses specified in this subdivision.

(b) (1) In addition to the 12 semester or 18 quarter units of coursework specified above, the doctor's or master's degree program shall contain not less than six semester or nine quarter units of supervised practicum in applied psychotherapeutic techniques, assessment, diagnosis, prognosis, and treatment of premarital, couple, family, and child relationships, including dysfunctions, healthy functioning, health promotion, and illness prevention, in a supervised clinical placement that provides supervised fieldwork experience within the scope of practice of a marriage, family, and child counselor.

(2) On and after January 1, 1995, the practicum shall include a minimum of 150 hours of face-to-face experience counseling individuals, couples, families, or groups.

(3) (A) Supervised practicum hours, as specified in this subdivision, shall be evaluated, accepted, and credited as hours for trainee experience by the board.

(B) The practicum hours shall be considered as part of the 48 semester or 72 quarter unit requirement.

(c) As an alternative to meeting the qualifications specified in subdivision (a), the board shall accept as equivalent degrees, those master's or doctor's degrees granted by educational institutions whose degree program is approved by the Commission on Accreditation for Marriage and Family Therapy Education.

(d) All applicants shall, in addition, complete the coursework or training specified in Section 4980.41.

(e) All applicants shall be at least 18 years of age.

(f) All applicants shall have at least two years' experience that meets the requirements of this chapter in interpersonal relationships, marriage, family, and child counseling and psychotherapy under the supervision of a licensed marriage, family, and child counselor, licensed clinical social worker, licensed psychologist, or a licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology. Experience shall not be gained under the supervision of an individual who has provided therapeutic services to that applicant. For those supervisorial relationships in effect on or before December 31, 1988, and which remain in continuous effect thereafter, experience may be gained under the supervision of a licensed physician who has completed a residency in psychiatry.

(g) The applicant shall pass a written examination and an oral examination conducted by the board or its designees.

(h) The applicant shall not have committed acts or crimes constituting grounds for denial of licensure under Section 480.

(i) Applicants applying for licensure on or before December 31, 1987, shall possess all of the qualifications specified in subdivisions (e) to (h), inclusive, and shall possess a doctor's or master's degree in marriage, family, and child counseling, social work, clinical psychology, counseling, counseling psychology, child development and family studies, or a degree determined by the board to be equivalent, obtained from a school, college, or university accredited by the Western Association of Schools and Colleges, the Northwest Association of Secondary and Higher Schools, or an essentially equivalent accrediting agency as determined by the board.

(j) For applicants applying for a license pursuant to subdivision (i), the board may make a determination that an applicant's master's or doctor's degree is an equivalent degree if it finds that the degree was issued upon completion of a course of academic study primarily designed to train persons as a marriage, family, and child counselor. The course of study completed by the applicant shall contain not less

than 30 semester or 45 quarter units of coursework as follows: (1) human biological, psychological, and social development, (2) human sexuality, (3) psychopathology, (4) cross-cultural mores and values, (5) theories of marriage, family, and child counseling, (6) professional ethics and law, (7) human communication, (8) research methodology, (9) theories and applications of psychological testing, and (10) not less than six semester or nine quarter units of supervised practicum in applied psychotherapeutic techniques, assessment, diagnosis, prognosis, and treatment of premarital, family, and child relationship dysfunctions. The applicant shall submit to the board satisfactory written verification by the chief academic officer of the accredited or approved school, or by an authorized designee, that the applicant has successfully completed courses, including the practicum required by the board. The verification shall include, but need not be limited to, descriptions of the completed courses. The board may request further written verification of course content and academic experience to determine that the applicant's training and experience is equivalent to the course of instruction required by this section.

(k) (1) An applicant applying for intern registration who, prior to December 31, 1987, met the qualifications for registration, but who failed to apply or qualify for intern registration may be granted an intern registration if the applicant meets all of the following criteria:

(A) The applicant possesses a doctor's or master's degree in marriage, family, and child counseling, marital and family therapy, psychology, clinical psychology, counseling psychology, counseling with an emphasis in marriage, family, and child counseling, or social work with an emphasis in clinical social work obtained from a school, college, or university currently conferring that degree that, at the time the degree was conferred, was accredited by the Western Association of Schools and Colleges, and where the degree conferred was, at the time it was conferred, specifically intended to satisfy the educational requirements for licensure by the Board of Behavioral Science Examiners.

(B) The applicant's degree and the course content of the instruction underlying that degree have been evaluated by the chief academic officer of a school, college, or university accredited by the Western Association of Schools and Colleges to determine the extent to which the applicant's degree program satisfies the current educational requirements for licensure, and the chief academic officer certifies to the board the amount and type of instruction needed to meet the current requirements.

(C) The applicant completes a plan of instruction that has been approved by the board at a school, college, or university accredited by the Western Association of Schools and Colleges that the chief academic officer of the educational institution has, pursuant to subparagraph (B), certified will meet the current educational requirements when considered in conjunction with the original degree.

(2) A person applying under this subdivision shall be considered a trainee, as that term is defined in Section 4980.03, once he or she is enrolled to complete the additional coursework necessary to meet the current educational requirements for licensure.

SEC. 7. Section 4980.42 of the Business and Professions Code is repealed.

SEC. 8. Section 4980.42 is added to the Business and Professions Code, to read:

4980.42. (a) Trainees performing services in any work setting specified in subdivision (e) of Section 4980.43 may perform those activities and services as a trainee, provided that the activities and services constitute part of the trainee's supervised course of study and that the person is designated by the title "trainee." Trainees may gain hours of experience outside the required practicum. Those hours shall be subject to the requirements of subdivision (b) and to the other requirements of this chapter.

(b) On and after January 1, 1995, all hours of experience gained as a trainee shall be coordinated between the school and the site where the hours are being accrued. The school shall approve each site and shall have a written agreement with each site that details each party's responsibilities, including the methods by which supervision shall be provided. The agreement shall provide for regular progress reports and evaluations of the student's performance at the site. If an applicant has gained hours of experience while enrolled in an institution other than the one that confers the qualifying degree, it shall be the applicant's responsibility to provide to the board satisfactory evidence that those hours of trainee experience were gained in compliance with this section.

SEC. 9. 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. For those applicants who enroll in a qualifying degree program on or after January 1, 1995, not more than 750 hours of counseling and direct supervisor contact may be obtained prior to the granting of the qualifying master's or doctor's degree, provided, however, that this limitation shall not be interpreted to include professional enrichment activities. Except for personal psychotherapy hours gained after enrollment and commencement of classes in a qualifying degree program, 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) All experience shall be at all times under the supervision of a

supervisor who shall be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised, and who shall be responsible to the board for compliance with all laws, rules, and regulations governing the practice of marriage, family, and child counseling. Experience shall be gained by interns and trainees either as an employee or as a volunteer in any allowable work setting specified in this chapter. The requirements of this chapter regarding gaining hours of experience and supervision are applicable equally to employees and volunteers. Experience shall not be gained by interns or trainees as an independent contractor.

(c) Supervision shall include at least one hour of direct supervisor contact for each week of experience claimed. A trainee shall also receive an average of at least one hour of direct supervisor contact for every five hours of client contact in each setting in which experience is gained. An intern shall also receive an average of at least one hour of direct supervisor contact for every 10 hours of client contact in each setting in which experience is gained. For purposes of this section, "one hour of direct supervisor contact" means one hour of face-to-face contact on an individual basis or two hours of face-to-face contact in a group of not more than eight persons. The contact may be counted toward the experience requirement for licensure, up to the maximum permitted by subdivision (d). All experience gained by a trainee shall be monitored by the supervisor as specified in regulation. The 5 to 1 and 10 to 1 ratios specified in this subdivision shall be applicable to all hours gained on or after January 1, 1995.

(d) (1) The experience required by Section 4980.40 shall include supervised marriage, family, and child counseling, and up to one-third of the hours may include direct supervisor contact and other professional enrichment activities.

(2) "Professional enrichment activities," for the purposes of this section, may include group, marital or conjoint, family, or individual psychotherapy received by an applicant. This psychotherapy may include up to 100 hours taken subsequent to enrolling and commencing classes in a qualifying degree program, or as an intern, and each of those hours shall be triple-counted toward the professional experience requirement. This psychotherapy shall be performed by a licensed marriage, family, and child counselor, licensed clinical social worker, licensed psychologist, licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology, or a licensed physician who has completed a residency in psychiatry.

(e) The experience required by 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.

(f) The experience required by Section 4980.40 may be gained as an intern as specified in subdivision (e) 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 of those 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.

(g) 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 (h), all postdegree hours shall be gained as a registered intern.

(h) 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.

(i) Trainees and interns shall not receive any remuneration from patients or clients, and shall only be paid by their employer.

(j) Trainees and interns shall only perform services at the place where their employer regularly conducts business, which may include performing services at other locations, so long as the services are performed pursuant to the direction and under the control of their employer and supervisor, and in compliance with the laws and regulations pertaining to supervision. Trainees and interns shall have no proprietary interest in that business.

(k) An intern or trainee who provides volunteered services or other services, and who receives no more than a total, from all work settings, of five hundred dollars ($500) per month as reimbursement for expenses actually incurred by that intern or trainee for services rendered in any lawful work setting other than a private practice shall be considered an employee and not an independent contractor. The board may audit applicants who receive reimbursement for expenses, and the applicant shall have the burden of demonstrating that the payments received were for reimbursement of expenses actually incurred.

(*l*) Each educational institution preparing applicants for licensure pursuant to this chapter shall consider requiring, and shall encourage, its students to undergo individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Each supervisor shall consider, advise, and encourage his or her interns

and trainees regarding the advisability of undertaking individual, marital or conjoint, family, or group counseling or psychotherapy as appropriate. Insofar as it is deemed appropriate and is desired by the applicant, the educational institution and supervisors are encouraged to assist the applicant in locating that counseling or psychotherapy at a reasonable cost.

SEC. 10. Section 4980.45 of the Business and Professions Code is amended to read:

4980.45. (a) A licensed professional in private practice who is a marriage, family, and child counselor, a psychologist, a clinical social worker, a licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology, or a licensed physician who has completed a residency in psychiatry and who is described in subdivision (f) of Section 4980.40 may supervise or employ, at any one time, no more than two unlicensed marriage, family, and child counselor registered interns in that private practice.

(b) A marriage, family, and child counseling corporation, as defined in Section 4987.5, may employ, at any one time, no more than two registered interns for each employee or shareholder who is qualified to provide supervision pursuant to subdivision (f) of Section 4980.40. In no event shall any corporation employ, at any one time, more than 10 registered interns. In no event shall any supervisor supervise, at any one time, more than two registered interns. Persons who supervise interns shall be employed full time by the professional corporation and shall be actively engaged in performing professional services at and for the professional corporation. Employment and supervision within a marriage, family, and child counseling corporation shall be subject to all laws and regulations governing experience and supervision gained in a private practice setting.

(c) Within 30 days of employment and within 30 days of termination of employment, in any allowable work setting, a registered intern shall notify the board in writing of the employment of termination of employment. The notice shall include the name of the registered intern the full name and business address of the employer, the type of work setting where the intern is gaining hours of experience, and the date employment commenced or terminated. If an intern fails to notify the board within 30 days after the date of his or her employment of termination of employment, the board shall not accept any hours of experience gained during that period of employment prior to notification for the purposes of meeting the experience requirements for licensure. The board, may, at its discretion, waive this requirement when it believes good cause exists. "Employment," as used in this section, means the gaining of hours of experience in an allowable setting as an employee or as a volunteer. This subdivision shall not apply to hours gained on or after January 1, of 1994.

SEC. 11. Section 4980.47 of the Business and Professions Code is repealed.

SEC. 12. Section 4980.48 of the Business and Professions Code is amended to read:

4980.48. A trainee shall inform each client or patient, prior to performing any professional services, that he or she is unlicensed and under the supervision of a licensed marriage, family, and child counselor, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology.

SEC. 13. Section 4982 of the Business and Professions Code is amended to read:

4982. The board may refuse to issue any registration or license, or may suspend or revoke the license or registration of any registrant or licensee if the applicant, licensee, or registrant has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing any such person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using of any of the dangerous drugs specified in Section 4211, or of any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license, or the conviction of more than one

misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof. The board shall deny an application for a registration or license or revoke the license or registration of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing marriage, family, and child counseling services.

(d) Gross negligence or incompetence in the performance of marriage, family, and child counseling.

(e) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

(f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

(g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee, allowing any other person to use his or her license or registration.

(h) Aiding or abetting, or employing, directly or indirectly, any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

(i) Intentionally or recklessly causing physical or emotional harm to any client.

(j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

(k) Engaging in sexual relations with a client, or a former client within two years following termination of therapy, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a marriage, family, and child counselor.

(*l*) Performing, or holding one's self out as being able to perform, or offering to perform, or permitting any registered trainee or registered intern under supervision to perform, any professional services beyond the scope of the license authorized by this chapter.

(m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client which is obtained from tests or other means.

(n) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation,

or remuneration shall be in relation to professional counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

(p) Advertising in a manner which is false, misleading, or deceptive.

(q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

(r) Any conduct in the supervision of any registered intern or registered trainee by any licensee that violates this chapter or any rules or regulations adopted by the board.

(s) Performing or holding one's self out as being able to perform, professional services beyond the scope of one's competence, as established by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license authorized by this chapter.

(t) Permitting a registered trainee or registered intern under one's supervision or control to perform, or permitting the registered trainee or registered intern to hold one's self out as competent to perform, professional services beyond the registered trainee's or registered intern's level of education, training, or experience.

(u) The violation of any statute or regulation governing the gaining and supervision of experience required by this chapter.

SEC. 14. 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 add Section 1562.5 to the Health and Safety Code, relating to community care facilities.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 1562.5 is added to the Health and Safety Code, to read:

1562.5. (a) The director shall ensure that within six months of obtaining licensure, an administrator of an adult residential facility and a program director of a social rehabilitation facility shall receive four hours of training on the needs of residents who may be infected with the human immunodeficiency virus (HIV), and on basic information about tuberculosis. Administrators and program directors shall attend update trainings every two years after satisfactorily completing the initial training to ensure that information received on HIV and tuberculosis remains current. The training shall consist of three hours on HIV and one hour on tuberculosis.

(b) The training shall consist of all of the following:

(1) Universal blood and body fluid precautions.

(2) Basic AIDS and HIV information, including modes of transmission.

(3) Legal protections for persons with HIV or AIDS.

(4) Referral information to local government, community-based, and other organizations that provide social, support or health services and social services to people with HIV or AIDS.

(5) Information about the residential care needs of people living with HIV or AIDS, including nutritional needs.

(6) Recognition of the signs and symptoms of tuberculosis.

(7) Tuberculosis testing requirements for staff, volunteers, and residents.

(8) Tuberculosis prevention.

(9) Tuberculosis treatment.

(c) The department shall ensure compliance with this section. In the event of noncompliance, the director shall develop and implement a plan of correction requiring that the training take place within six months of the violation.

(d) All administrators of adult residential and program directors of social rehabilitation facilities licensed on or before January 1, 1994, shall complete the training by December 31, 1994, and every two years thereafter. Newly employed administrators and program directors shall complete training within six months of commencing employment.

(e) Eligible providers of training and study courses shall be

limited to any of the following:

(1) County and city health departments.

(2) American Lung Association affiliates.

(3) Any agency with a contract to provide HIV, AIDS, or tuberculosis education with either the State Department of Health Services, or the federal Centers for Disease Control.

(4) The California Association of AIDS Agencies.

(5) Any providers approved by the State Department of Social Services for training of personnel employed in residential care facilities for the elderly, adult residential facilities, or residential care facilities for the chronically ill.

(f) Providers shall use HIV, AIDS, and tuberculosis materials produced, approved, or distributed by any of the following:

(1) The federal Centers for Disease Control.

(2) The American Lung Association.

(3) The University of California.

(4) The California Association of AIDS Agencies.

(5) The California AIDS Clearinghouse.

(6) County and city health departments.

(g) In the event that an administrator or program director demonstrates to the department a significant difficulty accessing training, the administrators and program directors of these facilities shall have the option of fulfilling these training requirements through a study course consisting of written and/or video educational materials.

(h) Successful completion of the training or study course by administrators and program directors and the biannual update described in this section shall be verified with the department during the annual review of the facility pursuant to subdivision (a) of Section 1534. Trained administrators and program directors shall disseminate the HIV, AIDS, and tuberculosis materials to facility personnel.

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 1056

An act to amend Sections 15339.25, 15339.26, and 15339.28 of the Government Code, relating to state contracts.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 15339.25 of the Government Code is amended to read:

15339.25. (a) The Legislature finds and declares that the expansion and development of for-profit and nonprofit businesses owned or operated by women, minorities, and disabled persons is vital to the overall growth and health of the California economy and further that ethnic groups by the year 2010 will become the majority of the state's population and will have a significant impact on the state's economy.

(b) No state entity is charged with collecting and interpreting business-related data which helps identify the reasons why minority, disabled person, and women-owned or operated businesses have significantly lower business participation rates than their nonminority male or nondisabled counterparts.

(c) The collection and dissemination of data and information pertaining to businesses owned by minorities, women, and disabled persons will assist state government to take corrective action on, and to enact, programs and policies designed to encourage the full incorporation of those businesses into the California economy.

SEC. 2. Section 15339.26 of the Government Code is amended to read:

15339.26. The University of California is requested to conduct a study to review, analyze, and document information regarding the status of the state's minority, disabled person, and women-owned or operated businesses and their impact on the state's economy. The guidance of the California Policy Seminar may be sought in designing and undertaking the study.

SEC. 3. Section 15339.28 of the Government Code is amended to read:

15339.28. The study shall collect data that shall include, but not be limited to, the following areas:

(a) Business industry or industries in which minority, disabled person, and women-owned or operated businesses are concentrated.

(b) Rates of ownership or operation of businesses by minorities, disabled persons, and women, including the number of businesses owned per thousand.

(c) Number of employees, annual payroll, and overall record of sales and gross receipts.

(d) A description of state business development programs

designed to support women, disabled person, and minority-owned or operated businesses.

(e) A comparison of the above factors with nonminority male and nondisabled business owners.

CHAPTER 1057

An act to amend Sections 18618, 18711, 18800, 18804, 18805, 18806, 18807, 18809, 18810, 18811, 18812, 18813, 18814, 18817, 18819, 18824, 18882, and 18888 of, and to add Sections 18808 and 18815 to, the Business and Professions Code, relating to professions and vocations.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 18618 of the Business and Professions Code is amended to read:

18618. The commission shall furnish to the Senate Committee on Business and Professions and the Assembly Committee on Governmental Organization a report on or before July 30 of each year which indicates the amount of the assessment collected from each promoter pursuant to Section 18711 and the purposes for which moneys in the account were expended.

SEC. 2. Section 18711 of the Business and Professions Code is amended to read:

18711. (a) The commission shall require, as a condition of licensure and as a part of the application process, the examination by a licensed physician and surgeon who specializes in neurology and neurosurgery of each applicant for a license as a professional boxer or, if for the renewal of a license, this examination every year if the boxer has boxed within the preceding year, in addition to any other medical examinations. The physician may recommend any additional tests he or she deems necessary. On the basis of that examination and any additional tests that are conducted, the physician may recommend to the commission whether the applicant may be permitted to be licensed in California or not. The executive officer shall review these recommendations and report any denials of licensure. If, as a result of these recommendations, the executive officer refuses to grant the applicant a license, the applicant shall not box in California until the denial has been overruled by the commission as provided in this chapter.

(b) In the event that an applicant for licensure as a professional boxer undergoes a neurological examination for purposes of licensure within the 120-day period immediately preceding the normal expiration of that license the applicant shall not be required to undergo an additional neurological examination within the

following calendar year unless the commission, for cause, orders that the examination be taken. The commission shall notify all commission approved physicians and referees that the commission has the authority to order any professional boxer to undergo a neurological examination.

(c) The cost of the examinations required by this section shall be paid from assessments on promoters of professional boxing matches and by managers and professional boxers in California. The rate of assessment shall be set by the commission, without the requirement of adoption of regulations, and shall cover all costs associated with the requirements of this section. This assessment shall be imposed on all professional boxing matches which occur on and after January 1, 1986. All moneys received by the commission pursuant to this section shall be deposited in and credited to the Athletic Commission Fund.

SEC. 3. Section 18800 of the Business and Professions Code is amended to read:

18800. (a) All moneys received by the commission under the provisions of this chapter shall be accounted for and reported by detailed statements furnished by the commission to the Controller at least once a month, and at the same time, such moneys shall be remitted to the Treasurer and shall be deposited in the Athletic Commission Fund, which is hereby created.

(b) All moneys deposited in the Athletic Commission Fund pursuant to Section 18800 which have been received by the commission pursuant to Sections 18882 and 18888, are hereby continuously appropriated as follows:

(1) Moneys in the Boxers' Pension Account for purposes of the pension plan established under Section 18881.

(2) Moneys in the Disability Insurance Program Account for purposes of the disability insurance program established under Section 18887.

SEC. 4. Section 18804 of the Business and Professions Code is amended to read:

18804. The application and renewal fee for a license to promote or conduct a professional contest or exhibition shall be one thousand dollars ($1,000).

SEC. 5. Section 18805 of the Business and Professions Code is amended to read:

18805. The application and renewal fee for a license to promote or conduct amateur boxing contests shall be two hundred fifty dollars ($250).

SEC. 6. Section 18806 of the Business and Professions Code is amended to read:

18806. The application and renewal fee for a boxing, kickboxing, or martial arts matchmaker's license shall be two hundred dollars ($200).

SEC. 7. Section 18807 of the Business and Professions Code is amended to read:

18807. The application and renewal fee for a boxing, kickboxing,

or martial arts assistant matchmaker's license shall be two hundred dollars ($200).

SEC. 8. Section 18808 is added to the Business and Professions Code, to read:

18808. The application and renewal fee for a booking agent's license shall be two hundred dollars ($200).

SEC. 9. Section 18809 of the Business and Professions Code is amended to read:

18809. The application and renewal fee for a professional boxer, kickboxer, or martial arts fighter license shall be sixty dollars ($60).

SEC. 10. Section 18810 of the Business and Professions Code is amended to read:

18810. The application and renewal fee for a boxing, kickboxing, and martial arts manager's license shall be one hundred fifty dollars ($150).

SEC. 11. Section 18811 of the Business and Professions Code is amended to read:

18811. The application and renewal fee for a boxing, kickboxing, and martial arts trainer's license, chief second's and second's license shall be fifty dollars ($50).

SEC. 12. Section 18812 of the Business and Professions Code is amended to read:

18812. The application and renewal fee for a professional boxing, kickboxing, and martial arts referee's or judge's license shall be one hundred fifty dollars ($150).

SEC. 13. Section 18813 of the Business and Professions Code is amended to read:

18813. The application and renewal fee for an amateur boxing, kickboxing, and martial arts referee's and judge's license shall be seventy-five dollars ($75).

SEC. 14. Section 18814 of the Business and Professions Code is amended to read:

18814. The application and renewal fee for a timekeeper's, announcer's, ticket taker's, ticket seller's, and box office personnel license shall be fifty dollars ($50) unless the commission establishes a lower fee by regulation.

SEC. 15. Section 18815 is added to the Business and Professions Code, to read:

18815. The application and renewal fee for a sparring permit shall be twenty-five dollars ($25).

SEC. 16. Section 18817 of the Business and Professions Code is amended to read:

18817. The application and renewal fee for professional boxers' training gymnasium shall not exceed two hundred dollars ($200).

SEC. 17. Section 18819 of the Business and Professions Code is amended to read:

18819. The fee for a simultaneous telecast permit under Section 18831 shall be fifty dollars ($50) per event.

SEC. 18. Section 18824 of the Business and Professions Code is

amended to read:

18824. Except as provided in Section 18646 and Section 18832, every person who conducts a contest or wrestling exhibition shall, within 72 hours after the determination of every contest or wrestling exhibition for which admission is charged and received, furnish to the commission a written report executed under penalty of perjury by one of the officers, showing the number of tickets issued or sold for the contest or wrestling exhibition, the amount of the gross receipts or value thereof, and the gross price charged directly or indirectly and no matter by whom received, for the sale, lease, or other exploitation of broadcasting and television rights of the contest or wrestling exhibition, and without any deductions, except for expenses incurred for one broadcast announcer, telephone line connection, and transmission mobile equipment facility, which may be deducted from the gross taxable base when those expenses are approved by the commission. The person shall also, within the same time, pay to the commission a 5-percent fee, exclusive of any federal taxes paid thereon, of the amount paid for admission to the contest or wrestling exhibition, and of the gross price as described above for the sale, lease, or other exploitation of broadcasting or television rights thereof, except that in no case shall the fee be less than one thousand dollars ($1,000). The minimum fee for an amateur contest or exhibition shall not be less than five hundred dollars ($500). The amount of the gross receipts upon which the fee provided for in this section is calculated shall not include any assessments levied by the commission under Section 18711.

The fee on admission shall apply to the amount actually paid for admission and not to the regular established price.

No fee is due in the case of a person admitted free of charge; provided, however, if the total number of persons admitted free of charge to a boxing, kickboxing, or martial arts contest or wrestling exhibition exceeds 25 percent of the total number of spectators, then a fee of one dollar ($1) per complimentary ticket or pass used to gain admission to the contest shall be paid to the commission for each complimentary ticket or pass that exceeds the numerical total of 25 percent of the total number of spectators.

As used in this section, "person" includes a promoter, club, individual, corporation, partnership, association or other organization, and "wrestling exhibition" means a performance of wrestling skills and techniques by two or more individuals, to which admission is charged or which is broadcast or televised, in which the participating individuals are not required to use their best efforts in order to win, and for which the winner may have been selected before the performance commences.

SEC. 19. Section 18882 of the Business and Professions Code is amended to read:

18882. (a) At the time of payment of the fee required by Section 18824, a promoter shall pay to the commission all amounts scheduled for contribution to the pension plan. At the time of payment of any

purse to the boxer and his or her manager, the inspector or other duly authorized representative of the commission shall withhold their contributions to the pension plan.

(b) All contributions from professional boxers, managers, and promoters to finance the pension plan shall be deposited in and credited to the Boxers' Pension Account, which is hereby created in the Athletic Commission Fund. The money in the Boxers' Pension Account shall be used exclusively for the purposes and administration of the pension plan.

(c) Except as otherwise provided in this subdivision, the commission or its designee shall invest the money contained in the Boxers' Pension Account as other state funds are invested. The commission or its designee may also invest money from such account in group annuity contracts.

SEC. 20. Section 18888 of the Business and Professions Code is amended to read:

18888. (a) All contributions from professional boxers, managers, and promoters to finance the disability insurance program may be deposited in and credited to the Disability Insurance Account, which is hereby created in the Athletic Commission Fund. The money in the Disability Insurance Account shall be used exclusively for the purposes and administration of the disability insurance program.

(b) Contributions to the disability insurance program shall be collected and invested by the commission as provided in Section 18881.

CHAPTER 1058

An act to add Section 73.5 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 73.5 is added to the Revenue and Taxation Code, to read:

73.5. (a) For purposes of subdivision (a) of Section 2 of Article XIII A of the California Constitution, the term "newly constructed" does not include that portion of any improvement to real property that consists of the installation of water conservation equipment for agricultural use.

(b) For purposes of this section:

(1) "Water conservation equipment" means any device, system, pipeline, mechanism, or improvement that is installed to replace or improve an existing system and the use of which results in an actual reduction in water usage. For purposes of this paragraph, an "actual

reduction in water usage" means a significant reduction in the amount of water that does any of the following:

(A) Leaches below the crop root zone and joins a groundwater body that is not suitable for crop irrigation.

(B) Runs off a field and flows to a surface water body that is not suitable for crop irrigation.

(C) Seeps from an on-farm reservoir, canal, or ditch and joins a groundwater body that is not suitable for crop irrigation.

(D) Evaporates from the soil surface or from a water surface or an on-farm reservoir, canal, or ditch.

(E) Evaporates or transpires from the crop canopy.

(F) Spills from an on-farm reservoir, canal, or ditch that joins a surface water body that is not suitable for crop irrigation.

(2) "Agricultural use" means the use of land for the purpose of producing an agricultural commodity for commercial purposes.

(c) (1) The exclusion established in this section shall only apply if the taxpayer obtains, at the taxpayer's expense and prior to the purchase of the equipment proposed to be excluded, the certification of a registered civil engineer, registered agricultural engineer, or certified irrigation designer that the use of that equipment will result in an actual reduction in water usage.

(2) An engineer or designer described in paragraph (1) shall be independent of the purchaser, seller, or manufacturer of the water conservation equipment, and shall include in his or her certification a registration or certification number to verify that he or she is registered or certified in this state.

(3) The taxpayer shall retain for his or her own records a copy of any certification obtained under paragraph (1), and shall provide a copy of that certification to the assessor upon the assessor's request.

SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, this act shall become operative only if Senate Constitutional Amendment 4 of the 1993–94 Regular Session is approved by the voters and becomes operative, and in that event this act shall become operative on the same date as that measure.

CHAPTER 1059

An act to amend Section 769.75 of the Insurance Code, relating to insurance.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 769.75 of the Insurance Code is amended 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 timeframes.

(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) 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.

(d) With respect to an agent who is an employee of an insurer, or an agent who by contract either represents only one insurer or group of insurers or is required by contract to submit risks to a specified insurer or group of affiliated insurers prior to submitting them to others, this section is not intended to prevent the insurer from managing the profitability of its business through the exercise of lawful management techniques, not inconsistent with subdivisions (a) and (b), such as the following:

(1) Training, continuing education, and counseling of an agent with high loss ratio experience where the insurer's program is focused on the agent's compliance with company policies, procedures, and underwriting guidelines, including the

establishment of performance improvement criteria and restrictions on binding and underwriting authority.

(2) Disciplinary action, including possible termination, of an agent who fails to comply with lawfully imposed corrective actions.

(e) 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.

CHAPTER 1060

An act to repeal Chapter 13.5 (commencing with Section 26250) of Part 2 of Division 2 of Title 3 of the Government Code, and to add Chapter 4 (commencing with Section 7275) to Part 1.6 of Division 2 of the Revenue and Taxation Code, relating to taxation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Chapter 13.5 (commencing with Section 26250) of Part 2 of Division 2 of Title 3 of the Government Code is repealed.

SEC. 2. Chapter 4 (commencing with Section 7275) is added to Part 1.6 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 4. REFUNDS OF UNCONSTITUTIONAL TAXES

7275. (a) Where a tax levied in a county in conformity with Part 1.6 (commencing with Section 7251) has been determined to be unconstitutional in a final and nonappealable decision of a court of competent jurisdiction and the revenues derived from that unconstitutional tax are paid to the board and held in an impound account, the board shall administer refunds and reimbursements of those illegally collected taxes in accordance with the provisions of this chapter.

(b) (1) Notwithstanding any other provision of law, on and after the effective date of the act adding this chapter, the procedures for refund or reimbursement of unconstitutional taxes contained in this chapter constitute the sole remedies for refund or reimbursement of illegal taxes as described in subdivision (a).

(2) Claims for refund of illegally collected taxes as described in subdivision (a) that were filed prior to the effective date of the act adding this chapter that have not been paid before that date shall be processed and paid to purchasers in accordance with the provisions of this chapter, regardless of whether the purchaser or the retailer filed the claim. Nothing in the act adding this chapter shall be

construed to require refiling of those previously filed claims for refund.

(c) Notwithstanding the provisions of Section 6902, the period of limitations specified in subparagraph (B) of paragraph (3) of subdivision (b) of Section 7277 shall apply to any claims for refund that are payable from any revenues paid to the board and held in an impound account which are derived from the unconstitutional tax.

(d) No later than 10 days from the date the decision determining the contested tax to be unconstitutional is final and nonappealable, the court shall order the entity that levied the unconstitutional tax to pay the impounded revenues to the board which shall immediately deposit them in a segregated impound account in the Retail Sales Tax Fund. The moneys so deposited, together with any interest thereon, shall be used as follows:

(1) To satisfy in full all valid claims for refund filed prior to the effective date of the act adding this chapter, in amounts as verified by audit of the records of the board.

(2) To fund a reserve account, in an amount to be determined by the board, with the approval of the Department of Finance, to fund refund and reimbursement of moneys from illegally collected taxes as described in subdivision (a), liability for which arises out of audit assessments occurring after the date of the act adding this chapter.

(A) Moneys derived from the unconstitutional tax described in subdivision (a) received by the board after the date the board receives the impounded revenues as provided in subdivision (d) shall be deposited in the reserve account provided by this subdivision.

(B) This reserve account shall be maintained for 10 years from the date the board deposits the revenues in the segregated account in the Retail Sales Tax Fund provided by this subdivision.

(i) Any amount deposited in the reserve account shall be used to pay other refunds or reimbursements to taxpayers within 12 months of deposit. Amounts not used for refunds or reimbursements within 12 months of deposit shall be transferred to the county in which the unconstitutional tax was levied for deposit in that county's general fund.

(ii) Upon termination of the 10-year period, any moneys remaining in this segregated account shall be transferred to the county in which the unconstitutional tax was levied for deposit in that county's general fund.

(3) To satisfy valid claims for refund filed after the effective date of the act adding this chapter as described in Section 7277.

(4) To reimburse the board's actual and reasonable costs of administering the refunds and reimbursements provided in this chapter, as approved by the Department of Finance.

(5) To reimburse losses resulting from the tax credit provided by Section 7276. In reimbursing those losses, the board may use its best estimates, based on historical allocation information, as to the amount of those losses. Any entity receiving the impounded moneys

rather than the taxes being credited shall suffer no impairment of revenues and the timing and receipt as well as the amount of revenues shall not be adversely affected by the credit. Any security arrangement that the board has with any entity receiving impounded moneys, including, but not limited to, provisions requiring the transfer of revenues to a bond trustee, shall remain in full force and effect during the period of the credit, and any pledge of tax revenues shall apply with equal force and effect to the impounded moneys distributed to those entities by the board in lieu of the credited tax revenues, without any further action required by the entity of the board.

(e) Any impounded moneys subject to refund or reimbursement pursuant to this chapter that are not used for that purpose or not deposited in the reserve account described in subdivision (d) shall be transmitted to the county in which the unconstitutional tax was levied for deposit in that county's general fund.

(f) For the purposes of bringing an action against the board for recovery of the whole or any part of the amount claimed as an overpayment of unconstitutional taxes as described in subdivision (a), the six-month period provided in Section 6934 shall not commence until the one-year claim period provided by Section 7277 has expired pursuant to the terms of this chapter. Suits for refund shall be brought in accordance with the provisions of Article 2 (commencing with Section 6931) of Chapter 7 of Part 1.

7276. Any taxpayers located in the jurisdiction in which an unconstitutional tax as described in subdivision (a) of Section 7275 was levied may claim a credit against their total amount of state and county sales or use tax as follows:

(a) An eligible taxpayer shall report sales and use taxes at the rates lawfully in effect in the county but may claim a credit against the total amount of state and local taxes, under rules to be promulgated by the board, in the amount of 0.75 percent. For the purpose of this section, "eligible taxpayer" means any person who resides in, or whose place of business is located in, the county in which the unconstitutional tax as described in subdivision (a) of Section 7275 was imposed, and who is required to report and pay sales tax under Chapter 2 (commencing with Section 6051) of Part 1 and any person required to report and pay or report and collect use tax under Chapter 3 (commencing with Section 6201) of Part 1.

(b) An eligible taxpayer who claims the credit provided in subdivision (a) shall remit to the board all reported tax moneys except those which represent the amount of the credit. Amounts reported, but not remitted under subdivision (a), shall be deemed to have been paid in full. Amounts not reported shall remain subject to assessment under Chapter 5 (commencing with Section 6451) of Part 1. The portion of those assessments representing this tax credit shall be paid from the reserve account provided by paragraph (2) of subdivision (d) of Section 7275.

(c) A taxpayer may not collect sales tax reimbursement pursuant

to Section 1656.1 of the Civil Code nor use tax in an amount in excess of the amount required to be reported under subdivision (b) less amounts subject to credit under subdivision (a) during the period for which a credit is allowed. A receipt for use tax issued pursuant to Section 6202 in the amount of tax actually remitted to the board under subdivision (b) shall be sufficient to relieve the purchaser for further liability for the tax computed at the reporting rate.

(d) The tax credit provided by subdivision (a) may be claimed upon notice to eligible taxpayers by the board. That notice shall provide that the credit may be claimed commencing with those taxes due on the first day of the first calendar quarter commencing more than 120 days after the effective date of the act adding this section or after the court decision described in paragraph (a) of Section 7275 becomes final and unappealable, whichever occurs later.

(e) The tax credit shall continue until the board determines that the amount of impounded revenues held by the board and available to fund the revenue losses that result from the tax credit is insufficient to fund the tax credit for another full calendar quarter. Eligible taxpayers shall continue to take the credit on their returns until notified by the board that the credit is terminated.

7277. (a) In the event that any tax collected under this part is determined on the basis of Section 4 of Article XIII A of the California Constitution to be unconstitutional in a final and nonappealable decision of a court of competent jurisdiction, and the revenues derived from the unconstitutional tax are held by the board in an impound account, a person who has reimbursed a retailer for that payment of that tax or a person, other than in a capacity as a retailer, who has paid that tax may file with the board a claim for refund of the unconstitutional tax in accordance with the requirements and procedures set forth in subdivision (b).

(b) (1) The claim for refund shall be in writing, shall state the specific ground upon which the claim is founded, and shall be accompanied by proof of payment of the tax to a retailer or wholesaler, including, but not limited to, a copy of an invoice, bill of sale, or purchase contract, that indicates the following:

(A) The date upon which, and place at which, the purchase occurred.

(B) A description of the property purchased.

(C) The price paid for the property.

(D) The amount of the transactions and use tax collected with respect to the purchase, or if that amount is not separately stated, the amount of the purchase and the rate of tax from which the amount of transactions and use tax may be calculated.

(2) In the case of a purchaser that has self-reported use tax to the state, the claim for refund shall also indicate the amount of use tax paid and the period for which those taxes were remitted.

(3) (A) Only a claim for refund made with respect to a single purchase or aggregate purchases of five thousand dollars ($5,000) or more shall be eligible for refund pursuant to this section.

(B) A claim for refund shall be filed within one year of the first day of the first calendar quarter commencing after the effective date of this section or after the date upon which the court decision described in subdivision (a) becomes final and nonappealable, whichever occurs later. If that one-year period does not end on the last day of a calendar quarter, it shall end on the last day of the preceding calendar quarter or on the last day of the calendar quarter which is nearest to the date the one-year period ends.

(c) For purposes of this section, "purchaser" means any person or entity, other than in a capacity as a retailer, who purchased tangible personal property the sale or use of which was subject to the unconstitutional tax described in subdivision (a).

(d) Interest shall be paid on the refunds provided by this chapter pursuant to Section 6907.

7279. (a) The total amount of refunds paid under this chapter shall be the amount of the impounded revenues derived from the unconstitutional tax plus any interest earned on that amount that remains after valid claims for refund filed prior to the effective date of the act adding this chapter are paid and the reserve amount described in paragraph (2) of subdivision (d) of Section 7275 is established.

(b) The board's actual and reasonable costs of administering refunds in accordance with this section and Section 7277, as approved by the Department of Finance, may be paid from the amount that is set aside for refunds under this chapter and may be paid prior to the payment of any claim for refund.

7279.5. A copy of the provisions of this chapter may be filed by the board with the court to demonstrate that implementation of the proposed plan of reimbursement, refund, or credit in accordance with the provisions of this chapter complies with any orders of the court requiring implementation of a refund plan by the board. Judicial notice of this chapter shall be taken by the court. In rendering a decision that the provisions of this chapter comply with any order of the court, the court shall order that any attorney's fees and costs incurred by the parties for the benefit of the persons seeking a refund be paid from the revenues collected pursuant to that tax plus any interest earned thereon.

7279.6. An arbitrary and capricious action of the board in implementing the provisions of this chapter shall be reviewable by writ.

SEC. 3. The County of San Diego is authorized to pay all just debts and obligations that were accrued by the San Diego County Regional Justice Facility Financing Agency during the period of its existence.

SEC. 4. The Legislature finds and declares the following:

(a) California courts of appellate jurisdiction have recently held that transactions and use taxes imposed by certain countywide taxing districts violate the California Constitution.

(b) Current law addresses refunds and overpayment of tax only

on the assumption that the particular transaction in issue is not subject to tax, rather than on the premise that the tax itself is unconstitutional. Current law also provides that only persons who directly pay a tax to state taxing authorities may file claims for refund. Section 6902 of the Revenue and Taxation Code currently establishes a three-year limitation period with respect to the filing of claims for refund.

(c) As a result, under existing statutory provisions a substantial portion of the unconstitutional taxes would not be refunded to the ultimate consumers who bore the direct economic burden of paying those taxes. Moreover, in certain cases the revenues raised by the unconstitutional taxes were impounded by the levying entity and would, under the proper authority, be available for refund to the consumers who bore the economic burden of paying those taxes.

(d) Therefore, it is the intent of the Legislature in enacting this act, to alter the normal refund mechanism in the case where a transactions and use tax, imposed by a taxing district within a county pursuant to the Revenue and Taxation Code, has been found to be unconstitutional by a court of appellate jurisdiction, and the revenues derived from that tax have been impounded. The statutes added to the Revenue and Taxation Code by this act are intended to establish a comprehensive system of remedies that balances the right of persons who made purchases subject to the unconstitutional taxes to obtain a return of those taxes with the need of entities imposing valid taxes within the same county to obtain the revenues to which they are entitled. The provisions added by this act are intended to apply to all claims and actions for refund in the circumstances described herein, notwithstanding any other provision of law, but are not intended to in any way affect the normal refund statutes regarding claims and actions for refund on any other basis.

SEC. 5. The Legislature further finds and declares that the system of tax credits provided by this act is adopted by the Legislature as the most efficient way to return revenues derived from the illegally collected taxes to the persons who bore the economic burden of those taxes. Nothing in this act may be construed to mean that the State of California assumes responsibility for the imposition of the illegal taxes at issue nor that there is any remedy for that illegal imposition of transactions and use taxes other than as provided in this act. There shall be no recovery against the State of California otherwise than as under this act in any action for refund of those illegally collected taxes.

SEC. 6. There is hereby appropriated from the General Fund to the State Board of Equalization for the 1993–94 fiscal year, the sum of two million one hundred seventeen thousand dollars ($2,117,000) to reimburse the board for its costs incurred in implementing this act. The amount appropriated from the General Fund by this section shall be derived from those impounded moneys specified in this act for reimbursement of board costs. For the 1994–95 fiscal year and

each fiscal year thereafter, the board's costs of implementing this act shall be reimbursed through an appropriation in the annual Budget Act.

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 that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide as soon as possible for appropriate and adequate procedures for the refund of revenues collected pursuant to local sales or transactions and use taxes that have been determined to be unconstitutional, it is necessary that this act take effect immediately.

CHAPTER 1061

An act to amend Sections 94302, 94310, 94311, 94315, and 94331 of, and to add Sections 94307 and 94308 to, the Education Code, relating to private postsecondary education.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 94302 of the Education Code is amended to read:

94302. As used in this chapter, unless the context requires otherwise:

(a) "Accredited" means that an institution has been recognized or approved as meeting the standards established by an accrediting agency recognized by the United States Department of Education, or the Committee of Bar Examiners for the State of California. It shall not include those institutions that have applied for accreditation, or are identified by accrediting associations as candidates for accreditation or have provisional accreditation.

(b) "Agency" means any person or business entity, regardless of the form of organization, that employs or in any manner contracts with one or more agents. "Agency" does not include an institution.

(c) "Agency approval" means a written document issued by the Council for Private Postsecondary and Vocational Education authorizing a business entity or an institution to engage in the recruitment of students for enrollment in private postsecondary and vocational institutions approved under this chapter.

(d) "Agent" means any person who, at a place away from the institution's premises or site of instruction, for consideration, solicits, promotes, advertises, offers, or attempts to secure enrollment for an institution, refers any person to an institution either for enrollment or to receive a solicitation for enrollment, or accepts application fees or admissions fees for education in an institution. Administrators and faculty who make informational public appearances, but whose primary task does not include service as a paid recruiter, are exempted from this definition.

(e) "Agent's permit" means a nontransferable written document issued to an agent pursuant to this chapter by the Council for Private Postsecondary and Vocational Education.

(f) "Applicant" means a new institution that has submitted an application but has not been evaluated by the council. An applicant institution shall not enroll students or offer educational services.

(g) "Approval" or "approval to operate" means that the council has determined and certified that an institution meets minimum standards established by the council for integrity, financial stability, and educational quality, including the offering of bona fide instruction by qualified faculty and the appropriate assessment of students' achievement prior to, during, and at the end of its program.

(h) "Branch" means a site located within 50 miles of the main location. Only educational services that are approved at the main location shall be offered at the branch. For the purpose of conducting onsite inspections and evaluations, hotel conference rooms, faculty offices, and homes are not considered branches.

(i) "Certificate of authorization for service" means a written, nontransferable document issued by the council authorizing an individual to be an instructor or administrator in any private vocational postsecondary educational institution in California which is approved under subdivision (a) of Section 94311.

(j) "Change of location" means a move of up to 25 miles of the location at which an institution offers any education, training, or instruction. A change of location of 25 or more miles is deemed the establishment of a new location of instruction requiring a separate approval to operate, unless otherwise provided by the council.

(k) "Correspondence school" or "home study school" means any institution that provides correspondence lessons for study and completion by a student at a location separate from the institution, including those institutions which offer that instruction by correspondence in combination with in-residence instruction.

(*l*) "Council" means the Council for Private Postsecondary and Vocational Education established pursuant to Section 94304.

(m) "Course of study" means either a single course or a set of related courses for which a student enrolls.

(n) "Degree" means any "academic degree" or "honorary degree" or title of any designation, mark, appellation, series of letters or words such as, but not limited to, associate, bachelor, master, doctor, or fellow which signifies, purports, or is generally taken to

signify satisfactory completion of the requirements of an academic, educational, technological, or professional program of study beyond the secondary school level or is an honorary title conferred for recognition of some meritorious achievement.

(o) "Degree title" means a discipline, major, or subject area of study, the completion of which leads to the award of a degree.

(p) "Diploma" means any "diploma," "certificate," "transcript," "document," or other writing in any language other than a degree which signifies, purports, or is generally taken to signify satisfactory completion of the requirements of an academic, educational, technological, or professional program of study beyond the secondary school level.

(q) "Education," or "education services," or "educational program" includes, but is not limited to, any class, course, or programs of training, instruction, or study.

(r) "Institution" means any private postsecondary educational institution. An "institution" includes its branch and satellite campuses, unless otherwise provided by the council.

(s) "Institutional approval" means an institution that has been evaluated by the council and has been found to be in compliance with the council's standards pursuant to this chapter.

(t) "Instruction" includes any specific, formal arrangement by an institution or its enrollees to participate in learning experiences in which the institution's faculty or contracted instructors present a planned curriculum appropriate to the enrollee's educational program.

(u) "Out-of-state school" means any private postsecondary or vocational educational institution offering career or job training programs, including both an in-residence institution and a home study institution that has its place of instruction or its principal location outside the boundaries of the state, or that offers or conducts courses of instruction or subjects on premises maintained by the school outside the boundaries of the state, or that provides correspondence or home study lesson materials from a location outside the boundaries of this state, or that evaluates completed lesson materials or otherwise conducts its evaluation service from a location outside the boundaries of this state, or that otherwise offers or provides California students with courses of instruction or subjects through activities engaged in or conducted outside the boundaries of the state.

(v) "Person" means a natural person or any business entity, regardless of the form or organization.

(w) "Private postsecondary educational institution" means any person doing business in California that offers to provide or provides, for a tuition, fee, or other charge, any instruction, training, or education primarily to people who have completed or terminated their secondary education or are beyond the age of compulsory high school attendance. The following are not considered to be private postsecondary educational institutions under this chapter:

(1) Institutions exclusively offering instruction at any or all levels from preschool through the 12th grade.

(2) Education solely avocational or recreational in nature, and institutions offering this education exclusively.

(3) Education sponsored by a bona fide trade, business, professional, or fraternal organization, solely for that organization's membership.

(4) Postsecondary or vocational educational institutions established, operated, and governed by the federal government or by this state, or its political subdivisions.

(5) A nonprofit institution owned, controlled, and operated and maintained by a bona fide church or religious denomination, lawfully operating as a nonprofit religious corporation pursuant to Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code, if the education is limited to instructions in the principles of that church or denomination, or to courses offered pursuant to Section 2789 of the Business and Professions Code, and the diploma or degree is limited to evidence of completion of that education, and the meritorious recognition upon which any honorary degree is conferred is limited to the principles of that church or denomination. Institutions operating under this paragraph shall offer degrees and diplomas only in the beliefs and practices of the denomination, church, or religion. The enactment of this paragraph expresses legislative intent that the state shall not involve itself in the content of degree programs awarded by any institution operating under this paragraph, as long as the institution awards degrees and diplomas only in areas specified in the previous sentence. Institutions operating under this paragraph shall not award degrees in any area of physical science. Any degree or diploma granted in any area of study under these provisions shall contain on its face, in the written description of the title of the degree being conferred, a reference to the theological or religious aspect of the degree's subject area. The enactment of this paragraph is intended to prevent any entity claiming to be a nonprofit institution owned, controlled, and operated and maintained by a bona fide church or religious denomination, lawfully operating as a nonprofit religious corporation pursuant to Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code, from marketing and granting degrees or diplomas that are represented as being linked to their church or denomination but which, in reality, are degrees in secular areas of study.

(x) "Satellite" means an auxiliary classroom located within 50 miles of a branch or the main location. A satellite is a temporary facility. All of the following shall apply to a satellite:

(1) Only educational services that are approved at the main location shall be offered at the satellite.

(2) The institution shall maintain no permanent records of attendance or academic progress at the satellite.

(3) No solicitation or enrollment of students shall occur at the

satellite.

(4) The satellite shall not be identified in any advertising.

For the purpose of conducting onsite inspections and evaluations, hotel conference rooms, faculty offices, and homes are not considered satellites.

(y) (1) "Short-term seminar training" means an educational service consisting of either of the following:

(A) Fifty hours or less of instruction, the total charge for which is less than five hundred dollars ($500).

(B) Instruction approved by a governmental licensing authority to be offered as continuing education in subjects licensees are required to take as a condition of continued licensure.

(2) "Short-time seminar training" does not include any of the following:

(A) Instruction in how to prepare for, take, or pass a licensing examination or other test qualifying a person for employment.

(B) Instruction in which the institution awards any credits or units other than continuing education units pursuant to instruction described in subparagraph (B) of paragraph (1).

(C) Any educational service consisting of more than 50 hours of instruction or costing five hundred dollars ($500) or more in total charges that is divided or structured into one or more segments that consist of 50 or fewer hours of instruction, the total charge for which is less than five hundred dollars ($500).

(z) "To offer" includes, in addition to its usual meanings, advertising, publicizing, soliciting, or encouraging any person, directly or indirectly, in any form, to perform the act described.

(aa) "To operate" an educational institution, or like term, means to establish, keep, or maintain any facility or location in this state where, or from or through which, educational services are offered or educational degrees or diplomas are offered or granted.

SEC. 2. Section 94307 is added to the Education Code, to read:

94307. (a) The council may bring an action for equitable relief for any violation of this chapter. The equitable relief may include restitution, a temporary restraining order, the appointment of a receiver, and a preliminary or permanent injunction. The action may be brought in the county in which the defendant resides or in which any violation has occurred or may occur.

(b) The remedies provided in this section supplement, and do not supplant, the remedies and penalties under other provisions of law.

SEC. 3. Section 94308 is added to the Education Code, to read:

94308. The director of the council may purchase annuity contracts for permanent employees of the council and shall reduce the salaries of the employees for whom the contracts are purchased by the amount of the costs of the contract if all of the following conditions are met:

(a) The annuity contract is under an annuity plan that meets the requirements of subdivision (b) of Section 403 of the Internal Revenue Code and Section 17512 of the Revenue and Taxation Code.

(b) The employee applies to the director for the purchase of the contract and reduction of salary.

(c) All provisions of the Insurance Code and the Government Code applicable to the purchase of this type of annuity are satisfied.

SEC. 4. Section 94310 of the Education Code is amended to read:

94310. No private postsecondary educational institution may issue, confer, or award an academic or honorary degree unless the institution meets the requirements of subdivision (a) or (i), as follows:

(a) The institution is approved by the council to operate in California and award degrees. The council shall not approve an institution to issue degrees, diplomas, or certificates pursuant to this subdivision until it has conducted a qualitative review and assessment of, and has approved, each degree program offered by the institution, and all of the operations of the institution, and has determined all of the following:

(1) The institution has the facilities, financial resources, administrative capabilities, faculty, and other necessary educational expertise and resources to ensure its capability of fulfilling the program or programs for enrolled students.

(2) The faculty are fully qualified to undertake the level of instruction that they are assigned and shall possess appropriate degrees or credentials and have demonstrated professional achievement in the major field or fields offered, in sufficient numbers to provide the educational services.

(3) The education services and curriculum clearly relate to the objectives of the proposed program or programs and offer students the opportunity for a quality education.

(4) The facilities are appropriate for the defined educational objectives and are sufficient to ensure quality educational services to the students enrolled in the program or programs.

(5) The course of study for which the degree is granted provides the curriculum necessary to achieve its professed or claimed academic objective for higher education, and the institution requires a level of academic achievement appropriate to that degree.

(6) The institution provides adequate student advisement services, academic planning and curriculum development activities, research supervision for students enrolled in Ph.D. programs, and clinical supervision for students enrolled in various health profession programs.

(7) If the institution offers credit for prior experiential learning it may do so only after an evaluation by qualified faculty and only in disciplines within the institution's curricular offerings that are appropriate to the degree to be pursued. The council shall develop specific standards regarding the criteria for awarding credit for prior experiential learning at the graduate level, including the maximum number of hours for which credit may be awarded.

(b) The approval process shall include a qualitative review and assessment of all of the following:

(1) Institutional purpose, mission, and objectives.
(2) Governance and administration.
(3) Curriculum.
(4) Instruction.
(5) Faculty, including their qualifications.
(6) Physical facilities.
(7) Administrative personnel.
(8) Procedures for keeping educational records.
(9) Tuition, fee, and refund schedules.
(10) Admissions standards.
(11) Financial aid policies and practices.
(12) Scholastic regulations and graduation requirements.
(13) Ethical principles and practices.
(14) Library and other learning resources.
(15) Student activities and services.
(16) Degrees offered.

The standards and procedures utilized by the council shall foster the development of high quality, innovative educational programs and emerging new fields of study within postsecondary education. In addition, the standards and procedures utilized by the council shall not unreasonably hinder educational innovation and competition.

It is the intent of the Legislature that the minimum standards for approval for degree-granting institutions established in Section 94310 not exceed the accreditation standards utilized by the Western Association of Schools and Colleges.

(c) The council may, at its discretion, delegate the responsibilities for regulation and oversight of accredited degree-granting law schools to the California Committee of Bar Examiners, and that accreditation may be accepted by the council in lieu of state approval.

(d) (1) The council shall conduct a qualitative review and assessment of the institution and all programs offered, including the items listed in subdivision (b), through a comprehensive onsite review process, performed by a qualified visiting committee impaneled by the council for that purpose. Except as provided in subdivision (f) of Section 94330, each institution shall submit a single application for all operations in California, its main location, branches, and satellites. The application shall include a single fee that is institution based and not site based. The visiting committee shall be impaneled by the council within 90 days of the date of the receipt of a completed application and shall be composed of educators, and other individuals with expertise in the areas listed in subdivision (b), from degree-granting institutions legally operating within the state. Within 90 days of the receipt of the visiting committee's evaluation report and recommendations, or any reasonable extension of time not to exceed 90 days, the council shall take one of the following actions:

(A) If the institution is in compliance with this chapter and has not operated within three years before the filing of the application

in violation of this chapter then in effect, the council may grant an approval to operate for a period not to exceed five years.

(B) If the institution is in compliance with this chapter, but has operated within three years before the filing of the application in violation of this chapter then in effect, or if the council, in its discretion, determines that an unconditional grant of approval to operate is not in the public interest, the council may grant a conditional approval to operate subject to whatever restrictions the council deems appropriate. The council shall notify the institution of the restrictions, the bases for the restrictions, and the right to request a hearing to contest the restrictions. Conditional approval shall not exceed two years.

(C) The council may deny the application. If the application is denied, the council may, in its discretion, permit the institution to continue offering the course of instruction to students already enrolled or may order the institution to cease instruction and provide a refund of tuition and all other charges to students.

(D) (i) If an institution is not operating in California when it applies for approval to operate for itself or a branch or satellite campus, the institution shall file with its application an operational plan establishing that the institution will satisfy the minimum standards set forth in subdivision (a). The operational plan shall also include a detailed description of the institution's program for implementing the operational plan, including proposed procedures, financial resources, and the qualifications of owners, directors, officers, and administrators employed at the time of the filing of the application. The council may request additional information to enable the council to determine whether the operational plan and its proposed implementation will satisfy these minimum standards.

(ii) If the council determines that the operational plan satisfies the minimum standards described in subdivision (a), that the institution demonstrates that it will implement the plan, and that no ground for denial of the application exists, the council shall grant a temporary approval to operate, subject to any restrictions the council reasonably deems necessary to ensure compliance with this chapter, pending a qualitative review and assessment as provided in subdivisions (a) and (b). The council shall inspect the institution, or branch or satellite campus if approval is sought for that campus, between 90 days and 180 days after operation has begun under the temporary approval to operate. Within 90 days following the council's inspection of the institution, the council shall act as provided in this subdivision.

(2) When evaluating an institution whose purpose is to advance postsecondary education through innovative methods, the visiting committee shall comprise educators who are familiar with and receptive to evidence bearing on the educational quality and accomplishments of those methods.

(3) The standards and procedures utilized by the council shall not unreasonably hinder educational innovation and competition.

(4) It is the intent of the Legislature that the council, prior to June 1, 1992, conduct an onsite review of all institutions approved by the Superintendent of Public Instruction between January 1, 1989, and December 31, 1990, that did not receive an onsite review by a visiting committee that included at least one permanent employee of the Private Postsecondary Education Division of the State Department of Education.

(5) Each institution or instructional program offering education for entry into a health care profession in which the provider has primary care responsibilities shall offer that education within a professional degree program which shall be subject to approval by the council pursuant to this section.

(e) If at any time the council determines that an institution has deviated from the standards for approval, the council may, after identifying for the institution the areas in which it has deviated from the standards, and after giving the institution due notice and an opportunity to be heard, place the institution on probation for a prescribed period of time, not to exceed 24 calendar months. During the period of probation, the institution shall be subject to special monitoring. The conditions for probation may include the required submission of periodic reports, as prescribed by the council, and special visits by authorized representatives of the council to determine progress toward total compliance. If, at the end of the probationary period, the institution has not taken steps to eliminate the cause or causes for its probation to the satisfaction of the council, the council may revoke the institution's approval to award degrees and provide notice to the institution to cease its operations.

(f) An institution may not advertise itself as an approved institution unless each degree program offered by the institution has been approved in accordance with the requirements of this section. The council shall review all operations of the institution, both within and outside of California. The council shall have the authority to conduct site visits outside of California when it deems these visits to be necessary. The council may authorize any institution approved to issue degrees under this section to issue diplomas for the completion of courses of study that are within the institution's approved degree-granting programs.

(g) (1) All institutions operating on December 31, 1990, pursuant to licensure received under subdivision (a) of Section 94310.1 or approval received under Section 94310.2, shall receive approval for a period not to exceed four years. On a specified date prior to January 1, 1995, to be determined by the council, each institution granted approval pursuant to this subdivision shall file a completed application for reapproval pursuant to this section.

(2) All institutions operating on December 31, 1990, pursuant to candidate for approval status received pursuant to Section 94310.2 shall receive candidate for approval status for a period not to exceed two years. On a specified date prior to January 1, 1993, as determined by the council, each institution granted candidate for approval status

pursuant to this subdivision shall file a completed application for approval pursuant to this section.

(h) All institutions operating pursuant to authorization received under Section 94310.3 or 94310.4, as in effect on December 31, 1990, shall receive candidate for approval status for a period not to exceed three years. On a specified date prior to January 1, 1994, to be determined by the council, each institution granted candidate for approval status pursuant to this subdivision shall file a completed application for approval pursuant to this section.

(i) Any public or private postsecondary educational institution incorporated in another state that has accreditation from a regional accrediting association recognized by the United States Department of Education at the time of the issuance of a degree, and that is approved by the council, may issue degrees, diplomas, or certificates. Accredited public or private postsecondary educational institutions incorporated in another state shall not offer degrees, diplomas, or certificates in California unless they comply with this subdivision.

(1) The council shall not approve an institution to issue degrees, diplomas, or certificates pursuant to this subdivision until the council has conducted a qualitative review and assessment of, and has approved, the operations of the institution in California, and the council has determined that the institution meets all of the following standards:

(A) The institution has financial resources to ensure the capability of fulfilling the program or programs for enrolled students.

(B) The faculty includes personnel who possess appropriate degrees from institutions accredited by a regional accrediting association recognized by the United States Department of Education in the degree major field or fields offered, in sufficient number to provide the educational services.

(C) The education services and curriculum clearly relate to the objectives of the proposed program or programs.

(D) The facilities are appropriate for the defined educational objectives and are sufficient to ensure quality educational services to the students enrolled in the program or programs.

(E) The institution has verifiable evidence of academic achievement comparable to that required of graduates of other institutions operating in this state for the program or programs upon which the degree, diploma, or certificate is based.

(2) The council shall grant approved status under this subdivision for a period consistent with the postsecondary educational institution's regional accrediting association, but not to exceed five years.

(3) Institutions approved under this subdivision shall offer in California only programs that the institution can document to have been acknowledged and favorably reviewed by the home regional accrediting association.

(4) In reviewing the out-of-state accredited institutions, the council shall use as guidelines the standards and procedures

developed by the special committee created pursuant to paragraph (5) of subdivision (b) of Section 94310.1, as in effect on December 31, 1989, and adopted by the California Postsecondary Education Commission. These standards and procedures were based on all of the following principles:

(A) Following the initial state review, subsequent onsite reviews by the council may be conducted in conjunction with institutional reviews by the regional accrediting association. However, if there is substantial evidence that the institution is not in compliance with state standards, the council may initiate a special review of the California operations of the institution.

(B) Each institution shall submit a single application for all operations in California, and the application shall include a single fee which is institution based and not site based.

(C) The council shall develop a procedural rationale to justify the number of sites to be visited by the state in the review of the institution's operations in California.

(D) The purpose of the onsite review by the council shall be to determine that operations by the institution in California meet the minimum state standards identified in statute.

(E) The standards and procedures shall not unreasonably hinder educational innovation and competition.

(5) The regulations adopted by the council to implement this chapter shall provide for consideration of the accredited institutions' stated educational goals, purposes, and objectives, in conducting the approval review of the California operations of out-of-state based institutions.

(A) These regulations shall include a formula to determine the institutional approval fee and the number of sites to be visited by the state.

(B) The regulations adopted by the council shall be based on the procedures and standards recommended by the special committee and acted upon by the commission. In conducting the approval review of the operation of out-of-state accredited institutions in California, the council shall interpret the regulations based upon each institution's accredited educational purposes and objectives.

(6) All institutions operating under subdivision (b) of Section 94310.1, as it read on December 31, 1990, shall receive approval for a period not to exceed five years from the date of the institution's last review by the state. On a date to be specified by the council on or before January 1, 1996, each institution granted approval under this subdivision shall file a completed application for reapproval under this section.

(j) An institution shall not offer any educational program or degree title that was not offered by the institution at the time the institution applied for approval to operate, and shall not offer any educational program or degree title at a campus that had not offered the program or degree title at the time the institution applied for approval to operate that campus, unless the council first approves the

offering of the program or degree title after determining that it satisfies the minimum standards established by this section.

SEC. 5. Section 94311 of the Education Code is amended to read:

94311. No private postsecondary educational institution, except those offering degrees and approved under Section 94310, may offer education services or an education program, unless the institution or the branch or satellite campus at which these programs are offered, has been approved by the council as meeting the requirements of this section and, if regulated by an agency within the Department of Consumer Affairs, has obtained and retained the approval of that agency:

(a) If an institution is operating under the council's prior approval and the institution has applied for approval to operate for itself or a branch or satellite campus that is operating, the council shall not grant approval to operate until it has conducted a qualitative review and assessment of the operations of the institution in California, and determined that all of the following minimum standards have been satisfied:

(1) The quality and content of each course or program of instruction, training, or study may reasonably and adequately be expected to achieve the objective for which the course or program is offered. All courses offered by the institution shall meet the minimum standards prescribed by this subdivision. If an institution represents that a course or program leads to employment, the quality, content, and instruction of the course or program shall be sufficient to assure that students may acquire the necessary level of education, training, skill, and experience to obtain employment in the occupation or job title to which the course or program of instruction is represented to lead.

(2) There is in the institution adequate space, equipment, instructional material, and instructor personnel to provide training of the quality needed to attain the objective described in paragraph (1).

(3) Every instructor and administrator possess adequate academic, experiential, and professional qualifications to teach the course or to perform the duties that the person is assigned and satisfies all standards established by the council by regulation, and holds an applicable and valid certificate of authorization for service issued by the council in the specified competence area in which the individual will serve. No person shall serve as an instructor or member of the administrative staff if that person has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of federal or state funds, or who has been judicially or administratively determined to have committed any violation of this chapter or of any law involving state or federal funds.

(4) The institution maintains for at least five years written records of the student's previous education and training, where applicable.

(5) A copy of the course outline, description of the occupations or

job titles, if any, to which the course of instruction is represented to lead, schedule of tuition, fees and other charges, refund policy, regulations pertaining to tardiness, absence, grading policy and rules of operation and conduct is given to students prior to enrollment.

(6) The institution maintains and enforces adequate standards relating to, and maintains records of, attendance, satisfactory academic progress, and student performance to achieve the objective described in paragraph (1).

(7) The institution complies with all local city, county, municipal, state, and federal regulations relative to the safety and health of all persons upon the premises such as fire, building, and sanitation codes. The council may require evidence of compliance.

(8) The institution does not exceed enrollment which the facilities and equipment of the institution can reasonably handle.

(9) The institution's officers, directors, and owners demonstrate financial and fiduciary responsibility, as prescribed by statute, or by regulations adopted by the council.

(10) The institution is in compliance with this chapter and has developed policies and procedures designed to ensure that compliance.

(11) No circumstances exist which are grounds for the revocation or suspension of an approval to operate.

(12) The institution complies with Article 2.5 (commencing with Section 94316) if that article is applicable.

(13) Application for approval shall be made in writing on forms prescribed by the council, which shall include, if applicable to the institution, a statement of whether the institution claims that it is exempt or that a course or other educational service it offers is exempt from Article 2.5 (commencing with Section 94316), and the information required by subdivision (f) of Section 94319.2.

(b) Within 90 days following the receipt of an application from an institution that is operating under the superintendent's prior authorization or approval or the council's prior approval, and prior to granting any approval, a representative of the council shall personally inspect the institution and verify the institution's compliance with the standards prescribed by this chapter. The onsite inspection shall include an inspection of the institution's facilities and records, interviews of administrators, faculty, and students, and an observation of class instruction, as determined to be appropriate by the council. If the application is for approval to operate a branch or satellite campus that is in operation, the council shall inspect that branch or satellite campus as provided herein and may also inspect the institution operating the branch or satellite campus. The council may waive or modify the onsite inspection for an institution located outside of California or for an institution offering home study or correspondence courses. For the purposes of this section, "council's prior approval" includes the prior approval or authorization of the Superintendent of Public Instruction, if applicable.

(c) Within 90 days following the inspection described in

subdivision (b) or any reasonable extension of time not to exceed 90 days, the council shall reach a decision on the merits and shall do one of the following:

(1) If the institution is in compliance with this chapter and has not operated within three years before the filing of the application in violation of the provisions of this chapter then in effect, the council may grant approval for a period not to exceed three years.

(2) If the institution is in compliance with this chapter, but has operated within three years before the filing of the application in violation of the provisions of this chapter then in effect, or if the council, in its discretion, determines that an unconditional grant of approval to operate is not in the public interest, the council may grant a conditional approval to operate subject to whatever restrictions the council deems appropriate. The council shall notify the institution of the restrictions, the bases for the restrictions, and the right to request a hearing to contest the restrictions.

(3) The council may deny the application if the institution does not comply with this chapter, including the minimum standards established in subdivision (a), or has operated within three years before the filing of the application in violation of the provisions of this chapter then in effect. If the application is denied, the council may, in its discretion, permit the institution to continue offering the course or courses of instruction to students already enrolled or may order the institution to cease all instruction and provide a refund of tuition and all other charges to students. The council shall notify the institution of the denial, the bases for the denial, and the right of the institution to request a hearing to contest the denial.

(d) (1) If an institution is not operating in California when it applies for approval to operate for itself or a branch or satellite campus, the institution shall file with its application an operational plan establishing that the institution will satisfy the minimum standards set forth in subdivision (a). The operational plan shall also include a detailed description of the institution's program for implementing the operational plan, including proposed procedures, financial resources, and the qualifications of owners, directors, officers, and administrators employed at the time of the application's filing. The council may request additional information to enable the council to determine whether the operational plan and its proposed implementation will satisfy these minimum standards.

(2) If the council determines that the operational plan satisfies the minimum standards described in subdivision (a), that the institution demonstrates that it will implement the plan, and that no ground for denial of the application exists, the council shall grant a temporary approval to operate, subject to any restrictions the council reasonably deems necessary to assure compliance with this chapter, pending a qualitative review and assessment as provided in subdivisions (a) and (b). The council shall inspect the institution, or branch or satellite campus if approval is sought for that campus, between 90 days and 180 days after operation has begun under the

temporary approval to operate. Within 90 days following the council's inspection of the institution, the council shall act as provided in subdivision (c).

(e) If an institution that is operating in California applies for approval to operate a branch or satellite campus that has not operated in this state, the institution shall file an operational plan for the branch or satellite campus as described in subdivision (d). The council shall evaluate the branch or satellite campus as provided in subdivision (d). The council may also evaluate the institution as provided in subdivisions (a) and (b) before determining whether to grant to the institution temporary or final approval to operate the branch or satellite campus. If the institution or the branch or satellite campus does not meet the requirements of this chapter or if the institution has operated within three years before the filing of the application in violation of the provisions of this chapter then in effect, the council may deny the application for approval to operate the branch or satellite campus or may grant a conditional approval to operate the branch or satellite campus subject to whatever restrictions the superintendent deems appropriate. The provisions for notice and hearing described in paragraphs (2) and (3) of subdivision (c) shall apply.

(f) No institution shall offer a course or program of instruction, training, or study at a campus that had not offered the course or program at the time the institution applied for approval to operate that campus unless the council first approves the offering of the course or program after determining that it satisfies the minimum standards established in subdivision (a).

(g) All institutions operating in California on December 31, 1989, pursuant to the prior authority of subdivision (c) of former Section 94311, and which continued to operate under the requirements of this chapter on the operative date of this section, shall receive an approval status for a period not to exceed three years. On a specified date to be determined by the council on or before June 30, 1993, each institution granted an approval pursuant to this subdivision shall file a completed application for reapproval pursuant to this section. It is the intent of the Legislature that all private vocational institutions having a cumulative gross student loan default rate higher than 40 percent, as determined by the Student Aid Commission, shall be reviewed by the council on or before February 29, 1992, to determine if these institutions are in compliance with the requirements of this chapter, and should be continued to be approved to offer educational programs in California. On or before March 15, 1992, the council shall report to the education policy and fiscal committees of the Legislature on the results of this review.

All institutions operating in California on December 31, 1990, pursuant to prior authority of subdivision (a) or (b) of former Section 94311, shall receive approval from the council for a period not to exceed three years. On or before June 30, 1994, the council shall work in cooperation with the appropriate state boards or

agencies, and with the Federal Aviation Administration, to review each of these institutions to determine whether the institution is in compliance with the requirements of this chapter. It is the intent of the Legislature that the council develop a memorandum of understanding with each of the appropriate state boards or agencies and with the Federal Aviation Administration to delineate the responsibilities of each agency for the approval and monitoring of these private vocational institutions that were operating on December 31, 1990, under the prior authority of subdivisions (a) and (b) of former Section 94311. It is further the intent of the Legislature that these memorandums of understanding be introduced as legislation on or before February 1, 1994, for enactment as amendments to this act. It is the intent of the Legislature that all institutions having a cumulative gross student loan default rate above 40 percent, as determined by the Student Aid Commission, shall be reviewed by the state board and the council on or before February 29, 1992, to determine if these institutions are in compliance with the requirements of this chapter and should continue to be approved to offer educational programs in California.

All institutions operating in California on December 31, 1990, pursuant to the prior authority of subdivision (d) of former Section 94311, shall receive an approval for a period not to exceed three years. On a specified date to be determined by the council on or before December 31, 1993, each institution granted an approval pursuant to this subdivision, shall file a completed application for reapproval pursuant to this section.

(h) The council may, at its discretion, enter into an agreement for the regulation and oversight of nondegree-granting private postsecondary institutions with the Federal Aviation Administration or with the state agency responsible for administering Article 1 (commencing with Section 1250) of Chapter 2 of Division 2 of the Health and Safety Code.

The council may enter into a regulatory agreement only when the appropriate agency can demonstrate that its standards and procedures for the review of institutions encompass the standards and consumer protection requirements prescribed by this chapter and that these standards and procedures are rigorously enforced.

Nothing in this section shall modify the existing authority of regulatory agencies within the Department of Consumer Affairs relating to schools or programs.

(i) If at any time the council determines that an institution has deviated from the standards for approval, the council may, after giving the institution due notice and an opportunity to be heard, place the institution on probation for a specified period of time not to exceed 24 calendar months. During the period of probation, the institution shall be subject to special monitoring. The conditions for probation may include the required submission of periodic reports, as prescribed by the council, and special visits by authorized representatives of the council to determine progress toward total

compliance. If at the end of the specified probationary period the institution has not taken steps to eliminate the causes for its probation to the satisfaction of the council, the council may revoke the institution's approval and provide notice to the institution to cease its operations.

SEC. 6. Section 94315 of the Education Code is amended to read:

94315. (a) An institution that exclusively offers short-term seminar training shall annually file with the council copies of all advertising and promotional material, including catalogs and brochures, and a declaration by an owner of the institution under penalty of perjury for public disclosure setting forth the following information:

(1) The owner's legal name, headquarters address, and the name of an agent for the service of process within California.

(2) All names, whether real or fictitious, under which the owner is doing and will do business.

(3) The names and addresses of the principal officers of the ownership.

(b) This chapter, except for this section and Sections 94307, 94316.3, 94320, 94321, and 94336, does not apply to an institution that exclusively offers short-term seminar training and that complies with this section.

SEC. 7. Section 94331 of the Education Code is amended to read:

94331. The council shall establish and maintain a Private Postsecondary and Vocational Education Administration Fund. The fund shall be divided into two special accounts, pursuant to the requirements of subdivision (g) of Section 94304. All fees collected pursuant to this section shall be credited to this fund, along with any interest on the money, for the administration of this chapter. Notwithstanding Section 13340 of the Government Code, the money in the fund is continuously appropriated to the council without regard to fiscal years. However, if the Legislature makes an appropriation for the support of the council in the Budget Act of any fiscal year, the amount for the support of the council expended from the respective accounts of the Private Postsecondary and Vocational Education Administration Fund during that fiscal year shall not exceed the amount appropriated by the Budget Act.

For the approval of private institutions operating under this chapter, the council shall charge an amount not exceeding the actual costs of approving the private institutions. On or before January 1, 1993, the council shall adopt a fee schedule for all institutions approved under this chapter, including the maximum amounts to be charged for an institution's initial application and annual renewal. The council may, subject to approval during the annual budget process as specified in this section, modify the fee schedule to add or delete categories of fees related to work performed by the council and set the maximum amount to be charged for each fee category added to the fee schedule. The fee schedule shall provide adequate resources for the council to implement this chapter effectively. It is

the intent of the Legislature that the council shall adopt a fee schedule that reflects the size of the institution, with institutions enrolling a larger number of students being required to pay a larger annual fee than those with smaller student enrollments. The council shall annually present its proposed budget, fee schedule, penalty fees assessed for delinquent payments pursuant to subdivision (i) of Section 94331.5, and additions and deletions of fee categories to the Department of Finance and the Joint Legislative Budget Committee for their review and approval as part of the annual budget process. The council shall annually publish a schedule of the current fees to be charged pursuant to this section and shall make this schedule generally available to the public. The fees may be increased annually up to the maximum allowable level by a majority vote of the council, without any additional review and approval by the Office of Administrative Law. The adoption of the annual fee schedule, any modification of the fee schedule, and any increase in fees up to the maximum allowable level shall not be subject to Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. Increases above the maximum level shall be changed through legislation enacted by the Legislature and signed by the Governor.

CHAPTER 1062

An act to amend, repeal, and add Section 42340 of, to add Sections 42310.1, 42310.2, and 42345 to, and to repeal and add Section 42324 of, the Public Resources Code, relating to solid waste.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 42310.1 is added to the Public Resources Code, to read:

42310.1. (a) Until January 1, 1997, the criteria specified in Section 42310 shall not apply to any rigid plastic packaging container that is manufactured for use with food or cosmetics, as defined in subdivisions (f) and (i) of Section 321 of Title 21 of the United States Code.

(b) Notwithstanding subdivision (a), rigid plastic packaging containers actually recycled shall be included in calculating the recycling rate pursuant to subdivision (b) or (c) of Section 42310.

(c) Any manufacturer of a product packaged in a rigid plastic packaging container or a manufacturer of a product packaged in a rigid plastic packaging container described in subdivision (a) shall do both of the following:

(1) On or before December 1, 1995, the manufacturer shall submit

a report to the board which demonstrates that the manufacturer is taking, and will continue to take, all feasible actions consistent with Section 42310 to ensure the reduction, recycling, or reuse of the rigid plastic packaging containers described in subdivision (a) and the development and expansion of markets for rigid plastic packaging containers. Those actions may include, but are not limited to, all of the following:

(A) The use of postconsumer recycled plastic in rigid plastic packaging containers sold in this state.

(B) The use of postconsumer recycled plastic in other packaging materials sold or manufactured in this state.

(C) The use of postconsumer recycled plastic in other products sold or manufactured in this state.

(D) Arranging for the use of postconsumer recycled plastic collected for recycling in this state in the manufacture of nonrigid plastic packaging container products or packaging of another entity.

(E) The procurement of products containing postconsumer recycled plastic, including, but not limited to, trash bags, trash containers, pallets, carpeting, slip sheets, and shrink wrap.

(F) The demonstration of financial investment in recycled plastic collecting, processing, and remanufacturing activities in the state.

(2) On or before January 1, 1996, the manufacturer of rigid plastic packaging containers shall diligently seek one or more "nonobjection letters" from the United States Food and Drug Administration which will permit the manufacturer of rigid plastic packaging containers to use recycled plastic in the manufacture of the rigid plastic packaging containers described in subdivision (a).

SEC. 2. Section 42310.2 is added to the Public Resources Code, to read:

42310.2. (a) On or before July 1, 1994, as part of the regulations required to be adopted pursuant to Section 42325, the board shall adopt regulations to carry out the requirements of paragraph (1) of subdivision (c) of Section 42310.1. In adopting regulations pursuant to this section, the board shall make every effort to limit paperwork and information to only those matters which are needed for the board to determine if manufacturers are taking all feasible actions to ensure the reduction, recycling, or reuse of the rigid plastic packaging containers described in subdivision (a) of Section 42310.1, and the development and expansion of markets for rigid plastic packaging containers.

(b) On or before February 1, 1996, the board shall review, and approve or disapprove, the reports required pursuant to paragraph (1) of subdivision (c) of Section 42310.1. If a report is not submitted pursuant to a schedule established by the board, or, if, based upon the report, the board determines that a manufacturer has not taken all feasible actions to ensure the reduction, recycling, or reuse of the containers and the development and expansion of markets for rigid plastic packaging containers, the board may take one of the following actions, as selected by the manufacturer:

(1) Require the manufacturer to take additional actions, including, but not limited to, one or more of the measures described in paragraph (1) of subdivision (c) of Section 42310.1, to ensure that the manufacturer is taking, and will continue to take, all feasible actions to ensure the reduction, recycling, or reuse of the containers and the development and expansion of markets for rigid plastic packaging containers.

(2) Impose a civil penalty of up to one hundred thousand dollars ($100,000) pursuant to Section 42322. In imposing monetary penalties pursuant to this paragraph, the board shall take into consideration all of the following factors:

(A) The size and net worth of the manufacturer.

(B) The impact of the violation on the overall objectives of this chapter.

(C) The severity of the violation. Any penalty imposed pursuant to this paragraph shall not be required to be paid by a manufacturer before January 1, 1997.

(c) If the board determines that the conditions in paragraphs (1) and (2) are met, the board shall enter into a contract, or other legally binding agreement, with one or more trade associations representing manufacturers of resin, manufacturers of rigid plastic packaging containers, or manufacturers of products packaged in rigid plastic packaging containers subject to this section and Section 42310.1. The agreement shall allow the trade association, in lieu of those individual manufacturers in the trade association who elect to be a party to the contract or agreement, to submit the report required pursuant to paragraph (1) of subdivision (c) of Section 42310.1 and to implement the actions identified in the report. The board shall enter into the agreement only if both of the following conditions exist:

(1) The agreement ensures that the report will contain sufficient information which otherwise would be required to be submitted by individual manufacturers pursuant to Section 42310.1, and any other information which is necessary and directly related to the board's ability to comply with this section.

(2) The agreement ensures that each manufacturer which elects to be a party to the agreement and which is a member of the trade association which submits the report shall be liable for the full amount of any civil penalties which may be imposed or shall comply with any requirement imposed by the board pursuant to paragraph (1) of subdivision (b), as selected by the manufacturer. No manufacturer subject to this paragraph shall be liable for a civil penalty greater than one hundred thousand dollars ($100,000), regardless of the number of trade associations of which the manufacturer is a member.

(d) Notwithstanding any other provision of this section, a trade association representing resin manufacturers shall be responsible for submitting an additional report as provided pursuant to paragraph (1) of subdivision (c) of Section 42310.1. The resin manufacturer's trade association is subject to the review, penalties, and sanctions

specified in paragraphs (1) and (2) of subdivision (b). No member of the resin manufacturer's trade association is liable for penalties and sanctions set forth in paragraph (1) or (2) of subdivision (b) pursuant to this subdivision if that member would not otherwise be subject to those penalties and sanctions.

(e) For the purposes of subdivision (b) and paragraph (1) of subdivision (c) of Section 42310.1, "feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(e) For purposes of Section 42310.1 and this section regarding all reporting, compliance, and penalty obligations, "manufacturer" includes all subsidiaries and affiliates.

SEC. 3. Section 42324 of the Public Resources Code is repealed.

SEC. 4. Section 42324 is added to the Public Resources Code, to read:

42324. (a) On or before April 1, 1994, the board shall conduct a public hearing for the purposes of taking testimony from the interested parties and the public on the adequacy of the recycling rate method used by the board to calculate the base rate from which the criteria established under Section 42310 are measured, and for determining if the recycling rate approach adopted by the board is the most accurate method feasible to determine the recycling rate for rigid plastic packaging containers. The board shall review any studies, reports, or data submitted by the plastics manufacturing industry, plastic recycling industries, government agencies, environmental organizations, or any other party.

(b) Within 45 days after the public hearing, the board shall determine whether or not to revise the recycling rate method. The board shall make written findings as to the reasons for changing its recycling rate approach or for retaining the current method.

SEC. 5. Section 42340 of the Public Resources Code is amended to read:

42340. The following rigid plastic packaging containers are exempt from this chapter:

(a) Rigid plastic packaging containers produced in or out of the state which are destined for shipment to other destinations outside the state and which remain with the products upon that shipment.

(b) Rigid plastic packaging containers which contain drugs, medical devices, medical food, or infant formula as defined by the Federal Food, Drug and Cosmetic Act (21 U.S.C. Sec. 301 et seq.).

(c) Rigid plastic packaging containers which contain toxic or hazardous products regulated by the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

(d) Rigid plastic packaging containers which are manufactured for use in the shipment of hazardous materials and are prohibited from being manufactured with used material by federal packaging material specifications and testing standards set forth in Section 178.509 of Title 49 of the Code of Federal Regulations. The board shall

determine the basis for the federal Department of Transportation regulation and the likelihood of that regulation being amended in the foreseeable future. The board shall report its determination and recommendation on whether to continue this exemption to the Legislature on or before January 1, 1995.

(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. 6. Section 42340 is added to the Public Resources Code, to read:

42340. The following rigid plastic packaging containers are exempt from this chapter:

(a) Rigid plastic packaging containers produced in or out of the state which are destined for shipment to other destinations outside the state and which remain with the products upon that shipment.

(b) Rigid plastic packaging containers which contain drugs, medical devices, medical food, or infant formula as defined by the Federal Food, Drug and Cosmetic Act (21 U.S.C. Sec. 301 et seq.).

(c) Rigid plastic packaging containers which contain toxic or hazardous products regulated by the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

(d) This section shall become operative on January 1, 1996.

SEC. 7. Section 42345 is added to the Public Resources Code, to read:

42345. Any extension of time for manufacturers to comply with Section 42310, beyond that which is granted pursuant to Section 42310.1 for the rigid plastic packaging containers described in that section, shall only be enacted by a statute passed by a two-thirds vote of both houses of the Legislature.

CHAPTER 1063

An act to add Section 11346.54 to the Government Code, relating to administrative regulations.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 11346.54 is added to the Government Code, to read:

11346.54. (a) All state agencies proposing to adopt or amend any administrative regulation shall assess whether and to what extent it will affect the following:

(1) The creation or elimination of jobs within the State of California.

(2) The creation of new businesses or the elimination of existing

businesses within the State of California.

(3) The expansion of businesses currently doing business within the State of California.

(b) For purposes of this section, "state agency" shall include every state office, officer, department, division, bureau, board, and commission, whether created by the Constitution, statute, or initiative, but shall not include the courts, an agency in the judicial or legislative branch of state government, the University of California, the Hastings College of the Law, or the Fair Political Practices Commission.

(c) The state agency shall include a statement of the results of this assessment in the notice of proposed action.

(d) Information required from state agencies for the purpose of completing this assessment may come from existing state publications.

CHAPTER 1064

An act to add Section 324.5 to the Public Utilities Code, relating to the Public Utilities Commission.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 324.5 is added to the Public Utilities Code, to read:

324.5. (a) The Public Utilities Commission shall publish any data it collects for its clearinghouse minority and women business data base that it deems to be nonconfidential, including, but not limited to, company name, address, telephone number, fax number, point of contact, federal Standard Industrial Classification (SIC) code, ethnicity code, gender code, and business description, for use by governmental agencies and the public who request the information. Publication of the data base shall be done on a semiannual basis and shall be made available in hardcopy and softcopy (computer disk). The data base shall also be made available electronically via a computer-accessed bulletin board service (BBS).

(b) The commission may impose fees on the requesters of information commensurate with its cost to publish, duplicate, or provide computer access to the data base.

CHAPTER 1065

An act to add Section 2885.6 to the Public Utilities Code, relating to telephones.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. The Legislature finds and declares the following:

(a) Monitoring of the cellular telephone industry by the Public Utilities Commission provides information needed by the commission to enforce existing regulatory policies and procedures necessary to protect the public interest.

(b) Cellular companies claim that some of the documents the commission may request in order to properly monitor the industry are confidential. The commission should give proper consideration to these claims of confidentiality.

SEC. 2. Section 2885.6 is added to the Public Utilities Code, to read:

2885.6. (a) The commission shall require cellular telephone carriers to provide the commission, within six months of the effective date of the act that adds this section, and thereafter as requested by the commission, with information, as specified by the commission, concerning service quality and customer complaints.

(b) In addition to any other sanctions available, the commission shall have the authority to assess any and all of the following specific penalties for cellular telephone carrier noncompliance with commission rules, practices, and procedures respecting the filing of required periodic information and reports to the commission:

(1) The revocation or suspension, on an expedited basis, of temporary tariffing authority granted the carrier.

(2) The revocation or suspension, on an expedited basis, of other rate flexibility or promotional program authority granted the carrier.

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 1066

An act to amend Sections 980, 987.56, 987.60, 987.603, 987.69, 987.86, and 1006.16 of, and to repeal Sections 980.1, 980.2, and 980.3 of, the Military and Veterans Code, relating to veterans, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 980 of the Military and Veterans Code is amended to read:

980. (a) As used in this chapter, "veteran" means any of the following:

(1) Any citizen of the United States who served in the active military, naval, or air service of the United States on or after April 6, 1917, and prior to November 12, 1918; and who received an honorable discharge or was released from active duty under honorable conditions.

(2) Any person who did all of the following:

(A) Served in the active military, naval, or air service of the United States for a period of not less than 90 consecutive days or was discharged from the service due to a service-connected disability within that 90-day period.

(B) Received an honorable discharge or was released from active duty under honorable conditions.

(C) Performed any portion of that service during any of the following periods:

(i) On or after December 7, 1941, and prior to January 1, 1947.

(ii) On or after June 27, 1950, and prior to February 1, 1955.

(iii) On or after August 5, 1964, and prior to May 8, 1975.

(iv) On or after August 2, 1990, to and including the date on which the territories in and around the Arabian Peninsula cease to be designated as a place where the armed forces of the United States are engaged in combat, as described in Executive Order 12744 of the President of the United States. It is the intent of the Legislature, in enacting this clause, that the benefits provided by this chapter shall be available to all veterans who were on active duty in the armed forces of the United States or who were called to active duty in the reserves or National Guard during the pendency of the deployment of forces for Operation Desert Shield or Desert Storm, that resulted in Executive Order 12744, irrespective of whether these veterans served overseas or in the United States.

(v) At any time, in a campaign or expedition for service in which a medal has been authorized by the government of the United States, regardless of the number of days served on active duty.

(3) Any member of the reserves or National Guard who does all

of the following:

(A) Is called to, and released from, active duty, regardless of the number of days served.

(B) Is called during any period when a presidential executive order specifies the United States is engaged in combat.

(C) Has received an honorable discharge or was released from active duty under honorable conditions.

(4) Any person who did all of the following:

(A) Served in the Merchant Marine Service of the United States.

(B) Has been granted veteran status by the United States Secretary of Defense under Title IV of the GI Improvement Act of 1977 (Public Law 95-202, as amended).

(b) For purposes of this chapter, "veteran" does not include any of the following:

(1) A person who was separated from the armed forces under other than honorable conditions.

(2) A person who was separated from the armed forces on account of alienage.

(3) A person who performed no military duty whatever or refused to wear the uniform.

(4) A person who served only in an auxiliary or reserve component of the armed forces whose service therein did not provide an exemption from the operation of the Selective Training and Service Act of 1940 (54 Stat. 885, as amended).

(5) A person whose service with the armed forces was due to temporary active duty orders for the sole purpose of training duty, processing, or a physical examination.

(6) A person whose only service during a qualifying period was as a student at a military academy and who, for any reason, failed to complete the course of study and subsequently did not serve on active duty.

SEC. 1.5. Section 980 of the Military and Veterans Code is amended to read:

980. (a) As used in this chapter, "veteran" means any of the following:

(1) Any citizen of the United States who served in the active military, naval, or air service of the United States on or after April 6, 1917, and prior to November 12, 1918, and who received an honorable discharge or was released from active duty under honorable conditions.

(2) Any person who did all of the following:

(A) Served in the active military, naval, or air service of the United States for a period of not less than 90 consecutive days or was discharged from the service due to a service-connected disability within that 90-day period.

(B) Received an honorable discharge or was released from active duty under honorable conditions.

(C) Performed any portion of that service during any of the following periods:

(i) On or after December 7, 1941, and prior to January 1, 1947.

(ii) On or after June 27, 1950, and prior to February 1, 1955.

(iii) On or after August 5, 1964, and prior to May 8, 1975.

(iv) On or after August 2, 1990, to and including the date on which the territories in and around the Arabian Peninsula cease to be designated as a place where the armed forces of the United States are engaged in combat, as described in Executive Order 12744 of the President of the United States. It is the intent of the Legislature, in enacting this clause, that the benefits provided by this chapter shall be available to all veterans who were on active duty in the armed forces of the United States or who were called to active duty in the reserves or National Guard during the pendency of the deployment of forces for Operation Desert Shield or Desert Storm, which resulted in Executive Order 12744, irrespective of whether these veterans served overseas or in the United States.

(v) At any time, in a campaign or expedition for service in which a medal has been authorized by the government of the United States, regardless of the number of days served on active duty.

(vi) At any time in Somalia, or in direct support of the troops in Somalia, including, but not limited to, persons stationed on ships of the United States armed forces conducting support activities offshore in the vicinity of Somalia, during Operation Restore Hope, regardless of the number of days served.

(3) Any member of the reserves or National Guard who does all the following:

(A) Is called to, and released from, active duty, regardless of the number of days served.

(B) Is called during any period when a presidential executive order specifies the United States is engaged in combat.

(C) Has received an honorable discharge or was released from active duty under honorable conditions.

(4) Any person who did all of the following:

(A) Served in the Merchant Marine Service of the United States.

(B) Has been granted veteran status by the United States Secretary of Defense under Title IV of the GI Improvement Act of 1977 (Public Law 95-202, as amended).

(b) For purposes of this chapter "veteran" does not include any of the following:

(1) A person who was separated from the armed forces under other than honorable conditions.

(2) A person who was separated from the armed forces on account of alienage.

(3) A person who performed no military duty whatever or refused to wear the uniform.

(4) A person who served only in an auxiliary or reserve component of the armed forces whose service therein did not provide an exemption from the operation of the Selective Training and Service Act of 1940 (54 Stat. 885, as amended).

(5) A person whose service with the armed forces was due to

temporary active duty orders for the sole purpose of training duty, processing, or a physical examination.

(6) A person whose only service during a qualifying period was as a student at a military academy and who, for any reason, failed to complete the course of study and subsequently did not serve on active duty.

SEC. 2. Section 980.1 of the Military and Veterans Code is repealed.

SEC. 3. Section 980.2 of the Military and Veterans Code is repealed.

SEC. 4. Section 980.3 of the Military and Veterans Code is repealed.

SEC. 5. Section 987.60 of the Military and Veterans Code is amended to read:

987.60. (a) The department may acquire the farm or home from its owner or may contract with a veteran for the construction of a dwelling house and other improvements for a farm or home, upon the terms agreed under all of the following terms and conditions:

(1) The department is satisfied of the desirability of the property submitted.

(2) The veteran has agreed with the department that he or she, or members of his or her immediate family, will actually reside on the property within 60 days from the date of purchase by the department, or, if the residence on the property is not complete on the date of purchase, within 60 days after the residence is completed, and will continue to reside on the property until all payments due the department have been paid or the farm or home is sold, except where the occupancy requirement is waived pursuant to Section 987.62.

(3) If the department is to contract with a veteran for the construction of a dwelling house and other buildings, or for the purchase of a mobilehome, all of the following are required:

(A) The veteran will be the owner of the real property on which the dwelling house and other buildings are to be constructed, or will be the owner of the real property or will be the owner of an undivided interest in common in a portion of a parcel of real property on which a mobilehome is to be situated, and agrees to convey that property to the department without cost.

(B) The veteran has paid a reasonable fee set by the department to cover the cost of any preliminary service of the department that may be necessary to process the application.

(C) The veteran has filed with the department adequate plans and specifications for the improvements to be constructed upon the real property, together with a contract, executed by a contractor licensed by the State of California for the construction of the improvements in accordance with the plans and specifications within 12 months after the acquisition of the real property by the department, and a bond executed by the contractor providing for compliance with the terms of the contract and for the payment of

persons furnishing material or labor on the job, executed by a surety company authorized to do business in the State of California. The department may also require course-of-construction insurance for public liability, property damage, and workers' compensation.

(D) The plans, specifications, contract, and bond are approved by the department.

(E) The veteran has placed in escrow all sums of money to be advanced by him or her, where the cost is in excess of the maximum that may be expended by the department.

(b) As used in this section "immediate family" includes only the veteran's spouse, natural or adoptive dependent children, and parents only if the parents are dependent upon the veteran for 50 percent or more of their support.

SEC. 6. Section 987.603 of the Military and Veterans Code is amended to read:

987.603. The department may acquire an assignment of an Indian veteran's beneficial interest in trust land held by the United States for that veteran or a leasehold interest in trust land acquired by the Indian veteran from an Indian beneficiary and contract with an Indian veteran as provided in Sections 987.601 and 987.602 upon the terms agreed if all of the following conditions are met:

(a) The department is satisfied of the desirability of the property submitted.

(b) The Indian veteran has agreed with the department that the veteran, or members of the veteran's immediate family, will actually reside on the property within 60 days from the date of acquisition by the department, or if the residence on the property is not complete on the date of acquisition, within 60 days after the residence is completed.

(c) The sum to be expended by the department pursuant to a contract for the acquisition of a home or the construction of a dwelling house and other improvements does not exceed the maximum loan amount established pursuant to subdivision (a) of Section 987.65. The sum to be expended by the department pursuant to a contract for the acquisition of a mobilehome on trust land or leasehold land does not exceed the maximum loan amount established pursuant to subdivision (b) of Section 987.65. The sum to be expended by the department pursuant to a contract for the acquisition of a farm on trust land or leasehold land does not exceed the maximum loan amount established pursuant to subdivision (e) of Section 987.65.

(d) The Indian veteran has paid a reasonable fee set by the department to cover the cost of preliminary service of the department that may be necessary to process the application.

(e) The Indian veteran has filed with the department adequate plans and specifications for the improvements to be constructed upon the real property, together with a contract executed by a contractor licensed by the State of California or by an Indian contractor approved by the department for the construction of the

improvements, in accordance with the plans and specifications, within 12 months after the assignment of the Indian veteran's beneficial interest or acquisition of the Indian veteran's leasehold interest in the real property by the department, and a bond executed by the contractor providing for compliance with the terms of the contract and for the payment of persons furnishing material or labor on the job, executed by a surety company, authorized to do business in the State of California. The department may also require course-of-construction insurance for public liability, property damage, and workers' compensation.

(f) The plans, specifications, contract, and bond are approved by the department.

(g) The Indian veteran has placed in escrow all sums of money to be advanced by the veteran where the cost is in excess of the maximum that may be expended by the department.

SEC. 7. Section 987.69 of the Military and Veterans Code is amended to read:

987.69. The department shall then enter into a contract with the veteran for the sale of the property to the veteran. The department shall fix the selling price of the property by adding to the purchase price thereof, to the total cost of improvements constructed, or to the value of such property as determined by the department when such property is acquired by the department in a manner other than by purchase, all expenses incurred and estimated to be incurred by the department in relation thereto, inclusive of interest, administration, appraisals, examination of title, incidental expenses, and the sum deemed necessary to meet unforeseen contingencies. In the case of real property acquired for the purpose of constructing improvements thereon, the department shall forthwith after acquiring said real property enter into the contract with the veteran authorized by this section at a selling price determined by the department's appraised value of the land, if the loan is to include the value of the land, and the amount of the department's appraised value of the improvements to be constructed thereon and any of the other additions herein authorized. After the execution of said contract between the veteran and the department and the making of the initial payment thereon the department shall be authorized to pay the cost of the improvements contracted to be constructed on said real property, making progress payments thereon in such amounts and at such times as the department shall upon written request of the veteran and his contractor have authority to approve additions to or deletions from the improvements contracted to be constructed and any savings affected or added cost incurred shall be deducted from or added to the amount due the department by the veteran under the terms of his contract.

Where the department enters into a contract for the sale of property on trust to an Indian veteran, the contract shall include the following conditions:

(a) The dwelling house or other improvements contracted to be

constructed on trust land shall be completed in compliance with the standards of the building code applicable on the trust land. If there is no building code in force on the trust land, the applicable standards shall be those of the building code of the county in which the trust land is located.

(b) On the completion of construction, the Indian veteran shall provide to the department an inspection certificate from a qualified building inspector certifying that the dwelling house or other improvements comply with the standards of the building code as required by subdivision (a).

SEC. 8. Section 987.56 of the Military and Veterans Code is amended to read:

987.56. (a) The department shall prescribe and determine the qualifications of all veterans. Any person deeming himself or herself a veteran and desiring to benefit hereunder, shall submit to the department information, in the form prescribed by the department, that will enable the department to determine his or her eligibility and qualifications. The department may make further inquiries and investigations in order to determine eligibility and qualifications.

(b) Veterans who are otherwise qualified and who were wounded or disabled as a result of their service shall be given first preference in the benefits conferred by this article. The department shall determine, in each case, whether the veteran was wounded or disabled as a result of service.

(c) The following group shall be given second preference in the benefits conferred by this article:

(1) The unremarried spouse of individuals who were members of the armed forces on active military duty, entered active duty while in the State of California, lived in this state for six months immediately preceding his or her entry into active duty, and were killed in the line of duty while on active duty.

(2) Members of the armed forces who entered active military duty while in the State of California, lived in this state for six months preceding his or her entry into active duty, and were held as prisoners of war.

(3) The unremarried spouse of members of the armed forces who entered active military duty while in the State of California, lived in this state for six months preceding his or her entry into active duty, and have been designated by the armed forces as missing in action.

(d) The following group shall be given third preference in the benefits conferred by this article:

(1) Indian veterans whose eligibility was or could have been established prior to the effective date of this legislation.

(2) Veterans whose eligibility is derived from service with any portion of which was on or after August 5, 1964, and prior to May 8, 1975, and veterans discharged or released from active duty within 10 years of their application to the department.

(e) Veterans discharged or released from active duty more than 10 years prior to their application to the department shall be given

fourth preference in the benefits conferred by this article.

(f) Veterans eligible for a subsequent loan under subdivision (a) of Section 987.86 shall be given fifth preference in the benefits conferred by this article.

(g) Nothing in this section regarding preferences shall affect any eligibility requirement for benefits conferred by this article.

SEC. 9. Section 987.86 of the Military and Veterans Code is amended to read:

987.86. (a) Any veteran for whom a farm or home is purchased under this article may be granted a subsequent opportunity to purchase another farm or home when the farm or home purchased under this article is sold, and the veteran pays the purchase contract in full. The maximum amount that the department may advance under this subdivision is limited to the maximum amounts set forth in Section 987.65 at the time the application is made for the subsequent loan.

(b) Only one farm or home purchased under this article shall be owned by a veteran or a veteran and the veteran's spouse at any one time.

(c) Any veteran for whom a farm or home is purchased under this article may be granted a subsequent opportunity to purchase another farm or home if he or she has paid the purchase contract in full and qualifies as a veteran as described in Section 980 under another separate period of service, or the veteran and the veteran's spouse each qualify as a veteran, as described in Section 980.

(d) A member of the armed forces, eligible for military retirement, who meets the residence requirements of Section 980, or a veteran as described in Section 980 who is receiving military retirement pay, for whom a farm or home was purchased under this article while in active military service, may be granted a subsequent opportunity to purchase another farm or home, if he or she has paid the purchase contract in full and has served during more than one period for which eligibility is granted.

SEC. 10. Section 1006.16 of the Military and Veterans Code is amended to read:

1006.16. The department shall require that all applicants under this article qualify under the applicable federal laws and regulations governing the permitted uses of tax-exempt bond funds, and file within the time limits required under applicable federal laws and regulations.

SEC. 11. Section 1.5 of this bill incorporates amendments to Section 980 of the Military and Veterans Code proposed by this bill and AB 1073. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 980 of the Military and Veterans Code, and (3) this bill is enacted after AB 1073, in which case Section 980 of the Military and Veterans Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of AB 1073, at which time Section 1.5 of this bill

shall become operative.

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 for veterans to have access to needed benefits, it is necessary that this bill take effect immediately.

CHAPTER 1067

An act to add Section 25402.5 to the Public Resources Code, relating to energy resources, and making an appropriation therefor.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 25402.5 is added to the Public Resources Code, to read:

25402.5. (a) As used in this section, "lighting device" includes, but is not limited to, a lamp, luminaire, light fixture, lighting control, ballast, or any component of those devices.

(b) (1) The commission shall consider both new and replacement, and both interior and exterior, lighting devices as lighting which is subject to subdivision (a) of Section 25402.

(2) The commission shall include both indoor and outdoor lighting devices as appliances to be considered in prescribing standards pursuant to paragraph (1) of subdivision (c) of Section 25402.

(3) The Legislature hereby finds and declares that paragraphs (1) and (2) are declarative of existing law.

(c) (1) The commission shall establish an advisory group to provide technical advice, and, after public review, shall prepare and submit a report to the Legislature on or before January 1, 1996, identifying which lighting devices, whether indoor or outdoor, and residential or commercial, may be appropriate either for the commission to include in lighting efficiency regulations and other state energy or lighting efficiency programs or for federal government consideration in national lighting efficiency standards. The advisory group shall include, but not be limited to, representatives of the Illuminating Engineering Society of North America, the International Association of Lighting Designers, the National Electrical Manufacturers Association, the Association of Professional Energy Managers, the Lighting Research Institute, the Electric Power Research Institute, the Natural Resources Defense Council, the Department of Energy, the Environmental Protection Agency, and California's electric utilities. No state funds shall be used

to support the advisory group.

(2) The commission's report and recommendations shall identify proposed lighting efficiency regulations, standards, or programs that are technologically feasible and cost-effective and that would result in a significant level of energy savings. The report shall emphasize, but not be limited to, residential lighting efficiency, and shall consider requiring manufacturers of light fixtures to produce fixtures which are physically compatible with fluorescent lamps. The report shall also consider educational and labeling programs that could help increase the use of efficient lighting devices.

(d) (1) To the extent not preempted by federal law, on or before February 1, 1996, the commission shall initiate a formal rulemaking proceeding, including public review and hearings, to consider efficiency standards for lighting devices as recommended in the report required by subdivision (c). Any regulations issued pursuant to this paragraph shall be subject to the requirements of paragraph (1) of subdivision (c) of Section 25402.

(2) The commission may also actively participate in proceedings of the Department of Energy concerning the development and adoption of national lighting efficiency standards as recommended in the report.

SEC. 2. (a) Section 1 of this act shall become operative only if the State Energy Resources Conservation and Development Commission receives, on or before February 28, 1994, not less than a total of two hundred twenty thousand dollars ($220,000) in nonstate funds consisting of contributions shared among electric utilities, lighting manufacturers, and other private sources, together with any federal funds received for the purpose. The Public Utilities Commission shall allow investor-owned electric utility expenditures for this purpose to be recoverable in rates. All contributions received by the State Energy Resources Conservation and Development Commission pursuant to this section shall be deposited in the Lighting Device Fund, which is hereby created in the State Treasury, and, notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated to the State Energy Resources Conservation and Development Commission for expenditure for purposes of Section 25402.5 of the Public Resources Code.

(b) To the extent possible, based on resources provided by the Budget Act of 1995, the State Energy Resources Conservation and Development Commission shall comply with the rulemaking requirements of subdivision (d) of Section 25402.5 of the Public Resources Code as part of the next appropriately scheduled appliance standard update. If additional resources are required to comply with those provisions, the commission shall request those resources through the budget process.

CHAPTER 1068

An act to amend Sections 65940.5 and 65950 of, and to add Section 65952.2 to, the Government Code, relating to land use.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 65940.5 of the Government Code is amended to read:

65940.5. (a) No list compiled pursuant to Section 65940 shall include a waiver of the time periods prescribed by this chapter within which a state or local agency shall act upon an application for a development project.

(b) No application shall be deemed incomplete for lack of a waiver of time periods prescribed by this chapter within which a state or local government agency shall act upon the application.

(c) Except for the waiver of the time limits pursuant to Sections 65950.1 and 65951, no public agency shall require a waiver of the time limits contained in this chapter as a condition of accepting or processing the application for a development project.

SEC. 2. Section 65950 of the Government Code is amended to read:

65950. Any public agency that is the lead agency for a development project for which an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code shall approve or disapprove the project within six months from the date of certification by the lead agency of the environmental impact report. If a negative declaration is adopted or if the project is exempt from Division 13 (commencing with Section 21000) of the Public Resources Code, the development project shall be approved or disapproved within three months from the date of adoption of a negative declaration, or the determination by the lead agency that the project is exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code, unless the project proponent requests an extension of the time limit. As specified in Sections 21100.2 and 21151.5 of the Public Resources Code, the period specified in those sections shall also begin on that date.

SEC. 3. Section 65952.2 is added to the Government Code, to read:

65952.2. No public agency shall disapprove an application for a development project in order to comply with the time limits specified in this chapter. Any disapproval of an application for a development project shall specify reasons for disapproval other than the failure to timely act in accordance with the time limits specified in this chapter.

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 1069

An act to amend Sections 3761, 3773, 3774, and 3775 of, and to add Sections 3753.1, 3753.7, and 3775.3 to, the Business and Professions Code, relating to respiratory care, and making an appropriation therefor.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 3753.1 is added to the Business and Professions Code, to read:

3753.1. An administrative disciplinary decision imposing terms of probation may include, among other things, a requirement that the licensee-probationer pay the monetary costs associated with monitoring the probation.

SEC. 2. Section 3753.7 is added to the Business and Professions Code, to read:

3753.7. For purposes of this chapter, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees.

SEC. 3. Section 3761 of the Business and Professions Code is amended to read:

3761. (a) No person may represent himself or herself to be a respiratory care practitioner without a license granted under this chapter, except as otherwise provided in this chapter.

(b) No person or corporation shall knowingly employ a person who holds himself or herself out to be a respiratory care practitioner without a license granted under this chapter, except as otherwise provided in this chapter.

(c) At the discretion of the examining committee, violation of the provisions of subdivision (a) shall be punishable by issuance of an administrative citation and assessment of an administrative fine of one thousand dollars ($1,000).

SEC. 4. Section 3773 of the Business and Professions Code is amended to read:

3773. At the time of application for renewal of a respiratory care

practitioner license, the licensee shall notify the examining committee of all of the following:

(a) Whether he or she has been convicted of any crime subsequent to the licensee's previous renewal.

(b) The name and address of the licensee's current employer or employers.

SEC. 5. Section 3774 of the Business and Professions Code is amended to read:

3774. On or before the birthday of a licensed practitioner in every other year, following the initial licensure, the examining committee shall mail to each practitioner licensed under this chapter, at the latest address furnished by the licensed practitioner to the executive officer of the examining committee, a notice stating the amount of the renewal fee and the date on which it is due. The notice shall state that failure to pay the renewal fee on or before the due date and submit evidence of compliance with Section 3719 shall result in expiration of the license.

Each license not renewed in accordance with this section shall expire but may within a period of three years thereafter be reinstated upon payment of all accrued and unpaid renewal fees and penalty fees required by this chapter. The examining committee may also require submission of proof of the applicant's qualifications, except that during the three-year period no examination shall be required as a condition for the reinstatement of any expired license that has lapsed solely by reason of nonpayment of the renewal fee.

SEC. 6. Section 3775 of the Business and Professions Code is amended to read:

3775. The amount of fees provided in connection with licenses or approvals for the practice of respiratory care shall be as follows:

(a) The application fee shall be fixed by the examining committee at not more than two hundred dollars ($200). The application fee for the applicant under Section 3734 shall be fixed by the examining committee at not more than two hundred fifty dollars ($250).

(b) The examination and reexamination fees shall be the actual cost to the examining committee for purchasing, grading, and administering each examination.

(c) The initial license fee for a respiratory care practitioner shall be two hundred dollars ($200).

(d) The renewal fee shall be fixed by the examining committee at not more than two hundred dollars ($200). However, the renewal fee in effect on December 31, 1993, shall not be increased prior to January 1, 1995, and in no case shall the fee in any year be more than 10 percent greater than the amount of the fee in the preceding year.

(e) The delinquency fee shall be fixed by the examining committee at not more than the following amounts:

(1) If the license is renewed not more than two years from the date of its expiration, the delinquency fee shall be 50 percent of the renewal fee in effect for the license term immediately following the date of expiration of the license.

(2) If the license is renewed after two years, but not more than three years, from the date of expiration of the license, the delinquency fee shall be the amount specified in paragraph (1) in addition to the amount of the renewal fee in effect at the time of renewal.

(f) The duplicate license fee shall be seventy-five dollars ($75).

(g) The endorsement fee shall be fifty dollars ($50).

(h) The fee for approval of providers of continued education shall be fixed by the examining committee at not more than one hundred dollars ($100).

(i) The fee for approval of education training programs shall be fixed by the examining committee at not more than one hundred dollars ($100). The examining committee may establish a renewal fee not to exceed one hundred dollars ($100) for education training programs and fix the term of the renewal period at not less than two years.

(j) The biennial renewal fee for continuing education providers shall be fixed by the examining committee at not more than one hundred dollars ($100).

SEC. 7. Section 3775.3 is added to the Business and Professions Code, to read:

3775.3. The Respiratory Care Board of California shall report to the appropriate policy and fiscal committee of each house of the Legislature whenever the Respiratory Care Board of California proposes or adopts an increase in any fee, and shall specify the rationale and justification for that increase.

CHAPTER 1070

An act to amend Section 21151 of, to add Section 21083.1 to, and to add and repeal Section 21080.6 of, the Public Resources Code, relating to environmental quality.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 21080.6 is added to the Public Resources Code, to read:

21080.6. (a) A lead agency may comply with the notice requirement in subdivision (a) of Section 21080.4 by preparing an expanded notice of preparation pursuant to this section.

(b) The expanded notice of preparation shall include a brief description of the project and the location and effects on the environment of the project.

(c) The expanded notice of preparation shall include the date, time, and place of a public hearing on the notice, an address where

documents or files relating to the project are available for review, the address to which written comments may be sent, and the deadline for submitting comments.

(d) The expanded notice of preparation may include any other information about the proposed project or the environmental impact report, including the agency's preliminary determinations and decisions regarding nonsignificant effects on the environment of the project; potentially significant effects on the environment; the scope of, and analyses and methodology for, the environmental impact report to be prepared; and a general description of any project alternatives to be considered and the basis for selecting those alternatives for analysis.

(e) Copies of the expanded notice of preparation shall be provided to each responsible agency, each agency with jurisdiction by law over resources affected by the project, each city or county that borders on the city or county in which the project is located, and any party who has requested notice, and shall be published in a newspaper of general circulation pursuant to Section 6061 of the Government Code.

(f) 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. Section 21083.1 is added to the Public Resources Code, to read:

21083.1. It is the intent of the Legislature that courts, consistent with generally accepted rules of statutory interpretation, shall not interpret this division or the state guidelines adopted pursuant to Section 21083 in a manner which imposes procedural or substantive requirements beyond those explicitly stated in this division or in the state guidelines.

SEC. 3. Section 21151 of the Public Resources Code is amended to read:

21151. (a) All local agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project that they intend to carry out or approve which may have a significant effect on the environment. When a report is required by Section 65402 of the Government Code, the environmental impact report may be submitted as a part of that report.

(b) For purposes of this section, any significant effect on the environment shall be limited to substantial, or potentially substantial, adverse changes in physical conditions which exist within the area as defined in Section 21060.5.

(c) When an environmental impact report is certified by a local lead agency's decisionmaking body which is not elected, that certification may be appealed to the agency's elected decisionmaking body, if any.

CHAPTER 1071

An act to add Sections 5506.10, 5538.10, and 5539.10 to the Public Resources Code, relating to regional park or open-space districts.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 5506.10 is added to the Public Resources Code, to read:

5506.10. (a) (1) The Legislature hereby finds and declares that the population of Sacramento County continues to grow at an increasing rate, and already the county is far behind in providing adequate park, recreational, and open-space facilities for its residents. Formation of a regional district with boundaries coterminous with those of Sacramento County is critical to help address the growing and unmet park and recreational needs in Sacramento County.

(2) Proceedings for the formation of a regional park and open-space district or a regional open-space district with boundaries coterminous with those of Sacramento County may be initiated by resolution of the Board of Supervisors of the County of Sacramento after a hearing noticed in accordance with Section 6064 of the Government Code, in lieu of the petition and proceedings related to the petition specified in this article.

(b) As used in this section:

(1) "Regional district" means a district formed pursuant to this section that contains all of the territory within Sacramento County, including all incorporated cities.

(2) "Capital outlay project" means the acquisition or improvement of real property, but, for purposes of subdivision (c) includes the servicing of bonds issued pursuant to Section 5539.10.

(3) "Maintenance" means both of the following:

(A) Those purposes listed in Section 22531 of the Streets and Highways Code.

(B) Security for park, recreational, and open-space lands and improvements, including, but not limited to, park rangers and park security personnel.

(c) The resolution specified in subdivision (a) shall do all of the following:

(1) Name the proposed regional district and state the reasons for forming it.

(2) Specify that the Board of Supervisors of the County of Sacramento 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 regional district.

(4) Describe the methods by which the regional district will be financed.

(5) (A) Specify that all revenue generated by the regional district, including the proceeds from the issuance of any bonds, shall be allocated among all affected public agencies within the territory of the district, for expenditure consistent with the purposes of this article, to adequately address the needs specified in subdivision (a) of Section 5539.10.

(B) For the purposes of this paragraph, "all affected public agencies" means the County of Sacramento, all incorporated cities within the county, and any park district or county service area established for the purpose of acquiring, improving, and managing land or improvements for park, recreational, open-space, or conservation purposes which is included within the territory of the district.

(6) (A) Call and give notice of an election to be held in the proposed regional district for the purpose of determining whether the regional district shall be formed.

(B) Notwithstanding Section 5518, the County Counsel of the County of Sacramento shall prepare the language in the ballot label. The proposition shall specify the matters set forth in the resolution, except for subparagraph (A). The analysis and review of the measure shall be carried out pursuant to Section 3781 of the Elections Code.

(7) State that in the first 20 years after the date that an assessment is levied pursuant to Section 5539.10, a minimum of 75 percent of all proceeds of assessments levied by the regional district shall be used for capital outlay projects on a nonannualized basis.

(8) Include an expenditure plan consisting of a list of capital outlay projects, including acquisition areas, and a general description of proposed outlays for operation and maintenance to be funded, over a 20-year period from the date on which the assessment is first levied, with proceeds of assessments levied by the regional district. No funds shall be allocated for capital outlay projects or for the operation and maintenance of any lands or facilities that are not located within the boundaries of the regional district.

(9) State the proposed rate and method of apportionment to be used in levying annual assessments for all categories of property.

(10) Include any other matters determined to be necessary or desirable by the board of supervisors.

(d) (1) The formation of the regional district is not subject to Section 5517.1 or to the Cortese-Knox Local Government Reorganization Act of 1985 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code).

(2) The regional district shall be formed if a majority of voters voting on the proposition vote in favor of formation of the regional district.

(e) (1) No proceeds from any bonds issued pursuant to Section

5539.10 shall be expended for operation and maintenance. Bond proceeds may be expended to pay all costs incidental to the preparation and issuance of the bonds.

(2) The regional district may use the proceeds from the levy of assessments for the operation and maintenance of capital outlay projects and any lands acquired and improvements made to park, recreational, and open-space lands of the regional district.

SEC. 2. Section 5538.10 is added to the Public Resources Code, to read:

5538.10. The officers and employees of the County of Sacramento may act, ex officio, as officers and employees of the regional district formed pursuant to Section 5506.10 and may discharge the authority and responsibility specified in this article. The County of Sacramento may provide the services and facilities needed to carry out the functions of the regional district. The proceeds of assessments levied pursuant to Section 5539.10 may be expended to reimburse the county for the actual costs of those services and facilities.

SEC. 3. Section 5539.10 is added to the Public Resources Code, to read:

5539.10. (a) (1) The Legislature hereby finds and declares that the land acquisition, improvements, and services provided by the regional district formed pursuant to Section 5506.10 will specifically benefit the properties assessed and the persons paying the assessments authorized in this section in at least the following respects:

(A) Enhanced recreational opportunities and expanded access to recreational facilities for all residents throughout the regional district.

(B) Improved quality of life for all communities in the regional district by protecting, restoring, and improving the regional district's irreplaceable beaches, rivers and creeks, wildlife, parks, and open-space land.

(C) Preservation of natural lands, including foothills, and rivers and creeks, and the development of public access to those lands and waters throughout the regional district.

(D) Protection of the historical and cultural values of the territory of the regional district.

(E) Increased economic activity and expanded employment opportunities within the regional district.

(F) Increased property values, resulting from the benefits specified in this subdivision.

(G) Provision of benefits to all properties within the regional district, including positive impacts on air and water quality, capacity of roads, transportation and other public infrastructure systems, schools, and public utilities.

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

(A) The expansion, restoration, improvement, and safety of park, recreational, beach, and open-space lands throughout the regional district benefits all residents in the regional district.

(B) Protection, restoration, and improvement of the lands within the regional district are vital to the quality of life for all residents in the regional district.

(C) Maintaining, improving, and servicing, and providing security for, park, recreational, and open-space lands and improvements is vital to the welfare and to the property values of all residents in the regional district.

(D) Increased park and recreational opportunities in the more densely populated and urbanized areas of the regional district are particularly vital to the health and well-being of residents, and providing those opportunities is a high priority.

(E) The protection and enhancement of the recreational opportunities provided by the rivers, beaches, foothills, parkways, greenways, and other open-space areas in the regional district must be included within the expenditure plan specified in paragraph (8) of subdivision (c) of Section 5506.10 in order to provide benefits to each resident of the county.

(F) Portions of parcels of land that are in commercial agricultural use do not benefit from park or open-space lands, facilities, or services funded pursuant to this section.

(b) In addition to the authority conferred in Section 5539.5, to the extent not inconsistent with this section, all provisions of the Landscaping and Lighting Act of 1972 (Part 2 (commencing with Section 22500) of Division 15 of the Streets and Highways Code) are applicable to the regional district, except as follows:

(1) Article 2 (commencing with Section 22605) of Chapter 2 of Part 2 of Division 15 of the Streets and Highways Code does not apply.

(2) No changes shall be made pursuant to Chapter 3 (commencing with Section 22620) of Part 2 of Division 15 of the Streets and Highways Code or Section 5572 of this code with respect to the rate and method of apportionment of assessments, the use of proceeds of assessments, the use of proceeds of bonds, and the territory included within the district, except that the governing body may correct errors in assessments, rule on appeals of assessments against particular parcels, and annually adjust the assessments levied against particular parcels of real property to reflect changes in the uses of those parcels.

(3) No changes shall be made to the rate and method of apportionment of any assessment approved by the voters and levied pursuant to this section.

(4) In addition to the items required by Section 22567 of the Streets and Highways Code, the regional district's annual report shall include all of the following:

(A) Changes in the total number of parcels assessed and changes in the number of parcels with respect to use code.

(B) The amount of revenue expected to be received by the regional district in the next fiscal year.

(C) The proposed allocation of funds for operation and

maintenance for the next fiscal year.

(D) The expenditure of funds in the current fiscal year.

(5) Any notice required pursuant to the Landscaping and Lighting Act of 1972, Section 54954.6 of the Government Code, or Section 5511 shall be published pursuant to Section 6064 of the Government Code.

(6) (A) (i) The governing body shall not levy any assessment unless a proposition authorizing the regional district to levy the assessment is first approved by a majority of the voters voting on the proposition. The proposition shall include the matters specified in subdivision (c) of Section 5506.10, except for paragraph (6) of that subdivision. The election held pursuant to this paragraph shall satisfy the requirement for any election that may be required under Section 22525.5 of the Streets and Highways Code.

(ii) No additional assessment shall be levied pursuant to this section, including any assessment for time periods beyond those specified in paragraphs (7) and (8) of subdivision (c) of Section 5506.10, unless a proposition, including the matters specified in subdivision (c) of Section 5506.10, except for paragraph (6) of that subdivision, is approved by a majority of the voters in the regional district voting on the proposition.

(B) Notwithstanding Section 5518, the County Counsel of the County of Sacramento shall prepare the language in the ballot label.

(C) The Board of Supervisors of Sacramento County may consolidate a proposition submitted to the voters pursuant to this paragraph into a single ballot measure with the proposition whether to form the regional district submitted pursuant to paragraph (6) of subdivision (c) of Section 5506.10.

(7) (A) All proceeds of assessments levied or bonds issued by the regional district shall be allocated in accordance with paragraphs (5) and (8) of subdivision (c) of Section 5506.10.

(B) Any future expenditure plan shall include a division of funds between expenditures for capital outlay projects and expenditures for operation and maintenance, a list of proposed capital outlay projects, and a description of areas proposed for acquisition. No expenditure plan shall contain any provision that may impair the payment of debt service on bonds or other evidence of indebtedness previously issued pursuant to this section. Any assessment levied pursuant to this section may include an annual amount to pay the costs of operation and maintenance and may be collected in annual installments.

(c) Prior to the election required by paragraph (6) of subdivision (b), the Board of Supervisors of Sacramento County may undertake proceedings on behalf of the proposed regional district in accordance with Part 2 (commencing with Section 22500) of Division 15 of the Streets and Highways Code to create an assessment district with the same boundaries as the proposed regional district. Hearings required pursuant to Part 2 (commencing with Section 22500) of Division 15 of the Streets and Highways Code may be consolidated with those

required pursuant to this article. Those proceedings shall be deemed to be the proceedings required by Part 2 (commencing with Section 22500) of Division 15 of the Streets and Highways Code.

(d) (1) The governing body shall exempt from assessment any uninhabited parcel that is substantially used in agriculture and any parcel enforceably restricted as open-space land during the time that the parcel is so used or restricted, if the governing body determines that the parcel will not benefit from the expenditure of the proceeds of assessments.

(2) For purposes of this subdivision, lands that are enforceably restricted as open-space lands include, but are not limited to, lands restricted under contract pursuant to the Williamson Act (Chapter 7 (commencing with Section 51200) of Part 1 of Division 1 of Title 5 of the Government Code) and lands restricted pursuant to a conservation easement.

(e) The net amount to be assessed upon lands within an assessment district may be apportioned by any formula or method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated benefits to be received by each lot or parcel from the improvements.

(f) The regional district shall not levy assessments beyond the last maturity date of any bonds issued pursuant to Section 5539.10 nor longer than 30 years from the date on which the assessment is first levied.

SEC. 4. If any provision of this act or the application thereof is held invalid, that invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

CHAPTER 1072

An act to amend Sections 726 and 729 of the Business and Professions Code, and to amend Section 802 of the Penal Code, relating to healing arts practitioners.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 726 of the Business and Professions Code is amended to read:

726. The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, under any initiative act referred to in this division and under Chapter 17 (commencing with Section

9000) of Division 3.

This section shall not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.

SEC. 2. Section 729 of the Business and Professions Code is amended to read:

729. (a) Any physician and surgeon, psychotherapist, or any person holding himself or herself out to be a physician and surgeon or psychotherapist, who engages in an act of sexual intercourse, sodomy, oral copulation, or sexual contact with a patient or client, or with a former patient or client when the relationship was terminated primarily for the purpose of engaging in those acts, unless the physician and surgeon or psychotherapist has referred the patient or client to an independent and objective physician and surgeon or psychotherapist, recommended by a third-party physician and surgeon or psychotherapist, for treatment, is guilty of sexual exploitation by a physician and surgeon or psychotherapist.

(b) Sexual exploitation by a physician and surgeon or psychotherapist is a public offense:

(1) An act in violation of subdivision (a) shall be punishable by imprisonment in a county jail for a period of not more than six months, or a fine not exceeding one thousand dollars ($1,000), or both.

(2) Multiple acts in violation of subdivision (a) with a single victim, when the offender has no prior conviction for sexual exploitation, shall be punishable by imprisonment in a county jail for a period of not more than six months, or a fine not exceeding one thousand dollars ($1,000), or both.

(3) An act or acts in violation of subdivision (a) with two or more victims shall be punishable by imprisonment in the state prison for a period of 16 months, two, or three years, and a fine not exceeding ten thousand dollars ($10,000); or the act or acts shall be punishable by imprisonment in a county jail for a period of not more than one year, or a fine not exceeding one thousand dollars ($1,000), or both.

(4) Two or more acts in violation of subdivision (a) with a single victim, when the offender has at least one prior conviction for sexual exploitation, shall be punishable by imprisonment in the state prison for a period of 16 months, two, or three years, and a fine not exceeding ten thousand dollars ($10,000); or the act or acts shall be punishable by imprisonment in a county jail for a period of not more than one year, or a fine not exceeding one thousand dollars ($1,000), or both.

(5) An act or acts in violation of subdivision (a) with two more victims, and the offender has at least one prior conviction for sexual exploitation, shall be punishable by imprisonment in the state prison for a period of 16 months, two, or three years, and a fine not exceeding ten thousand dollars ($10,000).

For purposes of subdivision (a), in no instance shall consent of the patient or client be a defense. However, physicians and surgeons shall not be guilty of sexual exploitation for touching any intimate part of a patient or client unless the touching is outside the scope of medical examination and treatment, or the touching is done for sexual gratification.

(c) For purposes of this section:

(1) "Psychotherapist" has the same meaning as defined in Section 728.

(2) "Sexual contact" means sexual intercourse or the touching of an intimate part of a patient for the purpose of sexual arousal, gratification, or abuse.

(3) "Intimate part" and "touching" have the same meanings as defined in Section 243.4 of the Penal Code.

(d) In the investigation and prosecution of a violation of this section, no person shall seek to obtain disclosure of any confidential files of other patients, clients, or former patients or clients of the physician and surgeon or psychotherapist.

(e) This section shall not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.

(f) If a physician and surgeon or psychotherapist in a professional partnership or similar group has sexual contact with a patient in violation of this section, another physician and surgeon or psychotherapist in the partnership or group shall not be subject to action under this section solely because of the occurrence of that sexual contact.

SEC. 3. Section 802 of the Penal Code is amended to read:

802. (a) Except as provided in subdivision (b), prosecution for an offense not punishable by death or imprisonment in the state prison shall be commenced within one year after commission of the offense.

(b) Prosecution for a misdemeanor violation of Section 647.6 or former Section 647a, committed with or upon a minor under the age of 14 years shall be commenced within two years after commission of the offense.

(c) Prosecution of a misdemeanor violation of Section 729 of the Business and Professions Code shall be commenced within two years after commission of the offense.

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 1073

An act to add Sections 40510.5 and 40523 to the Health and Safety Code, relating to air pollution.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 40510.5 is added to the Health and Safety Code, to read:

40510.5. The south coast district shall not increase any fee charged for a permit or variance, or for any activity that is required for compliance with the rules and regulations of the south coast district, by a percentage greater than any percentage increase in the state Consumer Price Index, as provided in Section 2212 of the Revenue and Taxation Code, for the preceeding fiscal year.

SEC. 2. Section 40523 is added to the Health and Safety Code, to read:

40523. The total amount of fees collected by the south coast district in any fiscal year shall not exceed the amount of fees collected by the district in the 1993–94 fiscal year, except that the amount may be adjusted annually in the 1994–95 fiscal year and subsequent fiscal years to reflect any increase in the Consumer Price Index as provided in Section 2212 of the Revenue and Taxation Code. This limitation shall not affect or limit the fees which may be imposed and collected pursuant to a state or a federal mandate imposed on or after January 1, 1994.

SEC. 3. This act shall become operative only if Assembly Bill 1890 is enacted.

CHAPTER 1074

An act to add Division 32.5 (commencing with Section 60200) to the Public Resources Code, relating to solid waste.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Division 32.5 (commencing with Section 60200) is added to the Public Resources Code, to read:

DIVISION 32.5. VENTURA COUNTY WASTE MANAGEMENT AUTHORITY

CHAPTER 1. GENERAL PROVISIONS

Article 1. Title

60200. This division shall be known, and may be cited, as the Ventura County Waste Management Authority Act.

Article 2. Definitions

60201. Unless the context requires otherwise, the definitions in this chapter govern the construction of this division. Any terms that are not defined in this chapter, but are defined in the California Integrated Waste Management Act of 1989 (Division 30 (commencing with Section 40000)), shall have the same meaning as defined in that act.

60201.5. "Authority" means the Ventura County Waste Management Authority formed pursuant to this division.

60202. "Board" means the board of directors of the authority.

60202.5. "County" means the County of Ventura.

60203. "Task force" means the local task force in the county convened pursuant to Section 40950, but as the task force was composed as of January 1, 1993.

60203.5. "Reorganization plan" means the reorganization plan required by Section 60211.

60204. "Represented agency" means the county and each city within the county that has become and remains a represented agency in accordance with Section 60232 and any city that subsequently becomes a represented agency in accordance with subdivision (c) of Section 60235.

60204.5. "State act" means the California Integrated Waste Management Act of 1989 (Division 30 (commencing with Section 40000)).

60205. "Study" means the study required by Section 60210.

60205.5. "Sanitation district" means the Ventura Regional Sanitation District, which is a county sanitation district organized pursuant to Chapter 3 (commencing with Section 4700) of Part 3 of Division 5 of the Health and Safety Code.

CHAPTER 2. STUDY AND REORGANIZATION PLAN

60210. On or before March 1, 1994, the county, the cities within the county, and the sanitation district shall cause a study to be conducted, which shall include an audit and assessment. The study shall be submitted to the task force for final review and approval. Approval of the study shall require the affirmative vote of the city representatives from seven cities on the task force and the two representatives of the county casting a single vote in the affirmative. In addition to any other matter that may be addressed, the study shall address all of the following:

(a) An assessment of the authority's optimum organizational structure, system of management and administration, projected budget, source of funding, and the personnel necessary to accomplish the functions of the authority.

(b) An assessment of the optimum schedule and procedure for the commencement of operations of the authority, including the availability of startup funding, organizational implementation, and the assumption of powers and duties.

(c) An identification and quantification of all assets now used for countywide solid waste planning and an assessment of how those assets shall be transferred to the authority.

(d) An identification of all solid waste facilities and operations of the county and each city within the county, and an assessment of how, and if, those facilities and operations, including related assets, liabilities, and reserves, may be transferred to the authority.

(e) An identification of the solid waste facilities and operations of the sanitation district, and an assessment of how those facilities and operations, including related assets, liabilities, and reserves, may be transferred to the authority.

(f) An identification of the wastewater facilities and operations of the sanitation district, including related assets, liabilities, and reserves.

(g) An identification and estimation of the liabilities of the sanitation district and an assessment of how, and to what extent, those liabilities may be apportioned to liabilities in connection with the sanitation district's solid waste operations, to be transferred to the authority, or to any liabilities associated with its wastewater operations that will be continued by the sanitation district pursuant to subdivision (b) of Section 60212.

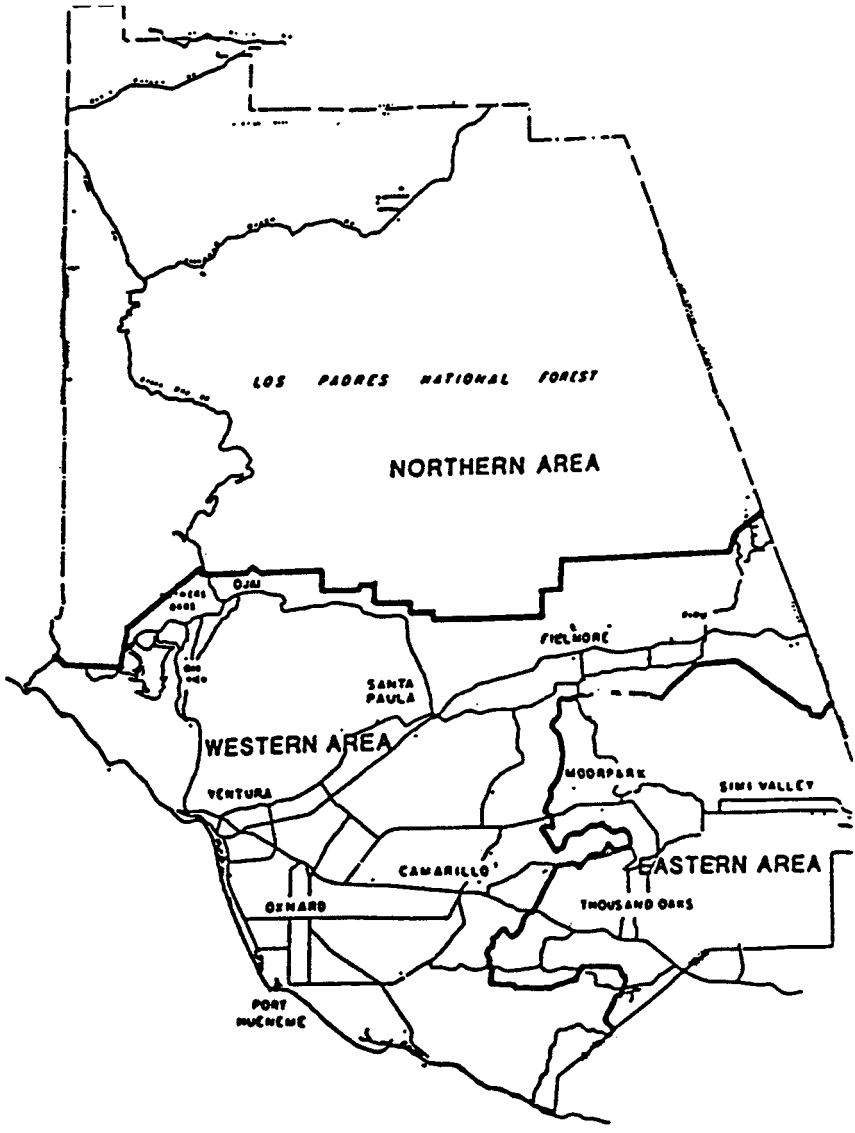
(h) An identification and estimation of all anticipated federal, state, and local remediation, closure, and postclosure obligations related to all solid waste facilities or operations that may be transferred to the authority, whether owned or operated by the county, any city within the county, or the sanitation district, and an assessment of how, whether, and to what extent, those obligations can be funded from solid waste operations, assets, and reserves to be transferred to the authority.

(i) An identification of all contracts, franchises, licenses, memoranda of understanding, and joint powers agreements of the county and each city within the county that affect solid waste management, and an assessment of how, whether, and to what extent, those agreements and existing law affect the anticipated scope of the authority's functions; whether, by agreement or consent of interested parties, those agreements may be amended to expand the scope of the authority's anticipated functions; and whether those agreements should be transferred to, or be administered by, the authority.

(j) An identification of all contracts, franchises, licenses, memoranda of understanding, and joint powers agreements that allocate, share, or indemnify liabilities by or of the county or any city within the county pertaining to any solid waste facility or operation, and an assessment of how, whether, and to what extent, those agreements may be transferred to the authority, and how, and to what extent, the obligations can be funded from solid waste operations, assets, and reserves to be transferred to the authority.

(k) An identification of all persons whose consent or agreement is required to enable the transfer to the authority of the solid waste facilities and operations, and related assets, liabilities, agreements, or obligations, identified in the study for transfer, and an assessment of whether those consents or agreements have been or can be obtained.

(*l*) The identification of administrative regions in the county. For purposes of this subdivision, the western, eastern, and northern regions are defined as shown in the following map:


LOS PADRES NATIONAL FOREST
NORTHERN AREA
OJAI
FILLMORE
SANTA PAULA
WESTERN AREA
VENTURA
MOORPARK
SIMI VALLEY
CAMARILLO
EASTERN AREA
OXNARD
THOUSAND OAKS
PORT HUENEME

60211. On or before July 1, 1994, based on the study, the county, the cities within the county, and the sanitation district shall cause a reorganization plan to be prepared. The reorganization plan shall be submitted to the task force for final review and approval. Approval of the reorganization plan shall require the affirmative vote of the city representatives from seven cities on the task force and the two representatives of the county casting a single vote in the affirmative. In addition to any other matter that may be provided for, the reorganization plan shall provide for all of the following:

(a) The authority's organizational structure, system of management and administration, initial projected budget, source of funding, and the personnel necessary to accomplish the functions of the authority.

(b) The schedule and procedures for the commencement of operations by the authority, including startup funding, organizational implementation, the transfer of assets and liabilities, and the assumption of powers and duties.

(c) The means by which those assets now used for countywide solid waste planning, identified for transfer in the study, may be transferred to the authority.

(d) The means by which those solid waste facilities and operations of the county, any city within the county, or the sanitation district, identified for transfer in the study, together with related assets, liabilities, and reserves, and any liabilities apportioned to solid waste operations, may be transferred to the authority.

(e) The means by which all persons whose consent or agreement is required can be obtained to enable the transfer to the authority of the solid waste facilities and operations, and related assets, liabilities, contracts, and obligations, and, if they cannot be obtained, the means by which their administration may be conducted by the authority without impairment of obligations.

(f) The means by which contracts, franchises, licenses, memoranda of understanding, and joint powers agreements of the county and cities within the county may be transferred to, and be administered by, the authority; provided, however, that the reorganization plan shall not require that the county or any city within the county transfer to the authority any agreement or franchise which they may have with their respective collectors of solid waste.

(g) Recommendations for the modification of any contracts, franchises, licenses, memoranda of understanding, or joint powers agreements, identified in the study, that would affect the authority's functions.

(h) Recommendations for alternatives to implementation if the requisite number of cities within the county do not elect to become represented agencies.

60212. (a) The reorganization plan may provide that the sanitation district transfer ownership, operation, and control to the authority of all of its solid waste facilities and operations, together

with all related assets, reserves, and obligations, now owned, operated, or controlled by it.

(b) If the reorganization plan provides for the transfer pursuant to subdivision (a), the sanitation district shall, however, retain its wastewater facilities and operations, including related assets, reserves, and obligations, and the reorganization plan shall not abrogate or limit the sanitation district's discretion with regard to its wastewater operations.

60213. (a) If the authority is formed, the authority, each represented agency, and the sanitation district shall implement the reorganization plan in accordance with its terms.

(b) All permits from regulatory agencies that are identified in the study and the reorganization plan for transfer to the authority shall be transferred only pursuant to existing law.

CHAPTER 3. FORMATION

60215. (a) The authority shall be formed if both the following conditions are met:

(1) The county board of supervisors and the city councils of seven or more of the 10 cities currently within the county vote, by a majority vote of each of their governing bodies, to approve formation of the authority. Any city whose city council took no action to approve the formation or any city where the city council disapproves formation of the authority shall not be a represented agency, and the jurisdictional boundaries of that city shall not be included within the territory of the authority. The county and any city that becomes a represented agency shall be deemed to have approved the terms and conditions of the study and the reorganization plan.

(2) Formation of the authority is approved by the local agency formation commission in accordance with the Cortese-Knox Local Government Reorganization Act of 1985 (Division 1 (commencing with Section 56000) of Title 6 of the Government Code).

(b) This division shall become inoperative on January 1, 1995, if the county and the requisite number of cities within the county have not voted to form the authority in accordance with subdivision (a).

60216. If the authority is formed pursuant to this chapter, it is a legally separate and distinct entity from its represented agencies with its own assets and liabilities. Except if otherwise expressly provided in this division, none of the assets or liabilities of the authority shall be the assets or liabilities of any of its represented agencies. The territory of the authority shall encompass all of the territory lying within the unincorporated area of the county and all of the territory lying within the boundaries of each of the represented agencies. The territory of the authority may change from time to time in accordance with any change in represented agencies.

60217. Any agreement regarding indemnification by the authority shall be consistent with existing law, and shall be

considered and approved or disapproved prior to any action by the county board of supervisors, the city councils, and the local agency formation commission pursuant to Section 60215. An indemnification agreement shall not be effective unless the county and any city that becomes a represented agency concur in the indemnification agreement.

CHAPTER 4. WITHDRAWAL AND FUTURE ADMITTANCE OF REPRESENTED AGENCIES

60220. (a) The authority is a "district" or "special district" for purposes of the Cortese-Knox Local Government Reorganization Act of 1985 (Division 1 (commencing with Section 56000) of Title 6 of the Government Code).

60221. Any city that is a represented agency may withdraw from the authority by giving the authority a notice of withdrawal in accordance with procedures adopted by the board, except that the withdrawing city shall continue to be bound by any and all obligations that, prior to the city's notice of withdrawal, were created pursuant to this division, including, but not limited to, any obligation to commit the processing or disposal of the city's solid waste to a particular solid waste facility. The withdrawing city may reassume control over the solid waste when that commitment expires or when the city provides to the authority and the solid waste facility financial assurances that are satisfactory to the board and the solid waste facility.

60222. Any city within the county that is not a represented agency or that was incorporated after the formation of the authority may, at any time, by a majority vote of the city council, become a represented agency.

CHAPTER 5. POWERS AND DUTIES

60230. (a) No provision of this act shall be construed to grant any powers to, or impose any duties upon, the authority that are not otherwise granted or imposed by, or that in any way conflict with, the state act.

(b) The authority is a regional agency for purposes of, and, as such, is subject to, the state act, including, but not limited to, the conditions set forth in Article 3 (commencing with Section 40970) of Chapter 1 of Part 2 of Division 30.

(c) It is not the intent of the Legislature in enacting this division to diminish the responsibility of individual cities and counties to implement source reduction, recycling, and composting programs as required by the state act.

60231. The authority shall operate the Bailard and Toland landfills throughout the life of the landfills, and shall perform policy development and planning, systems management, and program implementation with employees of the authority, except where

Section 53060 of the Government Code may be applicable.

CHAPTER 6. LIMITATIONS ON AND RESERVATION OF POWERS

60240. Nothing in this division shall limit or in any way impair the authority of the California Integrated Waste Management Board, any other state agency, the local enforcement agency in the county, any health department or unit of the county, or any city within the county from exercising those powers and duties that arise from the state act, any other state law, or any federal law, nor does this division in any way limit or impair the ultimate responsibility of each represented agency to prepare and implement, and comply with, Part 2 (commencing with Section 40900) of Division 30.

60241. Nothing in this division shall limit or in any way impair the power of the county or any city within the county to exercise its police powers with regard to the adoption and implementation of its general plan, zoning laws, or other laws regulating land use, including, but not limited to, the issuance of conditional use permits or other permits governing the use of land or facilities within its jurisdiction.

60242. Except with regard to obligations that exist between the authority and its represented agencies, nothing in this division shall create any liability of any represented agency to any person which the represented agency would not otherwise have had if this division had not been enacted, nor shall this division modify, increase, nullify, or otherwise in any way affect any liability of any represented agency to any person.

60243. Nothing in this division modifies or abrogates in any manner any franchise, contract, license, or other agreement entered into prior to the date of formation of the authority. No action or proceeding which is commenced prior to the date of formation of the authority, and no right that has accrued, is affected by this division, but any procedures taken after that date in any action or proceeding shall conform to this division insofar as possible.

60244. In accordance with Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code, the authority shall recognize the Service Employees International Union Local 998 as the exclusive representative for the employees of the authority for the purposes of collective bargaining concerning wages, hours, terms, and other conditions of employment. Contracts establishing wages, hours, terms, and other conditions of employment for employees of the sanitation district and the Ventura County Solid Waste Management Department, in effect at the time of the establishment of the authority shall be binding on the authority unless and until such contracts are replaced by new contracts negotiated between the labor organization and the authority.

CHAPTER 7. BOARD OF DIRECTORS

60245. (a) The authority shall be governed by a board of directors. The board shall be composed of one member from each represented agency who is a county supervisor or a city council member, as the case may be. Each member of the board shall serve at the discretion of the respective represented agency. For each member of the board, there shall also be an alternate, selected in the same manner as the member, and that alternate shall act in case the member is absent, disqualified, or unable to act.

(b) Subject to terms and conditions established by the board, each member of the board may be paid by the respective represented agency for services or other activities performed by the board member for, or on behalf of, the authority. Each member of the board may be entitled to reimbursement by the respective representative agency for the member's actual and necessary expenses incurred during the performance of the member's official duties on the board.

60246. (a) Each member of the board shall have one vote. A majority of the board members shall constitute a quorum of the board. A quorum of the board shall be present if any action is to be taken by the board. Any meeting of the board may be adjourned or recessed by a vote of the members if less than a quorum is present. Except as otherwise provided by law, a majority of the members of the board present at any meeting shall be required to approve or otherwise act on any matter, except that a two-thirds vote of the members of the board shall be required for any of the following actions:

(1) To establish charges, rates, or fees for any solid waste facility, and only after a noticed public hearing.

(2) To make a determination that any solid waste facility should be operated or owned by the authority.

(b) (1) A tie vote of the board shall be deemed a denial of the proposed action.

(2) The board shall maintain minutes of its meetings, including its decisions, deliberations, and resolutions, and those minutes shall be public records.

60252. The board may, by resolution, delegate to a general manager and other employees of the authority those powers that are necessary or advisable to accomplish the timely and efficient performance of the authority's administrative functions and to carry out the policies, procedures, and decisions of the board. However, the board shall delegate only those powers that are appropriate for the exercise of executive and administrative functions and shall reserve to itself those powers that are properly exercised through the regular deliberative and decisionmaking process of the board.

CHAPTER 8. FINANCIAL MANAGEMENT AND AUDITS

60255. (a) The board shall cause an annual independent audit of the financial affairs of the authority to be conducted. At least once

every three years, the board shall also cause a management audit to be conducted to determine the efficiency of the authority's operations, including, but not limited to, a cost-benefit analysis of all major programs and operations. The audits shall be published annually by the authority and copies forwarded to each represented agency. Except as limited by this section, the board may prescribe the method of auditing.

(b) The fiscal year of the authority shall commence on the first day of July each year and shall continue until the close of the 30th day of June of the year following.

60256. The investment of any surplus money of the authority shall be governed by Article 1 (commencing with Section 53600) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code. The board may deposit the funds of the authority in banks in the manner provided by law for the deposit of the money of a 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 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 1075

An act to amend Sections 6501.8 and 9021.6 of, and to add Sections 9021.7 and 9021.9 to, the Labor Code, relating to occupational safety and health, and making an appropriation therefor.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 6501.8 of the Labor Code is amended to read:

6501.8. (a) For purposes of this chapter, "asbestos-related work" means any activity which by disturbing asbestos-containing construction materials may release asbestos fibers into the air and which is not related to its manufacture, the mining or excavation of asbestos-bearing ore or materials, or the installation or repair of automotive materials containing asbestos.

(b) For purposes of this chapter, "asbestos containing construction material" means any manufactured construction material that contains more than one-tenth of 1 percent asbestos by weight.

(c) For purposes of this chapter, "asbestos-related work" does not include the installation, repair, maintenance, or nondestructive removal of asbestos cement pipe used outside of buildings, if the installation, repair, maintenance, or nondestructive removal of asbestos cement pipe does not result in asbestos exposures to employees in excess of the action level determined in accordance with Sections 1529 and 5208 of Title 8 of the California Code of Regulations, and if the employees and supervisors involved in the operation have received training through a task-specific training program, approved pursuant to Section 9021.9, with written certification of completion of that training by the training entity responsible for the training.

SEC. 2. Section 9021.6 of the Labor Code is amended 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 Account. Establishment of any fee pursuant to this section shall be accomplished through the regulatory process required by subdivision (b) of Section 9021.5.

SEC. 3. Section 9021.7 is added to the Labor Code, to read:

9021.7. (a) There is hereby created the Asbestos Training and Consultant Certification Fund, which shall consist of the Asbestos Training Approval Account and the Asbestos Consultant Certification Account. Moneys in the Asbestos Training Approval Account shall consist of the fees collected pursuant to Section 9021.9. Moneys in the Asbestos Consultant Certification Account shall consist of the fees collected pursuant to Section 9021.6.

(b) Moneys in the Asbestos Training Approval Account shall be available, upon appropriation by the Legislature, for expenditure only for administering the training entity approval process provided for in Section 9021.9. Moneys in the Asbestos Consultant Certification Account shall be available, upon appropriation by the Legislature, only for administering the certification process provided for in Section 9021.6.

SEC. 4. Section 9021.9 is added to the Labor Code, to read:

9021.9. (a) The division shall establish an advisory committee to develop and recommend by September 30, 1994, for action by the standards board in accordance with Section 142.3, specific requirements for hands-on, task-specific training programs for all craft employees who may be exposed, to asbestos-containing construction materials and all employees and supervisors involved in operations pertaining to asbestos cement pipe, as specified in subdivision (c) of Section 6501.8. The training programs shall include, but not be limited to, the following information:

(1) The physical characteristics and health hazards of asbestos.

(2) The types of asbestos cement pipe or asbestos-containing construction materials an employee may encounter in his or her specific work assignments.

(3) Safe practices and procedures for minimizing asbestos exposures from operations involving asbestos cement pipe or asbestos-containing construction materials.

(4) A review of general industry and construction safety orders relating to asbestos exposure.

(5) Hands-on instruction using pipe or other construction materials and the tools and equipment employees will use in the workplace.

(b) The division shall approve training entities to conduct task-specific training programs that include the requirements prescribed by the standards board pursuant to this section for employees and supervisors involved in operations pertaining to asbestos cement pipe or asbestos-containing construction materials.

(c) The division shall charge a fee to each asbestos training entity approved by the division pursuant to subdivision (b). The fee shall be sufficient to cover the division's cost for administering the approval process provided for in subdivision (b). The fees collected shall be deposited in the Asbestos Training Approval Account. Establishment of any fee pursuant to this section shall be accomplished through the regulatory process required by subdivision (b) of Section 9021.5.

SEC. 5. This act shall in no way diminish the requirements of Sections 1529 and 5208 of Title 8 of the California Code of Regulations, including, but not limited to, notice requirements and worker health and safety protection requirements.

SEC. 6. Amounts that are deposited in the Asbestos Training Approval Account of the Asbestos Training and Consultant Certification Fund in the 1993–94 fiscal year are hereby appropriated to the Department of Industrial Relations for operating costs in administering the training entity approval process provided for in Section 9021.9 of the Labor Code in the 1993–94 fiscal year.

CHAPTER 1076

An act to amend Sections 42300, 42301, 42310, and 42330 of, to add Chapter 5.4 (commencing with Section 42290) to Part 3 of Division 30 of, and to repeal Article 2 (commencing with Section 41970) of Chapter 9 of Part 2 of Division 30 of, the Public Resources Code, and to amend Section 7 of Chapter 1012 of the Statutes of 1991, relating to solid waste.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Article 2 (commencing with Section 41970) of Part 2 of Division 30 of the Public Resources Code is repealed.

SEC. 2. Chapter 5.4 (commencing with Section 42290) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 5.4. PLASTIC TRASH BAGS

42290. For purposes of this chapter, the following terms have the following meaning:

(a) "Manufacturer" means a person who manufactures plastic trash bags for sale in this state.

(b) (1) "Plastic trash bag" means a bag that is manufactured for intended use as a container to hold, store, or transport materials to be discarded, composted, or recycled, including, but not limited to, garbage bags, composting bags, lawn and leaf bags, can-liner bags, kitchen bags, compactor bags, and recycling bags.

(2) A plastic trash bag does not include a grocery sack or any other bag that is manufactured for intended use as a container to hold, store, or transport food.

(3) A plastic trash bag does not include any plastic bag that is used for the purpose of containing either of the following wastes:

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

(B) "Medical waste," as defined in Section 25023.2 of the Health and Safety Code.

(c) "Postconsumer material" means a finished product that would normally be disposed of as solid waste, having completed its intended end-use and product life cycle. "Postconsumer material" does not include manufacturing and fabrication scrap.

(d) 'Wholesaler' means any person who purchases plastic trash bags from a manufacturer for resale in this state.

42291. (a) Every manufacturer that manufacturers plastic trash bags of 1.0 mil or greater thickness for sale in this state shall ensure that at least 10 percent of the material used in those plastic trash bags is recycled plastic postconsumer material.

(b) (1) On and after January 1, 1995, every manufacturer that manufactures plastic trash bags of 0.75 mil or greater thickness for sale in this state shall ensure that at least 30 percent of the material used in those plastic trash bags is recycled plastic postconsumer material.

(2) If any manufacturer is unable to obtain sufficient amounts of recycled plastic postconsumer material to comply with this subdivision within a reporting period because of unavailability or because the available material did not meet recycled plastic

postconsumer material quality standards adopted by the board, the manufacturer shall certify that fact to the board.

42292. Each manufacturer shall obtain from its suppliers of recycled plastic postconsumer material for use in the manufacture of plastic trash bags a statement identifying the quantity and proximate prior usage of, and the actual postconsumer material content of, each shipment of recycled plastic postconsumer material purchased by the manufacturer, and any other information that the board, may, by regulation, require the manufacturer to obtain from its suppliers, for purposes of inclusion in the annual report required by Section 42293.

42293. On or before March 1, 1994, and annually thereafter, each manufacturer shall submit a report to the board certifying that it has complied with Section 42291 during the preceding calendar year, certifying the name and physical location of each of its suppliers of recycled plastic postconsumer material for use in the manufacture of plastic trash bags, and containing the information obtained pursuant to Section 42292 and any other information that the board may require by regulation. Any manufacturer that processes its own recycled plastic postconsumer material shall certify to the board that it is the supplier of the material.

42294. (a) Every wholesaler of plastic trash bags of 1.0 mil or greater thickness sold in this state shall certify to the board the name and physical location of each manufacturer from whom it purchased plastic trash bags for purposes of inclusion in the annual report required by subdivision (c).

(b) On and after January 1, 1995, every wholesaler of trash bags of 0.75 mil or greater thickness sold in this state shall certify to the board the name and physical location of each manufacturer from whom it purchased plastic trash bags for purposes of inclusion in the annual report required by subdivision (c).

(c) On or before March 1, 1994, and annually thereafter, each wholesaler shall submit a report to the board containing the certification required by this section for the preceding calendar year, together with any other information that the board may require by regulation.

42295. Each supplier, manufacturer, and wholesaler required to provide a certification or any information pursuant to this chapter shall be subject to audit by the board.

42296. (a) If any supplier provides a manufacturer with false or misleading information, the board, within 30 days of determining that fact, shall refer the false or misleading information to the Attorney General for prosecution for fraud.

(b) If any manufacturer or wholesaler provides the board with a false or misleading certification or other information, the board, within 30 days of determining that fact, shall refer the false or misleading certification or information to the Attorney General for prosecution for fraud.

42297. (a) The board may adopt such regulations as it determines are necessary to more specifically define terms for

purposes of the chapter and to otherwise implement this chapter.

(b) On or before July 1, 1994, and annually thereafter, the board shall publish a list of any suppliers, manufacturers, or wholesalers who have failed to comply with this chapter.

SEC. 3. Section 42300 of the Public Resources Code is amended to read:

42300. The Legislature finds and declares all of the following:

(a) Recycling rigid plastic packaging containers saves landfill space, reduces energy consumption, and preserves natural resources.

(b) The California Integrated Waste Management Act of 1989 requires cities and counties to reduce the amount of waste disposed in landfills by 50 percent by the end of the decade through source reduction, recycling, and composting.

(c) Rigid plastic packaging containers represent a significant component of the solid waste generated in the state.

(d) In order for recycling in the state to be successful, it is critical that stable, in-state markets be developed for material separately collected from the waste stream and processed for recycling.

(e) As of the effective date of this chapter, curbside collection of recyclables is available to nearly 20 percent of the state's residents. In order to expand the variety of materials collected in these programs, including all rigid plastic packaging containers, it is essential that stable markets exist for the plastic materials collected.

(f) The state has required several types of products to use increasing levels of postconsumer recycled material in their manufacture, including newsprint, glass containers, and plastic trash bags.

(g) Some of the nation's largest consumer product manufacturers have announced plans to require, or are currently requiring, their plastic packaging suppliers to provide them with containers comprised of increasing levels of postconsumer recycled materials, demonstrating that the technology is already available to use recycled material to make new plastic packaging containers. However, many businesses continue to purchase packaging materials made from 100 percent virgin plastic and to sell them in the state.

(h) The food and consumer products industries are manufacturing safe products and packaging using plastic materials, some of which use less raw material than other packaging materials through source reduction and the reuse and recycling of used plastic materials.

(i) The Legislature recognizes that the need to reduce the amount of solid waste generated by food products must be balanced with the need to package those products so that they are resistant to tampering, damage, and spoilage.

(j) It is, therefore, the intent of the Legislature to spur markets for plastic materials collected for recycling by requiring manufacturers to utilize increasing amounts of postconsumer recycled material in their rigid plastic packaging containers only if the use of that material does not present an unreasonable risk to the public health and safety,

and to achieve high recycling rates for these rigid plastic packaging containers.

SEC. 4. Section 42301 of the Public Resources Code is amended to read:

42301. For purposes of this chapter, the following definitions apply:

(a) "Curbside collection program" means a recycling program that collects materials set out by homeowners for collection at the curb at intervals not less than every two weeks. "Curbside collection program" does not include redemption centers, buyback locations, drop-off programs, material recovery facilities, or plastic recovery facilities.

(b) "Refillable package" means a rigid plastic packaging container which the board determines is routinely returned to and refilled by the product manufacturer at least five times with the original product contained by the package.

(c) "Reusable package" means a rigid plastic packaging container which the board determines is routinely reused by consumers at least five times to store the original product contained by the package.

(d) "Manufacturer" means the producer or generator of a product which is sold or offered for sale in the state and which is stored inside of a rigid plastic packaging container.

(e) "Rigid plastic packaging container" means any plastic package having a relatively inflexible finite shape or form, with a minimum capacity of eight fluid ounces or its equivalent volume and a maximum capacity of five fluid gallons or its equivalent volume, that is capable of maintaining its shape while holding other products, including, but not limited to, bottles, cartons, and other receptacles, for sale or distribution in the state.

(f) "Postconsumer material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end-use and product lifecycle. Postconsumer material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.

(g) "Recycled" means a product or material which has been reused in the production of another product and has been diverted from disposal in a landfill.

(h) "Recycling rate" means one of the following:

(1) The proportion, as measured by weight, volume, or number, that all rigid plastic packaging containers, notwithstanding the size limitations set forth in subdivision (d) or the exemption status as set forth in subdivisions (b) and (c) of Section 42340, in the aggregate, sold, or offered for sale in the state are being recycled in a given calendar year.

(2) The proportion, as measured by weight, volume, or number, that a PETE rigid plastic packaging container sold or offered for sale in the state is being recycled in a given calendar year, notwithstanding the size limitations set forth in subdivision (d) or

the exemption status as set forth in subdivisions (b) and (c) of Section 42340.

(3) The proportion, as measured by weight, volume, or number, that a particular type of rigid plastic packaging container sold or offered for sale in the state, such as a milk jug, soft drink container, or detergent bottle, is being recycled in a given calendar year.

(4) The proportion, as measured by weight, volume, or number, that a product-associated rigid plastic packaging container sold or offered for sale in the state is being recycled in a given calendar year.

(i) (1) "Source reduced container" means either of the following:

(A) A rigid plastic packaging container for which the manufacturer seeks compliance as of January 1, 1995, whose package weight per unit or use of product has been reduced by 10 percent when compared with the packaging used for that product by the manufacturer from January 1, 1990, to December 31, 1994.

(B) A rigid plastic container for which the manufacturer seeks compliance after January 1, 1995, whose package weight per unit or use of product has been reduced by 10 percent when compared with one of the following:

(i) The packaging used for the product by the manufacturer on January 1, 1995.

(ii) The packaging used for that product by the manufacturer over the course of the first full year of commerce in this state.

(iii) The packaging used in commerce that same year for similar products whose containers have not been considered source reduced.

(2) A rigid plastic packaging container is not a source reduced container for the purposes of this chapter if the packaging reduction was achieved by any of the following:

(A) Substituting a different material type for a material which previously constituted the principal material of the container.

(B) Increasing a container's weight per unit or use of product after January 1, 1991.

(C) Packaging changes that adversely affect the potential for the rigid plastic packaging container to be recycled or to be made of postconsumer material.

(j) "Product-associated rigid plastic packaging container" means a brand-specific, rigid plastic packaging line which may have one or more sizes, shapes, or designs and which is used in conjunction with a particular generic product line.

(k) "PETE" means polyethylene terephthalate as specified in subdivision (a) of Section 18015.

(*l*) "HDPE" means high-density polyethylene.

SEC. 5. Section 42310 of the Public Resources Code is amended to read:

42310. Except as otherwise provided in this chapter, on and after January 1, 1995, every rigid plastic packaging container sold or offered for sale in the state shall on average meet one of the following criteria:

(a) Be made from 25 percent postconsumer material.

(b) Have a recycling rate of 25 percent, based on annual reports published by the board on and after January 1, 1993. For purposes of this subdivision, PETE material shall be included in this calculation.

(c) Have a recycling rate of 55 percent if its primary material is PETE, based on annual reports published by the board on and after January 1, 1993.

(d) Have a recycling rate of 45 percent if it is a product-associated rigid plastic packaging container, or is used in conjunction with a particular generic product line.

(e) Be reusable or refillable.

(f) Be a source reduced container.

SEC. 6. Section 42330 of the Public Resources Code is amended to read:

42330. (a) The board shall grant a waiver from the postconsumer material content requirement of subdivision (a) of Section 42310, but not from any other requirement of Section 42310, if the board finds one or more the following:

(1) The rigid plastic packaging containers cannot meet the postconsumer material requirements of subdivision (a) of Section 42310 and remain in compliance with applicable provisions of regulations adopted by the Food and Drug Administration or other state or federal laws or regulations.

(2) It is technologically infeasible to use rigid plastic packaging containers which achieve the postconsumer material requirement of subdivision (a) of Section 42310.

(b) The board shall grant a waiver from all of the requirements of Section 42310 if the board finds either of the following:

(1) Less than 60 percent of the single-family homes in the state on and after January 1, 1994, have curbside collection programs which include beverage container recycling.

(2) At least 50 percent, by number, of a manufacturer's rigid plastic packaging containers sold or offered for sale in the state in the current calendar year achieve the postconsumer material requirements of subdivision (a) of Section 42310 and all of the manufacturer's rigid plastic packaging containers will comply with the requirements of Section 42310 on or before January 1, 1996.

(c) The board shall grant a one-year waiver from all of the requirements of Section 42310 for products packaged in rigid plastic packaging containers that are introduced and sold in this state after January 1, 1995.

SEC. 7. Section 7 of Chapter 1012 of the Statutes of 1991 is amended to read:

Sec. 7. (a) The California Integrated Waste Management Board shall submit recommendations to the Legislature by January 1, 1994, concerning programs which are needed to develop markets and encourage high levels of recycling for mixed paper waste.

(b) For the purposes of this section only, "mixed paper waste" means used paper stock that consists of a mixture of various qualities

of used paper not limited on the basis of fiber content, and includes, but is not limited to, used residential mail, office paper, and other grades of used paper stock that is not otherwise classified.

For this purpose "office paper" means paper waste commonly generated within the office environment, including, but not limited to, envelopes, computer print-out paper, colored ledger paper, and high-grade paper.

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 1077

An act to amend Sections 8555 and 8674 of the Business and Professions Code, relating to structural pest control.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 8555 of the Business and Professions Code is amended to read:

8555. This chapter does not apply to:

(a) Public utilities operating under the regulations of the State Railroad Commission, except to work performed upon property of such utilities not subject to the jurisdiction of the Railroad Commission or work done by said utility for hire.

(b) Persons engaged only in agricultural pest control work under permit or license by the State Department of Food and Agriculture or a county agricultural commissioner.

(c) Pest control performed by persons upon property which they own, lease or rent, except that such persons shall be subject to the limitations imposed by Article 3 of this chapter.

(d) Governmental agencies, state, federal, city, or county officials, and their employees while officially engaged.

(e) Authorized representatives of any educational institution or state or federal agency engaged in research or study of pest control, or engaged in investigation or preparation for expert opinion or testimony. Any professional engaging in research, study, investigation, or preparation for expert opinion or testimony on his

or her own behalf shall comply with the requirements of this chapter.

(f) Certified architects and registered civil engineers, acting solely within their professional capacity, except that they shall be subject to the limitations imposed by Article 3 of this chapter.

SEC. 2. Section 8674 of the Business and Professions Code is amended to read:

8674. The amount of the fees prescribed by this chapter is that fixed by the following schedule:

(a) A duplicate license fee of not more than two dollars ($2).

(b) A fee for filing a change of name of a licensee of not more than two dollars ($2).

(c) An operator's examination fee of not more than twenty-five dollars ($25).

(d) An operator's license fee of not more than one hundred fifty dollars ($150).

(e) An operator's license renewal fee of not more than one hundred fifty dollars ($150).

(f) A company registration fee of not more than one hundred twenty dollars ($120). Fees for company registrations shall be prorated for companies which held principal office registrations as of January 1, 1987.

(g) A branch office registration fee of not more than sixty dollars ($60).

(h) A field representative examination fee of not more than fifteen dollars ($15).

(i) A field representative license fee of not more than forty-five dollars ($45).

(j) A field representative license renewal fee of not more than forty-five dollars ($45).

(k) An applicator examination fee of not more than fifteen dollars ($15).

(*l*) An inspection report filing fee of not more than three dollars ($3).

(m) A fee for certifying a copy of an inspection report of not more than three dollars ($3).

(n) A fee for filing a notice of work completed of not more than two dollars ($2).

(o) A fee for filing a change of a registered company's name, principal office address, or branch office address, qualifying manager, or the names of a registered company's officers, or bond or insurance of not more than twenty-five dollars ($25) for each change.

(p) A fee for approval of continuing education providers of not more than fifty dollars ($50).

(q) A pesticide use report filing fee of not more than five dollars ($5) for each pesticide use report or combination of use reports representing a structural pest control operator's total county pesticide use for the month.

(r) A fee for approval of continuing education courses of not more than twenty-five dollars ($25).

(s) (1) Any person who pays a fee pursuant to subdivision (q) shall, in addition, pay a fee of two dollars ($2) for each pesticide use stamp purchased from the board. Notwithstanding any other provision of law, the fee established pursuant to this subdivision shall be deposited with a bank or other depository approved by the Department of Finance and designated by the Research Advisory Panel or into the Structural Pest Control Research Fund which is hereby created and continuously appropriated to be used only for structural pest control research. If the Research Advisory Panel designates that the fees be deposited in an account other than the Structural Pest Control Research Fund, any moneys in the fund shall be transferred to the designated account.

(2) Prior to the deposit of any funds, the depository shall enter into an agreement with the Department of Consumer Affairs that shall include, but not be limited to, all of the following requirements:

(A) The depository shall serve as custodian for the safekeeping of the funds.

(B) Funds deposited in the designated account shall be encumbered solely for the exclusive purpose of implementing and continuing the program for which they were collected.

(C) Funds deposited in the designated account shall be subject to an audit at least once every two years by an auditor selected by the Director of Consumer Affairs. A copy of the audit shall be provided to the director within 30 days of completion of the audit.

(D) The Department of Consumer Affairs shall be reimbursed for all expenses it incurs that are reasonably related to implementing and continuing the program for which the funds were collected in accordance with the agreement.

(E) A reserve in an amount sufficient to pay for costs arising from unanticipated occurrences associated with administration of the program shall be maintained in the designated account.

(3) A charge for administrative expenses of the board in an amount not to exceed 5 percent of the amount collected and deposited in the Structural Pest Control Research Fund may be assessed against the fund. The charge shall be limited to expenses directly related to the administration of the fund.

(4) The board shall, by regulation, establish a five-member research advisory panel including, but not limited to, representatives from each of the following: (1) the Structural Pest Control Board, (2) the structural pest control industry, (3) the Department of Food and Agriculture, and (4) the University of California. The panel shall solicit and review research proposals for recommendation to the board. The board shall distribute funds to qualified applicants, pursuant to the panel's recommendation, upon a two-thirds vote.

CHAPTER 1078

An act to add Chapter 12 (commencing with Section 6200) to Part 1 of Division 1 of the Food and Agricultural Code, relating to agriculture, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Chapter 12 (commencing with Section 6200) is added to Part 1 of Division 1 of the Food and Agricultural Code, to read:

CHAPTER 12. WINEGRAPE PEST AND DISEASE CONTROL DISTRICT LAW

Article 1. Findings and Definitions

6200. The Legislature finds and declares all of the following:

(a) California is the leading producer of wine in the United States, accounting for 72 percent of all wine, foreign and domestic, consumed in this country.

(b) Winegrapes are grown in virtually every county for processing by more than 800 wineries located throughout the state.

(c) California grows more than 327,455 acres of winegrapes producing 2,570,707 tons of grapes per year valued at more than seven hundred eighteen million dollars ($718,000,000), as of 1990, with a direct and indirect impact on the state's economy totaling more than eight billion six hundred million dollars ($8,600,000,000).

(d) Destructive pests and diseases, including phylloxera, pose a significant and imminent threat to the state's important grape and wine industry.

(e) Phylloxera has already infested grape acreage in many California counties, including Napa and Sonoma, resulting in losses totaling two billion dollars ($2,000,000,000) to growers and the wine industry.

(f) The state has an interest in protecting its agricultural products from further destruction by phylloxera and other harmful pests and diseases.

(g) To avoid a potentially catastrophic loss to one of California's most important industries, the Legislature declares that this chapter is in the interest of the public health and welfare.

(h) The Legislature further declares that it is in the interest of the public health and welfare that the districts authorized to be created by this chapter not duplicate existing services already being provided to grape growers by the University of California

Cooperative Extension Farm Advisor or the county agricultural commissioners.

6200.5. This chapter shall be known and may be cited as the Winegrape Pest and Disease Control District Law.

6201. It is the purpose of this chapter to make available a procedure for the organization, operation, government, and dissolution of districts to respond to, manage, and control the effects of the spread of the phylloxera pest, and other pests that attack winegrape plants, and to collect and disseminate to winegrape producers in the district all relevant information and scientific studies concerning the pest or pests, as well as to chart and determine the extent and location of any infestations.

Division 3 (commencing with Section 56000) of Title 5 of the Government Code does not apply to districts organized pursuant to this chapter.

6202. Unless the context otherwise requires, the definitions in this section govern the construction of this chapter.

(a) "Board" or "board of directors" means the board of directors of a district.

(b) "District" means a winegrape pest and disease control district organized pursuant to this chapter.

(c) "Owner" includes joint owner, coowner, guardian, executor, administrator, or any other person that holds property in a trust capacity under court appointment.

(d) "Phylloxera," Daktulosphaira vitifoliae, is an aphid-like pest in the family of Phylloxeridae that attacks winegrape plants (Vitus sp.).

(e) "Winegrapes" means grapes produced that are intended to be converted from their fresh form into grape juice, grape concentrate, wine, or products thereof, including, but not limited to, high proof and brandy produced from winegrapes.

Article 2. Formation of Districts

6210. Proceedings for the formation of a district within any county shall be commenced by a petition that is either of the following:

(a) Signed by 50 percent or more of the growers who own 65 percent or more of the affected land.

(b) Signed by 65 percent or more of the growers who own 50 percent or more of the affected land.

The petition shall be addressed to, and filed with, the board of supervisors of the county.

6211. The petition may be filed in sections, each of which shall comply with all the requirements for a petition, except that a section need not contain the total number of signatures required for the petition.

6212. Signatures to the petition may be withdrawn at any time before it has been acted upon by filing with the clerk of the board of supervisors a declaration signed by the petitioner that states that

it is the intention of the petitioner to withdraw his or her signature from the petition.

6213. (a) The petition shall state the name of the proposed district and shall set forth its boundaries or describe the lands to be included.

(b) It is a sufficient designation of the boundaries of a proposed district to recite that all the grape acreage in the county is to be included in the district, or that all the grape acreage in a designated area within the county is to be included in the district.

(c) If either designation is used, the outside boundary of the area so designated is the boundary of the district, and the district shall include all area within the outside boundary.

6214. (a) Upon the presentation and filing of a petition, the board of supervisors shall refer the petition to the county agricultural commissioner for the preparation of a register of owners of winegrape acreage within the proposed district, and for an investigation and report.

(b) The agricultural commissioner shall create a register of all winegrape acreage owners within the proposed district describing the net acreage of land devoted to the growing of winegrapes by each grower. The commissioner shall file with the register a report and recommendation to the board of supervisors on whether conditions of the phylloxera or other pest or disease warrant the board of supervisors proceeding with the organization of the district.

6215. (a) The board of supervisors shall fix a time and place for the hearing of the petition.

(b) The hearing shall not be less than 20 days, or more than 40 days, after the filing of the petition with the board of supervisors.

(c) The board of supervisors shall order the county clerk to give notice of the time and place fixed for the hearing upon the petition.

6216. The notice of hearing shall do all of the following:

(a) State the name of the district and that it is being formed for the control of winegrape pests and diseases.

(b) State the petition is available for inspection at the office of the clerk of the board of supervisors.

(c) Designate the boundaries of the proposed district in substantially the same way that they are described in the petition.

(d) State the time and place for the hearing.

(e) State that at the hearing protests will be considered by the board of supervisors.

(f) State that requests in writing for the exclusion of lands from, or the inclusion of lands in, the proposed district, will be heard and considered by the board of supervisors.

6217. Notice of the hearing shall be given by publication in a newspaper of general circulation published and circulated in the district.

6218. The notice shall be published once a week for two successive weeks prior to the date set for the hearing.

6219. At the hearing, the report of the county agricultural

commissioner shall be received. Protests may be made orally or in writing by any person interested in the formation of the proposed district. Any protest that pertains to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularities and defects to which objection is made. All written protests shall be filed with the clerk of the board of supervisors on or before the time fixed for the final hearing. The hearing may be continued from time to time, not to exceed 60 days.

6220. At the hearing, any owner of winegrape acreage in the proposed district may present to the board of supervisors a request, in writing, for the exclusion of that land or any part of that land from the proposed district upon a showing that the land or part of that land will not be benefited by the activities of the proposed district. Factors that the board of supervisors may consider in its determination to exclude shall include an affidavit from the landowner stating that the land has already been affected by phylloxera or other winegrape plant pests or diseases and the winegrape plants have been removed from the land, that more than 66 percent of the subject parcel is planted with non-vinifera-crossed rootstock, including, but not limited to, St. George, S04, 5C, or 5BB rootstock, or that the subject parcel does not have a pest or disease problem that can be controlled by the district. Any owner of winegrape acreage outside the proposed district may present to the board of supervisors a request in writing for inclusion of that land in the proposed district.

6221. If the board of supervisors determines that the petition does not comply with the requirements of law, the matter may be dismissed without prejudice to present a new petition covering the same matter. A finding by the board of supervisors in favor of the sufficiency of the petition and notice is final and conclusive against all persons except the state in a proceeding brought by the Attorney General within one year of the date of the making of the order establishing and describing the boundaries of the district.

6222. (a) If the board of supervisors determines that the project is feasible and in the interest of the winegrape growers of the county, the board of supervisors shall, by order entered in its minutes, declare the district duly organized under the name designated in the petition for the formation of the district.

(b) The order shall describe the territory included in the district and, if the board of supervisors does not exclude or include land pursuant to Section 6223, it is a sufficient description of the territory to describe the boundaries in substantially the same way as they are described in the petition.

(c) A copy of the order duly certified by the clerk of the board of supervisors shall be filed for record in the office of the county recorder of the county in which the district is situated.

6223. (a) In determining the boundaries of the district, the board of supervisors shall exclude from the district any winegrape acreage that it finds will not be benefited by the proposed project, and it may include in the district any lands that it finds will be

benefited if it also finds it will be in the interest of the district to include these lands. The inclusion may be upon application of the owner or, without the owner's application, upon giving the owner notice of the proposed inclusion and an opportunity for a hearing on the inclusion.

(b) Notice of inclusion shall be mailed, postage prepaid, by the clerk of the board of supervisors, to the address of the owner of the land as shown by the last equalized county assessment roll, and to any person that has filed with the clerk that person's name and address and description of land in which he or she has either a legal or equitable interest. The notice shall describe the land proposed to be included, and shall state the time and place at which objections to the inclusion will be heard.

Article 3. Organization of Districts

6230. Upon the adoption of the order of organization, the board of supervisors shall immediately appoint a board of directors of five members to administer the affairs of the district.

6231. In order to be eligible to be a director of the district, a person shall be a citizen of the United States and of this state, and an owner of lands included in the district that are devoted, in whole or in part, to the growing of the product for which the district is established.

6232. Upon his or her appointment, each director shall, in the manner provided by law, subscribe the oath of office and file the oath with the county clerk.

6233. (a) From and after the filing for record of the order of the board of supervisors declaring the district organized, and the appointment and qualification of its first board of directors, the organization of the district is complete. The district shall operate for a period of five years from the date of its organization, and shall cease to exist after five years unless the district is reauthorized and approved by the board of supervisors.

(b) The board of directors shall hold a public hearing six months prior to termination of its initial organization or last reauthorization to determine whether the conditions of the phylloxera or other pest or disease determined pursuant to Section 6214 warrant the reauthorization of the district for an additional five years. The notice of hearing shall state the name of the district and that consideration is being given to reauthorizing the district for an additional five years, the boundaries of the district, and the time and place for the hearing. Notice of the hearing shall be given as provided in Sections 6217 and 6218. The board of directors shall submit the record of the hearing and its recommendation to the board of supervisors within 90 days of the hearing. The board of supervisors shall approve or reject the recommendation; if it rejects the recommendation, the board of supervisors shall return the report accompanied by its reasons for the rejection to the board of directors within 30 days of

receipt. The board of directors may thereafter address the reasons for rejection by the board of supervisors and submit an amended report and new recommendations for reauthorization for approval or rejection by the board of supervisors, unless the district has ceased to exist pursuant to subdivision (a).

6234. (a) Immediately after the organization of the district, the directors shall meet and organize as a board and shall elect a chairperson, vice chairperson and secretary from among their own number.

(b) The chairperson shall call and preside at all meetings of the board, sign all warrants drawn on the county treasurer, and all contracts and other documents, and the minutes of all meetings at which the chairperson is present. In case of the chairperson's absence from a meeting, the vice chairperson shall act as chairperson pro tempore. The vice chairperson may sign warrants in place of the chairperson if the chairperson is absent from a meeting or unavailable. The secretary shall give notice of and keep the minutes of all meetings and prepare and have custody of all records and papers, and have custody of the seal of the district. The secretary shall attest all warrants drawn on the county treasury, all contracts and other documents, and shall sign the minutes of all meetings at which he or she is present. The secretary shall prepare the annual reports and any other reports required by the board and shall prepare all notices and all calls for bids.

6235. The members of the board shall serve for terms of one year, or for a longer term as determined by the board of supervisors, and until the appointment and qualification of their successors.

6236. Upon the expiration of the term of any member of the board, the board of supervisors shall appoint the successor. Vacancies shall be filled by the board of supervisors for the unexpired term.

6237. The members of the board shall not receive any compensation for their services, but may be reimbursed for their actual and necessary expenses, when claims for those expenses have been approved by the board.

Article 4. Powers and Duties of the District

6240. The district may do all of the following:

(a) Sue and be sued in all actions and proceedings in all courts and tribunals of competent jurisdiction.

(b) Adopt a seal and alter it at pleasure.

(c) Take by grant, purchase, gift, devise, lease, or otherwise, and hold, use and enjoy, and lease, or otherwise dispose of, real and personal property of every kind and description within or without the district necessary to the full and convenient exercise of its powers.

(d) Cause assessments to be levied, as provided in Article 5 (commencing with Section 6250), to pay any obligation of the district and to accomplish the purposes of the district in the manner

provided in this chapter.

(e) Make contracts, and employ, except as otherwise provided in this chapter, all persons, firms, and corporations necessary to carry out the purposes and the powers of the district, and at any salary, wage, or other compensation as the board of directors shall determine.

(f) Respond to the effects of, the spread of phylloxera and other winegrape plant pests and diseases and collect and disseminate to winegrape growers in the district all relevant information and scientific studies concerning the pest or pests or diseases, as well as to chart and determine the extent and location of any infestations.

(g) With reasonable advance notice in writing to the landowner, as determined by the district, enter into or upon any land included within the boundaries of the district for the purpose of inspecting the winegrape plants and any other host plants and fruit growing on them.

(h) Perform any and all acts, either within or outside the district, necessary or proper to fully and completely carry out the purposes for which the district is organized.

6241. Every district formed pursuant to this chapter has all of the powers prescribed by Section 6240 and other provisions of this chapter, regardless of any language in the petition for formation for any district or in any of the proceedings leading to the formation that would otherwise limit the power of the district.

6242. The county agricultural commissioner of the county in which the district is located shall, upon request of the board, assist the district to the extent possible in all activities undertaken by the district for the control of phylloxera or other winegrape plant pests or diseases.

6243. The board shall, immediately after its appointment and after public hearing, formulate an effective plan and adopt a budget of expenditures for the forthcoming fiscal year. At a public hearing on the plan and the budget, any owner of winegrape acreage included in the district may make written or oral protest against the budget or any item in it. The plan and the budget, as thereafter approved by the board, shall be the plan and the budget of the district for the forthcoming fiscal year.

6244. There may be added to the budget for the first fiscal year of the operation of the district an amount not to exceed 20 percent of the total amount of the budget to cover the preliminary expenses of the district, including, but not limited to, the costs of formation, before the beginning of the first fiscal year.

6245. For each fiscal year subsequent to the first year of operation of the district, the board shall adopt the final budget therefor in the same manner and at the same time that the budget for the first fiscal year was adopted.

6246. The board of supervisors may charge the district for any expenses incurred by the county in connection with the proceedings for the formation of the district, and the district shall reimburse the

county from assessments levied for those expenses.

Article 5. Levy of Assessments for District Purposes

6250. The county assessor, in making the annual assessment of property included in the district each and every year after the organization of the district, shall identify any parcel of real property with one acre or more of winegrape plants.

6251. Whenever acreage within the district is planted with winegrape plants in such a fashion as to qualify as winegrape acreage, the acreage is subject to assessment as provided in this article.

6252. (a) After the district has been formed, an owner of winegrape acreage in the district may present to the board a request in writing for the exclusion of that land or any part of the land from the district upon a showing that the land or part of the land will not be benefited by the activities of the district. Factors that the board may consider in its determination for exclusion shall include an affidavit from the owner that the land has already been affected by phylloxera or other winegrape plant pests and the winegrape plants have been removed from the land, more than 66 percent of the subject parcel is planted with non-vinifera-crossed rootstock, including, but not limited to, St. George, S04, 5C or 5BB rootstock, or that the subject parcel does not have a pest or disease problem that can be controlled by the district.

(b) After receipt of the request, the board shall cause an investigation of the parcel of land to be made and, if the board determines that the land or part of the land will not be benefited by the activities of the district, the board shall exclude the winegrape acreage from the district and immediately certify this fact to the county assessor and the county auditor or tax collector.

(c) Any owner of winegrape acreage outside of, or otherwise not included in, the district may present to the board a request in writing for inclusion of the land in the district.

6253. (a) The board shall, on or before the first Monday in April of each year, file with the board of supervisors, a budget that sets forth all estimated expenditures of the district for the fiscal year commencing on the first day of July. A copy of the budget shall also, at the same time, be filed with the auditor of the county.

The board of supervisors may, by ordinance or by resolution, adopted after notice and hearing, determine and levy an assessment for winegrape pest and disease control activities for any of the following purposes:

(1) Responding to, managing, and controlling the effects of the spread of the phylloxera pest and other pests that attack winegrape plants.

(2) Collecting and disseminating to winegrape producers in the district all relevant information and scientific studies concerning the pest or pests.

(3) Charting and determining the extent and location of any

infestations.

(b) The annual assessment shall not exceed five dollars ($5) per planted acre.

(c) The board of supervisors shall cause to be prepared and filed with the clerk of the board of supervisors a written report that contains all of the following information:

(1) A description of each parcel of property proposed to be subject to the assessment.

(2) The amount of the assessment of each parcel for the initial fiscal year.

(3) The maximum amount of the assessment that may be levied for each parcel during any fiscal year.

(4) The duration of the assessment.

(5) The basis of the assessment.

(6) The schedule of the assessment.

(7) A description specifying the requirements for written and oral protests, and the protest threshold necessary for requiring abandonment of the proposed assessment pursuant to subdivisions (f), (g), and (h).

(d) (1) The board may establish zones or areas of benefit within the district, and may restrict the imposition of assessments to areas lying within one or more of the zones or areas of benefit established within the district.

(2) The assessment shall be levied on each parcel within the boundaries of the district, zone, or area of benefit.

(e) The clerk of the board of supervisors shall cause a copy of the notice of the filing of the report and of the time, date, and place of hearing thereon, to be mailed to the owner of each parcel whose property would be subject to the assessment. The notice shall be mailed at least 45 days prior to the date set for hearing pursuant to Section 54954.6 of the Government Code, by name to those persons whose name and address appear on the last equalized county assessment roll and whose property has been identified by the county assessor pursuant to Section 6250. The envelope or cover of the mailing shall include the name of the local agency and the return address of the sender. The mailed notice shall include the name of the district, the return address of the sender, the amount of the assessment for the initial fiscal year, the maximum amount of the assessment that may be levied during any fiscal year, the duration and basis of the assessment, and a summary of the procedures for making a protest pursuant to subdivisions (f), (g), and (h). The notice shall also contain the name and telephone number of the person designated by the board of supervisors to answer inquiries regarding the protest proceedings.

(f) At any time not later than the hour set for the hearing, any landholder, whether a fee owner, lessee, or otherwise, of an interest in the property that is proposed to be assessed, who will be obligated to pay any proposed assessment, may make written protest against the proposed assessment. The protest shall be in writing, shall

contain a description of the property and the interest in the property that each signer of the protest represents, sufficient to identity the property, and if the signers are not shown on the last equalized assessment roll as the owners of that property, shall contain or be accompanied by written evidence that the signers are the holders of the property interest proposed to be assessed and who will be obligated to pay the proposed assessment. All protests shall be delivered to the clerk of the board of supervisors.

(g) (1) At the time, date, and place stated in the notice, the board of supervisors shall hear and consider all objections or protests, if any, to the report referred to in the notice, and shall also hear and determine all protests. The board of supervisors may continue the hearing from time to time.

(2) Any written protest may be withdrawn, in writing, by the person who made the protest, at any time prior to the conclusion of the protest hearing or any adjournment of the hearing.

(h) (1) If the board of supervisors finds that the protest is made by holders of property interests proposed to be assessed, and who will be obligated to pay the proposed assessment, represent more than 50 percent of the total amount of the expected revenue from the assessment, and protests are not withdrawn so as to reduce the same to less than 50 percent, the proposed assessment so protested shall be abandoned.

(2) If no protests or objections in writing have been delivered to the clerk of the board of supervisors by the time set for hearing thereon, or if valid protests have been found by the board of supervisors to be less than 50 percent of the total amount of expected revenue from the assessment, the board of supervisors may, upon the conclusion of the hearing, adopt, revise, change, reduce, or modify each or any assessment. The board of supervisors shall make a determination upon each assessment as described in the report or as determined at the hearing, and thereafter, by ordinance or resolution, shall determine and levy the assessment.

6254. The assessment authorized to be assessed and levied is hereby declared to be in the nature of a special assessment, and the Legislature hereby finds that the owners of all winegrape plants will be benefited by the district to the same extent and in the same manner regardless of the age of the plants. The assessments authorized by this article to be assessed and levied shall be assessed and levied regardless of the age of the plants growing on the land.

6255. The assessment so levied shall be computed and entered upon the assessment roll by the county auditor, and if the supervisors fail to levy the assessment as required, the auditor shall do so. The assessment shall be collected at the same time, and in the same manner as, and together with and not separate from, general county taxes, and when collected shall be paid into the county treasury for the use of the district.

6256. The general provisions of the laws of this state, prescribing the manner of levying and collecting county taxes and the duties of

the several county officers with respect to levying and collecting county taxes, are, so far as they are applicable and not in conflict with the specific provisions of this article, hereby adopted and made a part of this article. The several county officers thus referred to shall be liable upon their several official bonds for the faithful discharge of the duties imposed upon them by this chapter.

6256.5. The revenue from the assessments imposed pursuant to this chapter by the district are trust funds and shall be encumbered only for the purposes for which the district is formed and for the benefit of the property assessed. The district shall expend the minimum amount necessary for overhead and other administrative costs. No district funds shall be donated, loaned, or transferred to any other local agency or to the state for any purpose.

6257. The county treasury shall be the repository of all the moneys of the district. The county treasurer shall receive and receipt for all those moneys, and place the same to the credit of the district. The county treasurer shall be responsible upon his or her official bond for the safekeeping and disbursement, in the manner provided in this article, of all moneys of the district so held.

6258. If a consolidated district includes parts of two or more counties, the repository of all money of the district shall be the county treasury of the county in which is located the largest area of the district. Money collected for the use of the district in any other county in which a part of the district is located shall be transferred by the county treasurer upon warrant of the county auditor of the county in which the money was collected to the county treasurer of the county serving as repository for the district, in the same manner as prescribed for the disbursement of money held for a local district. Money derived from any county in which the district is located may be expended in any part of the district for the purposes authorized by this chapter, notwithstanding any other provision of law limiting the expenditure of any such money to a specific area or county.

6259. (a) The county treasurer shall pay out money of the district only upon warrants of the county auditor drawn upon the order of the board of directors of the district signed by the chairperson or vice chairperson and attested to by the secretary. The county treasurer, with the approval of the board of supervisors, shall pay out the money of the district upon one master warrant of the county auditor drawn upon the order of the board of directors of the district and signed by the chairperson or vice chairperson and attested to by the secretary, to meet the district's expenses, including salaries, at such intervals as is approved by the board of supervisors.

(b) The county treasurer shall report, in writing, on the first day of July, October, January, and March of each year, to the board of directors, the amount of money the treasurer then holds for the district, the amount of receipts since the last report, and the amounts paid out. Each report shall be verified and filed with the secretary of the district to whom it is addressed.

Article 6. Inclusion of Lands

6260. Lands devoted exclusively to the growing of winegrapes within a tract of land outside the district, but in the county in which the district is located, may be annexed to the district in the same manner provided in this chapter for the formation of the district.

Article 7. Consolidation

6270. Any two or more districts organized or existing under this chapter may be consolidated, whether or not the boundaries are coterminous, and whether or not the districts are located in the same county.

6271. The board of directors may adopt a resolution that recites the fact of receipt and the willingness of the district to consolidate, and shall then send copies of the resolution to the board of directors of each of the other districts. The board shall send a certified copy of the resolution to the board of supervisors of the county in which is located the largest area of winegrape acreage of the proposed consolidated district, and a copy of the resolution to the board of supervisors of each of the other counties in which is located any part of the proposed consolidated district.

6272. The board of supervisors of the county in which is located the largest area of winegrape acreage of the proposed consolidated district shall fix a time and place for hearing the proposal. Notice shall be given and the hearing conducted in the same manner and with the same effect as prescribed for the formation of a district pursuant to Article 2 (commencing with Section 6210).

6273. If the board of supervisors determines that consolidation is feasible and in the best interests of the winegrape growers of the respective districts, it shall, by resolution duly adopted, declare the districts consolidated into one district, giving the consolidated district a name that includes the term "consolidated." Certified copies of the resolution shall be filed with the Secretary of State and, for record, with the county recorder of each county in which is located any part of the consolidated district. Upon the filing, the districts are consolidated into a single consolidated district with all the rights, privileges, and powers of a district. The consolidated district shall succeed to all the funds and other property, and is subject to all the indebtedness, bonded and otherwise, of the districts consolidated. Each district that is included in the consolidated district shall continue in existence for the purpose of representation on the board of the consolidated district, and for the purpose of levying, assessing, and collecting assessments for district purposes. The board of the consolidated district is, however, the board of each district that is included in the consolidated district.

6274. Upon the adoption of a resolution consolidating two or more districts, the board of supervisors of the county in which is located the largest area of winegrape acreage shall immediately

appoint a board of directors of at least five members, including at least one member from each of the districts that are included in the consolidated district, and at least two members from each county, if districts located in more than one county are included in the consolidated district. If any of the districts that are included in the consolidated district includes more than 15,000 acres of winegrape acreage, the board of directors shall be increased by one additional director for each 10,000 acres, or fraction of 10,000 acres, in any one district that is included in the consolidated district. If the consolidated districts are located in more than two counties, the board of directors of the consolidated district shall have at least seven members.

6275. The board of a consolidated district has all the duties, powers, purposes, responsibilities, and jurisdiction of the board of any other district organized pursuant to this chapter. The members of the consolidated board shall be appointed in the same manner and serve for the same term as the directors of any other district organized pursuant to this chapter.

6276. Any district that has been included in a consolidated district may withdraw from the consolidated district and be reconstituted as a separate district by filing with the board of directors of the consolidated district a petition for withdrawal that is signed by the owners of not less than 51 percent, by area, of winegrape land in the district. The board of directors of the consolidated district shall send the original petition to the board of supervisors of the county in which the withdrawing district is located, and a copy of the petition to the board of supervisors of each of the other counties in which is located any part of the consolidated district. Upon receipt of a petition for withdrawal, the board of supervisors of the county in which the withdrawing district is located shall fix a time and place for hearing the petition. Notice shall be given and the hearing conducted in the same manner and with the same effect as prescribed for the formation of a district under Article 2 (commencing with Section 6210). Upon withdrawal of a district, all moneys collected from the district for the use of the consolidated district, and all property purchased with these moneys, shall remain the property of the consolidated district.

Article 8. Dissolution of Districts

6280. Upon the filing of a petition with the board of supervisors, signed by the owners of not less than 60 percent by area of the winegrape acreage in the district, requesting the dissolution of the district, the board of supervisors shall set a time and place for hearing on the petition, which shall not be less than 20 days, or more than 40 days, after the filing of the petition.

6281. The board of supervisors shall give notice of the time and place fixed for the hearing upon the petition for dissolution.

6282. The notice of hearing shall state all of the following:

(a) That a petition has been filed requesting the dissolution of the district.

(b) That the petition is available for inspection at the offices of the board of supervisors.

(c) The time and place for the hearing.

(d) That at the hearing protests against the dissolution of the district shall be considered by the board of supervisors.

6283. Notice of the hearing shall be given by publication in a newspaper of general circulation published and circulated in the district.

6284. The notice shall be published once a week for two successive weeks prior to the date set for the hearing.

6285. If, at the hearing, a majority of the membership of the board of supervisors find that the dissolution of the district will benefit the winegrape industry of the county, it shall, by resolution, dissolve the district.

6286. The board of supervisors shall cause a certified copy of the resolution to be recorded in the office of the county recorder and shall file a certified copy of the same with the Secretary of State. Thereupon, the district is dissolved for all purposes.

6287. Upon dissolution, the right, title, and interest to property owned or controlled by the district that is situated within the corporate limits of any city shall vest absolutely in the city. If the property is situated outside the corporate limits of a city, it shall vest in the county in which the property is situated.

6288. The board of supervisors is ex officio the governing body of the dissolved district. It may levy such assessments and perform such other acts as may be necessary to wind up the affairs of the district and to raise money for the payment of any outstanding indebtedness.

6289. All claims and accounts against the district that have not been settled by the board within 90 days after the resolution is recorded pursuant to Section 6286 shall be presented to the board of supervisors of the county in which the district was located, or in the case of a consolidated district to the board of supervisors of the county in which is located the largest area of winegrape acreage, and shall be passed and approved by the board of supervisors in the same manner as county claims and shall be paid out of the funds of the dissolved district.

6290. If there are insufficient funds to discharge all claims and accounts brought pursuant to Section 6289, the board of supervisors shall, at the time of levying the next general county taxes, levy a special assessment upon the net acreage devoted to the growing of winegrapes that benefited from the dissolved district in an amount sufficient to discharge all outstanding claims and accounts against the district. In the case of a consolidated district, the board of supervisors of each county in which a portion of the district is located shall levy a special assessment based upon the ratio that the proportion of outstanding claims and accounts bears to the net acreage of the district in each county.

SEC. 2. (a) With respect to costs that the district is required to reimburse pursuant to Section 6246 of the Food and Agricultural Code, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the 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.

(b) Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains unreimbursed 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.

(c) 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 that steps may be taken to combat the phylloxera pest and other pests that threaten the wine industry in this state at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1079

An act to add Section 14041 to the Government Code, relating to transportation.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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 imperative that the state foster projects prime for economic development and job creation as California faces the hardest economic challenges in decades.

(b) The Alameda Corridor Transportation Authority was created to assess and resolve the surface transportation issues facing the Long Beach and Los Angeles Harbors.

(c) The Alameda Corridor project will upgrade existing railway lines to facilitate transportation of cargo from the largest port complex in the state and create jobs as well as mitigate freeway

congestion and air pollution.

(d) Many of the communities impacted by the Alameda Corridor project are economically depressed and are still recovering from the Los Angeles riots of 1992 and, therefore, to ensure that these communities benefit from long-term economic development, preference in the bidding process for the Alameda Corridor project should be given to local businesses.

(e) It is imperative that jobs be created in order to safeguard the economic health of the region impacted by the Alameda Corridor project.

SEC. 2. Section 14041 is added to the Government Code, to read:

14041. (a) The Alameda Corridor Transportation Authority is encouraged to coordinate with local private industry councils in service delivery areas to develop training programs and employment opportunities under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.) directly related to the Alameda Corridor project and to pursue other appropriate employment and training funding sources.

(b) The Trade and Commerce Agency, in conjunction with the Office of Permit Assistance, shall provide assistance, using existing resources, to the Alameda Corridor Transportation Authority by doing all of the following:

(1) Identifying all permits, licenses, agreements, and other approvals necessary for the project.

(2) Developing a schedule for acting on state and local permits, licenses, agreements, and other approvals. The schedule shall be consistent with the Permit Reform Act of 1981 (Chapter 3 (commencing with Section 15374) of Part 6.7 of Division 2 of Title 3) and the so-called Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7).

(3) Developing a memorandum of agreement for consideration and action on permits, licenses, agreements, and other approvals by affected state agencies.

(4) Developing a memorandum of agreement for consideration and action on permits, licenses, agreements, and other approvals by affected local agencies.

CHAPTER 1080

An act to amend Sections 976.6, 1611, 1612, 10200, 10201, 10202, 10203, 10205, 10206, 10209, 10212, 10213.5, 10214.5, and 10218.5 of the Unemployment Insurance Code, relating to employment training.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 976.6 of the Unemployment Insurance Code is amended to read:

976.6. In addition to other contributions required by this division, every employer, except an employer defined by Section 676, 684, or 685, and except an employer which has elected an alternate method of financing its liability for unemployment compensation benefits pursuant to Article 5 (commencing with Section 801), or Article 6 (commencing with Section 821) of Chapter 3, shall pay into the Employment Training Fund contributions at the rate of 0.1 percent of wages specified in Section 930. The contributions shall be collected in the same manner and at the same time as any contributions required under Sections 977 and 977.5.

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, 1999, deletes or extends that date.

SEC. 2. Section 1611 of the Unemployment Insurance Code is amended to read:

1611. Money in the Employment Training Fund shall be expended only for the purposes of Chapter 3.5 (commencing with Section 10200) of Part 1 of Division 3, and for the costs of administering this article and Section 976.6, except:

(a) With the approval of the Legislature, the fund or contributions to it may be used to pay interest charged on federal loans to the Unemployment Fund.

(b) Commencing with allocations made to the Employment Training Panel in the 1992–93 fiscal year, any moneys allocated to the panel in a fiscal year that are not encumbered by the panel in that fiscal year, shall revert to the Unemployment Insurance Fund.

(c) Commencing with the 1994–95 fiscal year, and for each fiscal year thereafter, to the extent that interest is earned on the money in the Employment Training Fund, that interest shall be used to fund the activities of the Employment Development Department Service Center Program that was established on July 6, 1966, by Executive Order No. 66-11, at the program level authorized by the 1993 Budget Act, and to fund up to 50 percent of the costs of the State-Local Cooperative Labor Market Information Program established pursuant to Section 10533, but in an amount not to exceed three million one hundred thousand dollars ($3,100,000).

(d) It is the intent of the Legislature that the panel shall closely monitor program performance and expenditures for employment training programs administered by the panel, and that the panel shall expeditiously disencumber funds that are not needed for employment training program completion. Commencing with the 1992–93 fiscal year, those moneys that are disencumbered during the fiscal year that are not reencumbered during the same fiscal year shall revert to the Unemployment Insurance Fund.

SEC. 3. Section 1612 of the Unemployment Insurance Code is amended to read:

1612. This article shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1997, deletes or extends that date.

SEC. 4. Section 10200 of the Unemployment Insurance Code is amended to read:

10200. The Legislature finds and declares the following:

(a) California's economy is being challenged by competition from other states and overseas. In order to meet this challenge, California's employers, workers, labor organizations, and government need to invest in a skilled and productive workforce, and in developing the skills of frontline workers. For purposes of this section, "frontline worker" means a worker who directly produces or delivers goods or services.

The purpose of this chapter is to establish a strategically designed employment training program to promote a healthy labor market in a growing, competitive economy that shall fund only projects that meet the following criteria:

(1) Foster job creation of high-wage, high-skilled jobs, or foster retention of high-wage, high-skilled jobs that are threatened by out-of-state competition.

(2) Encourage industry-based investment in human resources development that promotes the competitiveness of California industry through productivity and product quality enhancements.

(3) Result in secure jobs for those who successfully complete training.

(4) Supplement, rather than displace, funds available through existing programs conducted by employers and government-funded training programs, such as the Job Training Partnership Act (JTPA), the Carl D. Perkins Vocational Education Act, the Greater Avenues for Independence program (GAIN), the Enterprise Zone Act, the Employment and Economic Incentive Act, and the Stewart B. McKinney Homeless Assistance Act, or apportionment funds allocated to the community colleges, regional occupational centers and programs, or other local educational agencies. In addition, it is further the intention of the Legislature that programs developed pursuant to this chapter shall not replace, parallel, supplant, compete with, or duplicate in any way already existing approved apprenticeship programs.

(b) The employment training panel, in funding projects that

meet the requirements of subdivision (a), shall give funding priority to those projects that best meet the following goals:

(1) Result in the growth of the California economy by stimulating exports from the state, and the production of goods and services that would otherwise be imported from outside the state.

(2) Train new employees of firms locating or expanding in the state that provide high-skilled, high-wage jobs and are committed to an ongoing investment in the training of frontline workers.

(3) Develop workers with skills that prepare them for the challenges of a high performance workplace of the future.

(4) Train workers who have been displaced, have received notification of impending layoff, or are subject to displacement, because of a plant closure, workforce reduction, changes in technology, or significantly increasing levels of international and out-of-state competition.

(5) Are jointly developed by business management and worker representatives.

(6) Develop career ladders for workers.

(7) Promote the retention and expansion of the state's manufacturing workforce.

(c) The program established through this chapter is to be coordinated with all existing employment training programs and economic development programs, including, but not limited to, programs such as the Job Training Partnership Act, the California Community Colleges, the regional occupational programs, vocational education programs, joint labor-management training programs, and related programs under the Employment Development Department and the Trade and Commerce Agency.

SEC. 5. Section 10201 of the Unemployment Insurance Code is amended to read:

10201. As used in this chapter:

(a) "Employer" means any employer subject to Part 1 (commencing with Section 100) of Division 1, except any public entity, or any nonprofit organization which has elected an alternate method of financing its liability for unemployment insurance compensation benefits pursuant to Article 5 (commencing with Section 801), or Article 6 (commencing with Section 821) of Chapter 3.

Any public entity or nonprofit organization that has elected an alternate method of financing its liability for unemployment insurance compensation benefits pursuant to Article 5 (commencing with Section 801), or Article 6 (commencing with Section 821) of Chapter 3, shall be deemed to be an employer only for purposes of placement of new hire trainees who received training as an incidental part of a training project designed to meet the needs of one or more private sector employers.

(b) "Eligible participant" means any person who, prior to beginning training or employment pursuant to this chapter, is any of the following:

(1) Unemployed and has established an unemployment insurance claim in this state, or has exhausted eligibility for unemployment insurance benefits from this state within the previous 24 months.

(2) Employed for a minimum of 90 days, but is determined by the panel to be likely to be displaced and therefore claiming unemployment insurance benefits because of reductions in overall employment within a business, elimination of the person's current job, or a substantial change in the skills required to remain employed due to technological change or other factors, or if employed for less than 90 days, met the conditions of paragraph (1) at the time of hire, or had received a notice of layoff from the prior employer. In making a finding of eligibility under this paragraph, the panel shall require the employer or contractor to provide, at the option of the employer or the contractor, either of the following:

(A) Certification of the specific facts that threaten the continued employment of the trainee, and a plan for assuring with reasonable certainty that the training being proposed will contribute to the long-term job security of the trainee. The plan shall include, but not be limited to, a general description, with respect to the facility at which the trainee is employed, of other actions planned by the employer, such as technological changes, additional training, management adjustments, and organizational changes, for the purposes of enhancing the effectiveness of the proposed training. The plan shall also include a statement of how the employer plans to sustain the commitment to workplace training after the contract ends, and how the training will affect the productivity and employment security of the workforce.

(B) Evidence that the workers proposed to receive retraining have been given written notice that their employment will be terminated within two years of the date the application is presented to the panel.

(3) Employed for a minimum of 90 days, but who is determined by the panel to be in need of training in order to facilitate an employer's adaptation to a high performance workplace or diversification of the production of goods or services in order to meet the productivity goals and competitive needs of the employer's operation, or if employed for less than 90 days, met the conditions of paragraph (1) at the time of hire or had received a notice of layoff from the prior employer. In making a finding of eligibility under this paragraph, the panel shall require an employer or contractor to submit evidence of change, or plans to change, to a high performance or diversified workplace and a statement of how the employer plans to sustain the commitment to workplace training after the contract ends and how the training will affect the productivity and employment security of the workforce. For purposes of this subdivision, "high performance workplace" means a workplace that invests in the training of frontline workers, as defined in subdivision (a) of Section 10200, to equip these workers with problem solving and decisionmaking skills that result in

increased productivity.

(4) Employed, but who is determined by the panel to be qualified to be trained or retrained in skills for which there is a demonstrable shortage and in a field where new employment opportunities will be created for other persons defined in paragraph (1) if this retraining takes place. In making a finding of eligibility under this paragraph, the panel shall require the employer or contractor to provide a job for at least one unemployed person for each person retrained.

(c) "Panel" means the Employment Training Panel created by Section 10202.

(d) "Fund" means the Employment Training Fund created by Section 1610.

(e) "Department" means the Employment Development Department.

(f) "Training agency" means any private training entity or local educational agency.

(g) "Job" means employment on a basis customarily considered full time for the occupation and industry. The employment shall have definite career potential and a substantial likelihood of providing long-term job security. Furthermore, the employment shall provide earnings, upon completion of the employment requirement specified in subdivision (f) of Section 10209, equal to 50 percent, in the case of new hire training, or 60 percent, in the case of retraining, of the state or regional average hourly wage. However, in no case shall the employment result in earnings of less than 45 percent of the state average hourly wage for new hire training and 55 percent of the state average hourly wage for retraining. The panel may consider the dollar value of health benefits that are voluntarily paid for by an employer when computing earnings to meet the minimum wage requirements.

(h) "Private industry council" means an entity established pursuant to Section 15030.

(i) "New hire training" means employment training, including job-related literacy training, for persons who, at the start of training, are unemployed.

(j) "Retraining" means employment related skill and literacy training for persons who are employed prior to commencement of training and will continue to be employed by the same employer for at least 90 days following completion of training.

(k) "Trainee" means an eligible participant.

(*l*) "State average hourly wage" means the average weekly wage paid by employers to employees covered by unemployment insurance, as reported to the Employment Development Department for the four calendar quarters ending June 30 of the preceding calendar year, divided by 40 hours.

SEC. 5.5. Section 10202 of the Unemployment Insurance Code is amended to read:

10202. (a) There is hereby established in the department the Employment Training Panel consisting of eight persons, seven of

whom shall be appointed as provided in subdivision (b), and shall have experience and a demonstrated interest in business management and employment relations. The Secretary of the Trade and Commerce Agency, or his or her designee, shall also serve on the panel as an ex officio, voting member.

(b) Two members of the panel shall be appointed by the Speaker of the Assembly, two members of the panel shall be appointed by the President pro Tempore of the Senate, and three members of the panel shall be appointed by the Governor. The Governor shall designate a member to chair the panel, and the person so designated shall serve as the chair of the panel at the pleasure of the Governor.

(c) The appointive members of the panel shall serve for two-year terms, except that of the initial members of the panel, one initial appointee of each appointing power shall serve for a one-year term. Effective January 1, 1994, the terms of all appointive panel members shall expire. Thereafter, new members shall be appointed to serve for the same terms as provided in this subdivision for initial panel members.

(d) Appointive members of the panel shall receive the necessary traveling and other expenses incurred by them in the performance of their official duties out of appropriations made for the support of the panel. In addition, each appointive member of the panel shall receive one hundred dollars ($100) for each day attending meetings of the panel, and may receive one hundred dollars ($100) for each day spent conducting other official business of the panel, but not exceeding a maximum of three hundred dollars ($300) per month.

SEC. 6. Section 10203 of the Unemployment Insurance Code is amended to read:

10203. The panel may meet as necessary at locations throughout the state. The panel shall maintain a minimum of three regional offices. The central office shall be located in Sacramento. Two regional offices shall be located in the southern part of the state, and one regional office shall be located in the northern part of the state.

The panel will assign one person, with experience in meeting the needs of small businesses, to each of the regional offices for the purpose of developing training projects for small businesses and expediting the processing of training proposals from small businesses.

SEC. 7. Section 10205 of the Unemployment Insurance Code is amended to read:

10205. The panel shall do all of the following:

(a) Establish a three-year plan that shall be updated annually, based on the demand of employers for trained workers, changes in the state's economy and labor markets, and continuous reviews of the effectiveness of panel training contracts. The initial three-year plan shall be submitted to the Governor and the Legislature not later than January 1, 1994. The initial update of the plan shall be submitted not later than July 1, 1994, and annual updates of the plan thereafter shall be submitted not later than July 1 of each year. In carrying out this

section, the panel shall review information in the following areas:

(1) Labor market information, including the state-local labor market information program in the Employment Development Department, and economic forecasts.

(2) Evaluations of the effectiveness of training as measured by increased security of employment for workers and benefits to the California economy.

(3) The demand for training by industry, type of training, and size of employer.

(4) Changes in skills necessary to perform jobs, including changes in basic literacy skills.

(5) Changes in the demographics of the labor force and the population entering the labor market.

(6) Proposed expenditures by other agencies of federal Job Training Partnership Act funds and other state and federal training and vocational education funds on eligible participants.

(b) The panel shall maintain a system to continuously monitor economic and other data required under this plan. If this data changes significantly during the life of the plan, the plan shall be amended by the panel. Each plan shall include all of the following:

(1) The panel's objectives with respect to the criteria and priorities specified in Section 10200 and the distribution of funds between new-hire training and retraining.

(2) The identification of specific industries, production and quality control techniques, and regions of the state where employment training funds would most benefit the state's economy and plans to encourage training in these areas, including specific standards and a system for expedited review of proposals which meet the standards.

(3) A system for expedited review of proposals which are substantially similar with respect to employer needs, training curriculum, duration of training, and costs of training, in order to encourage the development of proposals which meet the needs identified in paragraph (2).

(4) The panel's goals and operational objectives with respect to meeting the needs of small employers.

(5) The research objectives of the panel that contribute to the effectiveness of this chapter in benefiting the economy of the state as a whole.

(6) A priority list of skills that are in such short supply that employers are choosing to not locate or expand their businesses in the state or are importing labor in response to these skills shortages. This list should identify those industries in which upgrade training is likely to encourage hiring of the unemployed on a backfill basis.

(c) Solicit proposals and write contracts on the basis of proposals made directly to it. Contracts for the purpose of providing employment training may be written with any of the following:

(1) An employer or group of employers.

(2) A training agency.

(3) A private industry council with the approval of the appropriate local elected officials in the service delivery area.

(4) A grant recipient or administrative entity selected pursuant to Section 103 of the Federal Job Training Partnership Act and Section 15021, with the approval of the local private industry council and the appropriate local elected officials.

These contracts shall be in the form of fixed-fee performance contracts. Notwithstanding any provision of law to the contrary, contracts entered into pursuant to this chapter shall not be subject to competitive bidding procedures. However, the panel shall set contracting objectives with respect to minority-owned and female-owned businesses that are substantially similar to those required by Chapter 6 (commencing with Section 16850) of Part 3 of Division 4 of Title 2 of the Government Code, Section 10108.5 of the Public Contract Code, and Article 1.5 (commencing with Section 10115 of Chapter 1 of Part 2 of Division 2 of the Public Contract Code). No trainee shall receive employment training under this chapter for a period of more than 18 months. Contracts for training may be written for a period not to exceed 24 months for the purpose of administration by the panel and the contracting employer or any group of employers acting jointly or any training agency for the purpose of providing employment training.

(d) Fund training projects that best meet the priorities specified in the three-year plan. In doing so, the panel shall seek to facilitate the employment of the maximum number of eligible participants. This chapter shall not be construed to require the panel to set aside funds based on the priorities established in the three-year plan.

(e) Establish minimum standards for the consideration of proposals, which shall include, but not be limited to, the identification of employers who have been contacted by the contractor and who have provided reasonable assurance that they will employ successful trainees, the number of jobs available, the skill requirements for the identified jobs, the projected cost per person trained, hired, and retained in employment, the wages paid successful trainees upon placement, and the curriculum for the training. No proposal shall be considered or approved that proposes training for employment covered by a collective bargaining agreement unless the signatory labor organization agrees in writing.

(f) Ensure the provision of adequate fiscal and accounting controls for, monitoring and auditing of, and other appropriate technical and administrative assistance to, projects funded by this chapter.

(g) Provide for evaluation of projects funded by this chapter. The evaluations shall assess the effectiveness of training previously funded by the panel to improve job security and stability for workers, and benefit participating employers and the state's economy, and shall compare the wages of trainees in the 12-month period prior to training as well as the 12-month period subsequent to completion of training, as reflected in the department's unemployment insurance

tax records. Individual project evaluations shall contain a summary description of the project, the number of persons entering training, the number of persons completing training, the number of persons employed at the end of the project, the number of persons still employed three months after the end of the project, the wages paid, the total costs of the project, and the total reimbursement received from the Employment Training Fund.

(h) Report annually to the Legislature, by November 30, on projects operating during the previous state fiscal year. These annual reports shall provide separate summaries of all of the following:

(1) Projects completed during the year, including their individual and aggregate performance and cost.

(2) Projects not completed during the year, briefly describing each project and identifying approved contract amounts by contract and for this category as a whole, and identifying any projects in which funds are expected to be disencumbered.

(3) Projects terminated prior to completion and the reasons for the termination.

(4) A description of the amount, type, and effectiveness of literacy training funded by the panel.

(5) Results of complete project evaluations.

In addition, based upon its experience in administering job training projects, the panel shall include in these reports policy recommendations concerning the impact of job training and the panel's program on economic development, labor-management relations, employment security, and other related issues. The chair of the panel may appoint an advisory research council.

(i) Expedite the processing of contracts for firms considering locating or expanding businesses in the state, as determined by the Trade and Commerce Agency, in accordance with the priorities for employment training programs set forth in paragraph (2) of subdivision (c) of Section 10200.

(j) Coordinate and consult regularly with business groups and labor organizations, the State Job Training Coordinating Council, the State Department of Education, the office of the Chancellor of the California Community Colleges, the Employment Development Department, and the Trade and Commerce Agency.

(k) Adopt by regulation procedures for the conduct of panel business, including the scheduling and conduct of meetings, the review of proposals, the disclosure of contacts between panel members and parties at interest concerning particular proposals, contracts or cases before the panel or its staff, the awarding of contracts, the administration of contracts, and the payment of amounts due to contractors. All decisions by the panel shall be made by resolution of the panel and any adverse decision shall include a statement of the reason for the decision.

(*l*) Adopt regulations and procedures providing reasonable confidentiality for the proprietary information of employers seeking training funds from the panel if the public disclosure of that

information would result in an unfair competitive disadvantage to the employer supplying the information. In no case shall the panel withhold information from the public regarding its operations, procedures, and decisions which would otherwise be subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(m) Review and comment on the budget and performance of any program, project, or activity funded by the panel utilizing funds collected pursuant to Section 976.6.

SEC. 8. Section 10206 of the Unemployment Insurance Code is amended to read:

10206. (a) The panel may allocate money in the fund for any of the following purposes:

(1) Reimbursement of reasonable training costs and administrative costs incurred by contractors. In making a determination of costs to be reimbursed under this paragraph, the panel may allocate funds in accordance with any of the following methods:

(A) For purposes of providing simplified fixed-fee performance contracts, a flat rate per hour for categories of training that are substantially similar with respect to content, methodology, and duration, as determined by the panel, not to exceed the reasonable and normal costs for the training, based upon the panel's experience. The panel shall periodically adjust the standardized rates established pursuant to this paragraph to reflect changes in training costs.

(B) A complete review of the proposal and its costs, including a budget listing the planned costs of training, including personnel, fringe benefits, equipment, supplies, fees for consulting or administrative services, and other costs attributable to training; the services provided by subcontractors; the length and complexity of the training; the method of training; the wages and occupations following training; whether the trainees are new hires or retrainees; and the cost of similar training that the panel has funded previously. The cost of program administration shall not exceed 15 percent of the training costs under this paragraph, except that for new hire training the panel may fund administrative costs of up to 25 percent of the training cost.

(2) Costs of program administration incurred under this chapter. These costs shall be reviewed annually by the Department of Finance and the Legislature and determined through the normal budgetary process.

The panel's administrative costs, exclusive of the cost of administering Section 976.6, shall not exceed 15 percent of the amount annually available for expenditure by the panel. Expenditures for marketing, research, and evaluations provided under contract to the panel under paragraph (1) that otherwise would have been provided directly by the panel shall not be included in this limitation.

(3) Service related to the purposes of this chapter provided by the Small Business Development Centers pursuant to an interagency agreement with the Trade and Commerce Agency.

(b) The panel may modify the specific requirements of paragraph (1) of subdivision (a) as they apply to employers or contractors proposing projects which involve training for a significant number of small employers in the same project.

(c) For all training contracts, the panel shall establish requirements for in-kind contributions by either the contractor or the employer that reflect a substantial commitment on the part of the contractor or the employer to the value of the training. In developing these requirements, the panel shall take into account the ability of the contractor or the employer, because of size or financial condition, to make any contribution, and the ability of the Employment Training Fund to meet the demand for training authorized by this chapter. Contributions shall be evaluated against plans required in subparagraph (A) of paragraph (2) of subdivision (b) of Section 10201 to sustain a commitment to workplace training after the contract ends. In developing policies regarding in-kind contributions, the panel shall hold public hearings.

(d) In order to encourage successful new hire training, the panel shall develop a new hire cost reimbursement system. The new hire cost reimbursement system shall recognize the additional risk attendant to new hire training if the contractor successfully meets at least 60 percent of the training and placement goals of a new hire contract. The reimbursement system authorized by this subdivision shall discourage excessive overenrollment at the beginning of the contract, and shall not provide reimbursements if the training and placement goals are achieved primarily through modification of the original contract. The new hire cost reimbursement system provided for in this subdivision shall remain in effect only until December 31, 1995.

SEC. 9. Section 10209 of the Unemployment Insurance Code is amended to read:

10209. (a) Contracts shall only be made for training in job-related vocational skills that are necessary for participants to attain a new job or retain an existing job with definite career potential and long-term job security. The contracts for vocational skills training may include ancillary training for job-related basic and literacy skills training if the panel finds that the training is necessary to achieve the objectives of the vocational training.

(b) Contracts for projects involving on-the-job training shall specify the specific skills and competencies to be gained as a result of the on-the-job training component of the project.

(c) The panel shall not approve any training proposal which facilitates the change in ownership of a business leading to the likelihood that an existing collective bargaining agreement would be declared void.

(d) To encourage a broad and equitable distribution of funds, the

panel may require an employer who has previously received funds pursuant to this chapter for retraining of workers at a facility to contribute proportionately more to the cost of training in subsequent panel contracts for training of workers at the same facility.

(e) The panel may delegate to the executive director the authority to approve training contracts of up to one hundred thousand dollars ($100,000), provided the contracts meet the requirements of this chapter and the policies established by the panel, and provided that the panel regularly reviews the actions taken by the executive director pursuant to this subdivision.

(f) Payments shall be made in accordance with a performance contract under which partial payments may be made during training, a partial payment may be made on placement or retention of each trainee, and not less than 25 percent of the negotiated fee is withheld until the trainee has been retained in employment for 90 days after the end of training with a single employer, except for those occupations in which it is not customary for a worker to be employed 90 consecutive days with a single employer. In these latter cases, the panel may substitute a period similar to the probationary period customary to the occupation. The probationary period shall not be less than 500 work hours and shall be completed within 272 days of the completion of the training. In no case shall any payment be considered to have been earned until the trainee has been retained in employment for 90 days or the equivalent probationary period for an occupation in which it is not customary for a worker to be employed 90 consecutive days with a single employer.

(g) Contracts for new hire training shall require the contractor to provide the placement services necessary to ensure the trainees are placed in jobs for which they have been trained.

SEC. 10. Section 10212 of the Unemployment Insurance Code is amended to read:

10212. (a) The panel may employ personnel necessary to carry out the purposes of this chapter. All personnel shall be appointed pursuant to the State Civil Service Act (Part 1 (commencing with Section 18000) of Division 5 of Title 2 of the Government Code), except for an executive director, and two assistant directors, who shall be exempt from state civil service.

(b) The executive director shall be appointed by the Governor, and shall be well qualified for the position with experience in government. The appointment shall be for a term of four years. The executive director may perform all duties, exercise all powers, discharge all responsibilities, and administer and enforce all laws, rules, and regulations under the jurisdiction of the panel, with the approval of the panel. The executive director shall administer this chapter, with the approval of the panel, in the manner he or she deems necessary to conduct the work of the panel properly. With the approval of the panel, the executive director may create divisions and subdivisions as necessary, and change and abolish these divisions and subdivisions from time to time. The executive director may be

removed from office, for cause, by a vote of five of the seven members of the panel.

(c) The Governor shall appoint two assistant directors, to serve at the pleasure of the Governor. The assistant directors shall have the duties as assigned by the executive director, and shall be responsible to the executive director for the performance of their duties.

(d) One assistant director shall have experience in serving the needs of small businesses, and shall, under the supervision of the executive director, manage the panel's efforts to ensure that employment training services are available to small businesses.

SEC. 11. Section 10213.5 of the Unemployment Insurance Code is amended to read:

10213.5. (a) The Trade and Commerce Agency shall determine those firms considering locating or expanding businesses in the state in order to enable the Employment Training Panel to expedite the processing of contracts for these firms pursuant to subdivision (g) of Section 10205. The Trade and Commerce Agency shall also provide technical assistance by marketing the Employment Training Fund to newly locating or expanding businesses in the state and by assisting in the packaging of employer contracts for training of eligible participants from the Employment Training Fund.

(b) The Small Business Development Center program in the Office of Small Business in the Trade and Commerce Agency shall provide information and applications for funding by the panel to its clients.

SEC. 12. Section 10214.5 of the Unemployment Insurance Code is amended to read:

10214.5. (a) The panel may allocate up to 10 percent of the annually available training funds for the purpose of funding special employment training projects for the purposes of any of the following:

(1) Increasing understanding of the requirements for effective new hire and retraining programs, especially as they relate to diverse sectors of the population and to businesses that are difficult to serve under the panel's standard project format.

(2) Encouraging the development of new industries, including the electric and clean fuel vehicle industry and other advanced transportation technology industries, that contribute to high skilled employment and economic vitality in California.

(3) Supporting efforts that address the training and employment of workers affected by defense industry cutbacks and military base closures.

(4) Stabilizing employment in fields where there is a demonstrated deficit of trained employees and clear career advancement opportunities.

These projects shall also contribute to the panel's understanding of the relationship between various training designs, the achievement of employers' training objectives, and the development of new industries. Notwithstanding any other provision of this chapter,

participants in these research projects need not meet the same eligibility criteria as outlined in Section 10201. In addition, the panel may allocate funds under this section for the development of training materials and training programs that contribute to the development of new industries in the state.

(b) The panel may allocate up to 30 percent of the funds specified in subdivision (a) for job-related vocational and literacy skills training and the employment of individuals with barriers to full-time, stable employment. These barriers may include, but shall not be limited to, language, basic skills, and occupational literacy barriers to employment. These individuals shall meet the eligibility criteria specified in subdivision (b) of Section 10201. Preference shall be given to contractors that can provide trainees with the comprehensive services necessary to successfully complete training, overcome barriers, secure gainful employment, and become self-sufficient. The panel may waive, if necessary, the minimum wage requirements pursuant to subdivision (g) of Section 10201 and the employment retention provisions specified in subdivision (f) of Section 10209 and instead require that the trainee has been retained in employment for a minimum of 90 days out of 120 consecutive days after the end of training with no more than three employers. In addition, the panel may allocate funds under this subdivision for reasonable child care and transportation costs for trainees.

(c) The panel shall adopt minimum standards for consideration of proposals to be funded pursuant to this section.

(d) The panel may not delegate its authority to approve contracts written pursuant to this section.

(e) It is the intent of the Legislature in providing the authority for these projects that the panel allocate these funds in a manner consistent with the objectives of this chapter as provided in Section 10200.

SEC. 13. Section 10218.5 of the Unemployment Insurance Code is amended to read:

10218.5. (a) 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 chaptered before January 1, 1997, deletes or extends that date.

(b) The panel may enter into contracts that permit employment training through June 30, 1997, however, no contract shall have a termination date that extends beyond December 31, 1997.

(c) In the event a later enacted statute does not extend the January 1, 1997, repeal date of this chapter, the panel shall enter into an agreement with another state agency, to be selected by the Governor, that shall act on behalf of the panel for the sole purpose of contract administration, which shall include, but is not limited to, monitoring performance, generating amendments to downsize the contracts, closing out contracts, auditing contracts, and making payment for any contracts that extend beyond January 1, 1997

(d) Any agency acting on behalf of the panel pursuant to this

section may seek a budget appropriation or augmentation for both the administration of the program and payment to contractors.

CHAPTER 1081

An act to add Chapter 24 (commencing with Section 14950) to Division 7 of the Water Code, relating to water.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Chapter 24 (commencing with Section 14950) is added to Division 7 of the Water Code, to read:

CHAPTER 24. SHELLFISH PROTECTION ACT OF 1993

14950. This chapter shall be known and may be cited as the Shellfish Protection Act of 1993.

14951. The Legislature finds and declares all of the following:

(a) Commercial shellfish harvesting is a beneficial use of the waters of the state and, in addition, benefits the economy of the state through the creation of jobs.

(b) Pollution, from both point and nonpoint sources, currently threatens many of the state's commercial shellfish growing areas.

(c) In order to maintain the health, and encourage the expansion, of commercial shellfish harvesting within the state, it is necessary to protect the commercial shellfish growing areas from ongoing point and nonpoint sources of pollution.

(d) The regional boards whose jurisdictions include commercial shellfish growing areas shall have primary responsibility for the protection of commercial shellfish harvesting from the effects of point and nonpoint pollution sources.

14952. For the purposes of this chapter, a commercial shellfish growing area is an area certified pursuant to Section 28504 of the Health and Safety Code in which shellfish are grown and harvested.

14953. (a) If a commercial shellfish growing area is threatened by point or nonpoint source pollution, as specified in Section 14954, the regional board shall form a technical advisory committee, within 90 days of the effective date of this act, devoted solely to the threatened area. A technical advisory committee shall be formed for any subsequently threatened area within 90 days of the date the threat is identified pursuant to Section 14954. The technical advisory committee shall advise and assist that board in developing a strategy for appropriate investigation and remediation pursuant to Sections 14955 and 14956 to reduce pollution affecting that area. The regional board shall give public notice of the formation of the technical

advisory committee. All meetings of the technical advisory committee shall be public.

(b) For the purpose of subdivision (a), the technical advisory committee shall include both of the following:

(1) One commercial shellfish grower from the threatened area, one representative from the State Department of Health Services, one representative from the Department of Fish and Game, one representative from the California Coastal Commission, one representative from each category of potential pollution source, one representative from a local environmental group, and one representative from the local health department.

(2) Additional members and a chairperson appointed by the regional board.

(c) Members of the technical advisory committee established pursuant to subdivision (a) shall not receive a per diem or other compensation, and shall not be reimbursed for any expenses.

14954. For the purpose of Section 14953, a commercial shellfish growing area is threatened if any of the following applies:

(a) The State Department of Health Services downgrades the classification applicable to the commercial shellfish growing area.

(b) The commercial shellfish growing area is subjected to harvest closure for more than 30 days per calendar year during the previous three years.

(c) The State Department of Health Services classifies the commercial shellfish growing area as restricted.

(d) The regional board, the Department of Fish and Game, or the California Coastal Commission determines that the commercial shellfish growing area is threatened.

14955. (a) The technical advisory committee shall review existing data to determine whether additional investigatory efforts are needed to identify the pollution sources that threaten the commercial shellfish growing area, the scope of the pollution sources, and the degree to which those sources threaten the commercial shellfish growing area.

(b) If the technical advisory committee determines pursuant to subdivision (a) that additional investigatory efforts are needed, the regional board shall develop, with the assistance of the technical advisory committee, a water quality investigation project for funding under Sections 205 and 319 of the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.; Secs. 1285 and 1329) or any other appropriate funding sources.

(c) Any water quality investigation project developed pursuant to subdivision (b) shall be limited to accomplishing that which is reasonably necessary for the regional board to gather sufficient data to determine the appropriate remedial actions.

(d) The regional board shall not undertake any investigatory efforts determined to be necessary pursuant to subdivision (a) unless the regional board determines that funding is available to carry out those efforts.

14956. (a) Once the nature, sources, scope, and degree of the pollution affecting a commercial shellfish growing area have been determined, the regional board, with the advice of the local technical advisory committee, shall order appropriate remedial action, including the adoption of best management practices, to abate the pollution affecting that area. The regional board shall monitor water quality in the threatened area during the implementation of pollution abatement measures to ensure that the measures are effective and shall provide the results of the monitoring to the technical advisory committee. The regional board shall give public notice of any actions proposed for adoption.

(b) If agricultural sources of pollution have been identified as contributing to the degradation of shellfish growing areas, the regional board shall invite members of the local agricultural community representing the type of agricultural discharge affecting the local shellfish growing area, the local resource conservation district, the local soil conservation service, the local agricultural stabilization and conservation service, the cooperative extension of the University of California, and affected shellfish growers to develop and implement appropriate short- and long-term remediation strategies that will lead to a reduction in the pollution affecting the commercial shellfish growing area.

14957. When rating project proposals affecting shellfish growing areas for state and federal funding under Sections 205 and 319 of the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.; Secs. 1285 and 1329) or from other funding sources, the state board and regional boards shall give timely notice to the California Aquaculture Association and shall provide shellfish growers with the opportunity to comment on the following types of project proposals:

(a) Project proposals that seek to identify the nature, sources, scope, and degree of pollution threatening a commercial shellfish growing area.

(b) Project proposals that seek to reduce or eliminate the impact of point or nonpoint pollution that affects a commercial shellfish growing area. Proposals under this subdivision shall include waste reclamation projects.

14958. When a commercial shellfish area is no longer threatened, as specified in Section 14954, the regional board shall dissolve the technical advisory committee for that area. If the area is subsequently threatened, as specified in Section 14954, the regional board shall re-form the committee pursuant to Section 14953.

CHAPTER 1082

An act to amend Sections 22004.2, 22655, 22662, 23000.1, 23000.5, and 23101.5 of, and to repeal and add Section 24600.1 to, the Education Code, relating to the State Teachers' Retirement System.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 22004.2 of the Education Code is amended to read:

22004.2. (a) With respect to members with membership effective dates of December 31, 1989, and earlier, benefit enhancements due to a plan amendment enacted after October 14, 1987, are subject to the limitations imposed by Section 415 of the Internal Revenue Code.

(b) With respect to members with membership effective dates of January 1, 1990, and later, retirement benefits, including enhancements due to a plan amendment, are subject to the limitations imposed by Section 415 of the Internal Revenue Code.

(c) With respect to members or retirants described in subdivision (a) or (b), or beneficiaries of those persons, a change in the benefit structure of the plan pursuant to a plan amendment shall not be subject to Section 415(b) (5) (D) of the Internal Revenue Code in the case of all plan amendments enacted before, on, or after August 3, 1992.

SEC. 2. Section 22655 of the Education Code is amended to read:

22655. The nonmember spouse who is awarded a separate account shall have the right to a refund of accumulated retirement contributions in the separate account of the nonmember.

(a) The right of the nonmember spouse to a refund of accumulated retirement contributions is subject to Section 23103.

(b) The nonmember spouse shall file an application on a form provided by the system to obtain the refund.

(c) The refund is effective when the system deposits in the United States mail an initial warrant drawn in favor of the nonmember spouse and addressed to the latest address for the nonmember spouse on file in the system. If the nonmember spouse has elected on a form provided by the system to transfer all or a specified portion of the accumulated contributions that are eligible for direct trustee-to-trustee transfer to the trustee of a qualified plan under Section 402 of the Internal Revenue Code of the United States, deposit in the United States mail of a notice that the requested transfer has been made constitutes a return of the nonmember spouse's accumulated contributions.

(d) The nonmember spouse is deemed to have permanently waived all rights and benefits pertaining to the service credit and

represented by the accumulated retirement contributions when the refund becomes effective.

(e) The nonmember spouse may not cancel a refund after the refund is effective.

(f) The nonmember spouse shall have no right to elect to redeposit the refunded accumulated retirement contributions after the refund is effective and shall have no right to redeposit under Section 22656 or purchase additional service credit under Section 22657 after the refund becomes effective.

(g) If the total service credit in the separate account of the nonmember spouse, including service credit purchased under Sections 22656 and 22657, is less than two and one-half years, the board shall refund the balance of the account.

SEC. 3. Section 22662 of the Education Code, as amended by Chapter 163 of the Statutes of 1992, is amended to read:

22662. Upon the legal separation or dissolution of marriage of a retirant, the court may include in the judgment or court order a determination of the community property rights of the parties in the retirement allowance of the retirant consistent with this section. Upon election under subdivision (d) of Section 2610 of the Family Code, or paragraph (4) of subdivision (a) of Section 4800.8 of the Civil Code, whichever is in effect, the court order awarding the nonmember spouse a community property share in the benefits of a retirant shall be consistent with this section.

(a) If the court does not award the entire retirement allowance to the retirant and the retirant is receiving a retirement allowance under any section other than Section 24200, the court shall require only that the system pay the nonmember spouse, by separate warrant, his or her community property share of the retirement allowance of the retirant.

(b) If the court does not award the entire retirement allowance to the retirant and the retirant is receiving an allowance which has been actuarially modified pursuant to Section 24200, the court shall order only one of the following:

(1) The retirant shall maintain the retirement allowance without change.

(2) The retirant shall cancel the retirement allowance pursuant to Section 24200.1 and select a new joint and survivor option or a new beneficiary or both, and the system shall pay the nonmember spouse, by separate warrant, his or her community property share of the retirement allowance of the retirant, the option beneficiary, or both.

(3) The retirant shall cancel the retirement allowance pursuant to Section 24200.1 and select an unmodified retirement benefit and the system shall pay the nonmember spouse, by separate warrant, his or her community property share of the retirement allowance of the retirant.

(c) If the option beneficiary, other than the nonmember spouse, dies before the retirant, the court shall order the retirant to select a new option beneficiary pursuant to Section 24200.2 and shall order

the system to pay the nonmember spouse, by separate warrant, his or her share of the community property interest in the retirement allowance of the retirant or the new option beneficiary, or both.

(d) The right of the nonmember spouse to receive his or her community property share under this section shall terminate upon the death of the nonmember spouse. However, the nonmember spouse may designate a beneficiary to receive his or her community property share of accumulated retirement contributions in the event that accumulated retirement contributions become payable.

SEC. 4. Section 23000.1 of the Education Code is amended to read:

23000.1. Notwithstanding Sections 22804, 23000, and 23404, each school district, community college district, county board of education, and county superintendent of schools, may pick up, for the sole purpose of deferring taxes, as authorized by Section 414(h)(2) of the Internal Revenue Code (26 U.S.C.A. Sec. 414(h)(2)) and Section 17501 of the Revenue and Taxation Code, all of the employee's contributions towards retirement made by members of the State Teachers' Retirement System provided that the contributions are deducted from the salary of the member.

SEC. 5. Section 23000.5 of the Education Code is amended to read:

23000.5. Notwithstanding any other provision of law, the state may pick up all or a portion of the normal contributions required to be paid by a state employee who is a member of the State Teachers' Retirement System provided that the contributions are deducted from the salary of the member. The pick up of member contributions shall be through a salary reduction program pursuant to Section 414(h)(2) of the Internal Revenue Code. These contributions shall be reported as employer-paid member contributions, and shall be credited to member accounts.

SEC. 6. Section 23101.5 of the Education Code is amended to read:

23101.5. (a) Deposit in the United States mail of an initial warrant drawn as directed by the member as a refund of contributions upon termination of employment, and addressed to the address directed by the member, constitutes a return of the member's accumulated contributions.

(b) If the member has elected on a form provided by the system to transfer all or a specified portion of the accumulated contributions that are eligible for direct trustee-to-trustee transfer to the trustee of a qualified plan under Section 402 of the Internal Revenue Code of the United States, deposit in the United States mail of a notice that the requested transfer has been made constitutes a return of the member's accumulated contributions.

(c) For refunds not involving direct trustee-to-trustee transfers, if the member returns the total gross distribution amount to the system's office within 30 days from the mailing date, the refund shall be canceled and the person shall be reinstated to membership with

all the rights and privileges restored.

SEC. 7. Section 24600.1 of the Education Code is repealed.

SEC. 8. Section 24600.1 is added to the Education Code, to read:

24600.1. (a) A retirant, disabilitant, or beneficiary shall specify whether monthly benefit payments are to be disbursed by: (1) direct deposit (electronic funds transfer); (2) direct mail to a financial or other institution; or (3) mailing to a payment address provided by the retirant, disabilitant, or beneficiary.

(b) A member or beneficiary to whom a lump-sum payment or benefit is to be disbursed shall specify the address to which the payment shall be mailed.

(c) Information regarding each monthly benefit payment or lump-sum payment shall be provided to the member, retirant, disabilitant, or beneficiary for whom the disbursement was made.

(d) A payment disbursed as specified by the member, retirant, disabilitant, or beneficiary shall fully discharge the board and the system from any claim resulting from actions taken under this section.

CHAPTER 1083

An act to amend and repeal Section 24600.1 of the Education Code, and to amend Section 21212 of the Government Code, relating to public retirement systems.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 24600.1 of the Education Code is amended to read:

24600.1. (a) Upon the receipt of a request from any retirant, disabilitant, or beneficiary, the board may transmit payments to a bank, savings and loan association, or credit union for deposit in the retirant's, disabilitant's, or beneficiary's account by electronic fund transfer or by mail. The transmittal of the payment shall fully discharge the board and the system from any claim resulting from actions taken under this section.

(b) (1) The board shall send a copy of the benefit payment information to any retirant, disabilitant, or beneficiary who has payments transmitted directly by electronic fund transfer or by mail to a financial institution, unless the board has received a written request from that person not to send a copy of the information.

(2) The board shall notify the retirant, disabilitant, or beneficiary, in the monthly benefit payment notice, of his or her right to request that no copy of the benefit payment information be mailed, pursuant to paragraph (1).

SEC. 2. Section 24600.1 of the Education Code is repealed.

SEC. 3. Section 24600.1 of the Education Code, as added by Assembly Bill 2278 of the 1993–94 Regular Session, is amended to read:

24600.1. (a) A retirant, disabilitant, or beneficiary shall specify whether monthly benefit payments are to be disbursed by: (1) direct deposit (electronic funds transfer); (2) direct mail to a financial or other institution; or (3) mailing to a payment address provided by the retirant, disabilitant, or beneficiary.

(b) A member or beneficiary to whom a lump-sum payment or benefit is to be disbursed shall specify the address to which the payment shall be mailed.

(c) (1) The board shall send a copy of the benefit payment information to any retirant, disabilitant, or beneficiary who has payments transmitted directly by electronic fund transfer or by mail to a financial institution, unless the board has received a written request from that person not to send a copy of the information.

(2) The board shall notify the retirant, disabilitant, or beneficiary, in the monthly benefit payment notice, of his or her right to request that no copy of the benefit payment information be mailed, pursuant to paragraph (1).

(d) A payment disbursed as specified by the member, retirant, disabilitant, or beneficiary shall fully discharge the board and the system from any claim resulting from actions taken under this section.

SEC. 4. Section 21212 of the Government Code is amended to read:

21212. (a) Any person entitled to a benefit from this system may request that payment be made by deposit by electronic fund transfer in the person's bank, savings and loan association or credit union account.

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

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

(d) (1) The board shall not send a copy of the benefit payment information to any person who has had payment made by electronic fund transfer or by mail pursuant to subdivision (a) or (b), if the board has received a written request from that person that it not be sent.

(2) The board shall notify persons subject to this section, in the monthly benefit payment notice, of their right to request that no copy of the benefit payment information be mailed, pursuant to paragraph (1).

SEC. 5. Sections 2 and 3 of this act shall only become operative if Assembly Bill 2278 (1) is enacted during the 1993 portion of the 1993–94 Regular Session, (2) repeals and adds Section 24600.1 of the Education Code, and (3) this bill is enacted after Assembly Bill 2278,

in which case Section 1 of this act shall not become operative.

CHAPTER 1084

An act to amend Sections 19605.7 and 19605.71 of the Business and Professions Code, relating to horseracing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 19605.7 of the Business and Professions Code is amended to read:

19605.7. The total percentage deducted from wagers at satellite wagering facilities in the northern zone shall be the same as the deductions for wagers at the racetrack where the racing meeting is being conducted and shall be distributed as set forth in this section. Amounts deducted under this section shall be distributed as follows:

(a) For thoroughbred meetings, 2.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 4 percent on exotic wagers shall be distributed to the racing association for payment to the state as a license fee, 2 percent retained by the satellite wagering facility as a commission for the right to do business, as a franchise, and such commission is not for the use of any real property, 2.5 percent or the amount of actual operating expenses, as determined by the board, whichever is less, distributed to an organization described in Section 19608.2, and four-tenths of 1 percent deposited with the official registering agency pursuant to subdivision (a) of Section 19617.2 and shall thereafter be distributed in accordance with subdivisions (b) and (c) of Section 19617.2, and one-tenth of 1 percent distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that the one-tenth of 1 percent of funds distributed to the Equine Research Laboratory shall supplement, and not supplant, other funding sources.

(b) For harness, quarter horse, Appaloosa, Arabian, or mixed breed meetings, 1 percent of the amount handled by the satellite wagering facility on conventional wagers and 1 percent on exotic wagers shall be distributed to the racing association for payment to the state as a license fee, for fair meetings, 1.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 3 percent on exotic wagers shall be distributed to the racing association for payment to the state as a license fee, 2 percent retained by the satellite wagering facility as a commission for the right to do business, as a franchise, and such commission is not for the

use of any real property, and 6 percent of the amount handled by the satellite wagering facility or the amount of actual operating expenses, as determined by the board, whichever is less, distributed to an organization described in Section 19608.2. In addition, in the case of quarter horses, four-tenths of 1 percent shall be deposited with the official registering agency pursuant to subdivision (b) of Section 19617.7 and shall thereafter be distributed in accordance with subdivisions (c), (d), and (e) of Section 19617.7; in the case of Appaloosas, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of Appaloosas; in the case of Arabians, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of Arabians; in the case of standardbreds, four-tenths of 1 percent shall be distributed for the California Standardbred Sires Stakes Program pursuant to Section 19619; in the case of thoroughbreds, four-tenths of 1 percent shall be deposited with the official registering agency pursuant to subdivision (a) of Section 19617.2 and shall thereafter be distributed in accordance with subdivisions (b) and (c) of Section 19617.2; and one-tenth of 1 percent shall be distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that the one-tenth of 1 percent of funds distributed to the Equine Research Laboratory shall supplement, and not supplant, other funding sources.

(c) In addition to the distributions specified in subdivision (a) or (b), for thoroughbred and fair meetings only, six-tenths of 1 percent of the total amount handled by each satellite wagering facility authorized pursuant to Section 19605.1 and one-half of 1 percent of the total amount handled at each other satellite wagering facility shall be allocated to the facility for promotion of that meeting's program. For harness and mixed breed meetings, 1 percent of the total amount handled by each satellite wagering facility shall be distributed to an organization described in Section 19608.2 for promotion of the program at satellite wagering facilities. For quarter horse meetings, one-half of 1 percent of the total amount handled by each satellite wagering facility shall be distributed to an organization described in Section 19608.2 for the promotion of the program at satellite wagering facilities, and one-half of 1 percent of the total amount handled by each satellite wagering facility shall be distributed according to a written agreement for each race meeting between the licensed racing association and the organization representing the horsemen participating in the meeting.

(d) In addition to the distributions specified in subdivisions (a), (b), and (c), for thoroughbred meetings, four-tenths of 1 percent of the total amount handled at each satellite wagering facility authorized pursuant to Section 19605.1 and one-half of 1 percent of the total amount handled at each other satellite wagering facility shall be allocated to the association conducting the racing program to reimburse it for any costs of offsite stabling and vanning which are required pursuant to Section 19535. The amount of the

reimbursement payable to an association for offsite stabling shall not exceed the actual cost to the association of maintaining stalls at its racetrack plus the actual costs incurred by the association to provide vanning and transportation of racehorses from offsite stabling facilities to its racetrack.

(e) In addition to the distributions specified in subdivisions (a), (b), and (c), for fair meetings, four-tenths of 1 percent of the total amount handled at each satellite wagering facility authorized pursuant to Section 19605.1 and one-half of 1 percent of the total amount handled at each other satellite wagering facility shall be allocated to the organization representing racing fairs to reimburse fairs for the actual cost of providing offsite stabling required by the board pursuant to Section 19535. If fairs contract with associations to provide offsite stabling during fair meetings, the cost incurred by fairs shall not exceed the actual cost to the association of maintaining the stalls or the amount of reimbursement funds made available pursuant to this subdivision, whichever is less. In the event of a disagreement between an association and the organization representing racing fairs or the organization representing the majority of horsemen participating at the meeting with respect to the actual cost of maintaining stalls, the board, at the request of the association or the organization representing racing fairs or the organization representing the majority of horsemen participating at the meeting, shall determine within 60 days the amount of actual costs incurred. For purposes of this subdivision, "actual cost" does not include fixed overhead or administrative expenses which would be incurred by the association in the absence of an agreement to provide offsite stabling during fair meetings.

(f) Any of the promotional funds distributed pursuant to subdivision (c) that are not expended in the year in which they are collected may be expended in the following year. If promotion funds expended in any year exceed the amount collected for that year, the funds expended in the following year shall be reduced by the excess amount.

(g) Any of the stabling and vanning reimbursement funds distributed pursuant to subdivision (d) that are not expended during the meeting at which they are collected shall be retained by the racing association to offset its costs, in excess of payments by the organization representing fairs, of maintaining the stalls contracted for by fairs pursuant to subdivision (e).

(h) Additionally, for thoroughbred, harness, quarter horse, mixed breed, and fair meetings, thirty-three hundredths of 1 percent of the total amount handled by each satellite wagering facility shall be paid to the city or county in which the satellite wagering facility is located pursuant to Section 19610.3 or 19610.4.

(i) Notwithstanding any other provision of law, a racing association is responsible for the payment of the state license fee as required by this section.

SEC. 2. Section 19605.71 of the Business and Professions Code is

amended to read:

19605.71. The total percentage deducted from wagers at satellite wagering facilities in the central and southern zone shall be the same as the percentage deducted from wagers at the racetrack where the racing meeting is being conducted and shall be distributed as set forth in this section. Amounts deducted by a satellite wagering facility under this section shall be distributed as follows:

(a) For thoroughbred meetings, 2.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 4 percent on exotic wagers shall be distributed to the racing association for payment to the state as a license fee, 2 percent retained by the satellite wagering facility as a commission for the right to do business, as a franchise, and such commission is not for the use of any real property, 2.5 percent or the amount of actual operating expenses, as determined by the board, whichever is less, distributed to an organization described in Section 19608.2, and four-tenths of 1 percent deposited with the official registering agency pursuant to subdivision (a) of Section 19617.2 and shall thereafter be distributed in accordance with subdivisions (b) and (c) of Section 19617.2, and one-tenth of 1 percent distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that the one-tenth of 1 percent of funds distributed to the Equine Research Laboratory shall supplement, and not supplant, other funding sources.

(b) For harness, quarter horse, Appaloosa, Arabian, or mixed breed meetings, 1 percent of the amount handled by the satellite wagering facility on conventional wagers and 1 percent on exotic wagers shall be distributed to the racing association for payment to the state as a license fee, for fair meetings, 1.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 3 percent on exotic wagers shall be distributed to the racing association for payment to the state as a license fee, 2 percent retained by the satellite wagering facility as a commission for the right to do business, as a franchise, and such commission is not for the use of any real property, and 6 percent of the amount handled by the satellite wagering facility or the amount of actual operating expenses, as determined by the board, whichever is less, distributed to an organization described in Section 19608.2. In addition, in the case of quarter horses, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of quarter horses pursuant to Section 19617.6; in the case of Appaloosas, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of Appaloosas; in the case of Arabians, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of Arabians; in the case of standardbreds, four-tenths of 1 percent shall be distributed for the California Standardbred Sires Stakes Program pursuant to Section 19619; in the case of thoroughbreds, four-tenths of 1 percent shall be deposited with the official registering agency pursuant to subdivision (a) of

Section 19617.2 and shall thereafter be distributed in accordance with subdivisions (b) and (c) of Section 19617.2; and one-tenth of 1 percent shall be distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that the one-tenth of 1 percent of funds distributed to the Equine Research Laboratory shall supplement, and not supplant, other funding sources.

(c) In addition, for thoroughbred meetings and harness, Appaloosa, mixed breed, or fair meetings, 1 percent shall be distributed to an organization described in Section 19608.2 for promotion of the program at satellite wagering facilities. Notwithstanding any other provision of law, on wagers made in the Counties of Orange and Los Angeles on thoroughbred races conducted in the County of Orange or Los Angeles, or both, excluding the 50th District Agricultural Association, the amount deducted for promotion of the satellite wagering program at satellite wagering facilities shall be one-half of 1 percent. Any of the promotion funds that are not distributed in the year in which they are collected may be distributed in the following year. If promotion funds distributed in any year exceed the amount collected for that year, the funds distributed in the following year shall be reduced by the excess amount. For quarter horse meetings, one-half of 1 percent of the total amount handled by each satellite wagering facility shall be distributed to an organization described in Section 19608.2 for the promotion of the program at satellite wagering facilities, and one-half of 1 percent of the total amount handled by each satellite wagering facility shall be distributed according to a written agreement for each race meeting between the licensed racing association and the organization representing the horsemen participating in the meeting. To the extent that funds representing a percentage greater than one-half of 1 percent of funds wagered on thoroughbred races conducted in the Counties of Orange and Los Angeles have been distributed, prior to July 27, 1992, to an organization described in Section 19608.2 for promotion activities, but remain unused, those funds shall be redistributed, 50 percent as commissions to the association that conducts the racing meeting, and 50 percent as purses to the horsemen participating in the racing meeting. Additionally, thirty-three hundredths of 1 percent of the total amount handled by the satellite wagering facility shall be paid to the city or county in which the satellite wagering facility is located pursuant to Section 19610.3 or 19610.4.

(d) Notwithstanding any other provision of law, a racing association is responsible for the payment of the state license fee as required by this section.

SEC. 3. The amendment of Sections 19605.7 and 19605.71 of the Business and Professions Code which states that the amount retained by the satellite wagering facility as a commission is for the right to do business as a franchise and that the commission is not for the use of any real property does not constitute a change in, but is

declaratory of, the existing law.

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 changes made by this act apply to the current racing season, it is necessary that this act take effect immediately.

CHAPTER 1085

An act to amend Sections 19577, 19605.7, 19605.71, 19605.8, and 19606 of, and to add Sections 19578 and 19610.2 to, the Business and Professions Code, and to amend Section 522 of the Food and Agricultural Code, relating to equine drug testing.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 19577 of the Business and Professions Code is amended to read:

19577. (a) Any blood, urine, saliva, or any other test sample required by the board to be taken from a horse that is entered in any race shall be taken in duplicate if there is a sufficient test sample available after the official test sample has been taken. Two-thirds of the samples taken shall be sent to the official racing laboratory approved and designated by the board, and one-third of the samples taken shall be sent to the California Veterinary Diagnostic Laboratory System. The duplicate samples shall be stored and sent to an independent laboratory participating in the Association of Racing Commissioners International Quality Assurance Program if requested by the owner or trainer. The board shall adopt regulations to ensure the security of obtaining all samples and the testing of those samples. If the official test sample tests positive for any prohibited drug substance, the board shall inform the trainer and the owner of those results. The trainer or the owner of the horse, upon being so informed, or the steward, may request that the duplicate sample be tested.

(b) The requesting party shall pay the testing costs of the duplicate sample.

(c) The results of the tests from the official racing laboratory, the California Veterinary Diagnostic Laboratory System, and the independent laboratory shall be confidential until the matter is referred to the board.

(d) If the test results from the independent laboratory are negative, a presumption affecting the burden of producing evidence pursuant to Section 603 of the Evidence Code of no evidentiary

prohibited drug substance in the animal shall exist for purposes of this chapter.

(e) The board shall contract with the Regents of the University of California to have one-third of the routine equine drug testing required by this section performed by the California Veterinary Diagnostic Laboratory System. The contract may provide for a phased-in performance in order to allow for the startup of the California Veterinary Diagnostic Laboratory System and for the completion of existing contracts.

SEC. 2. Section 19578 is added to the Business and Professions Code, to read:

19578. (a) It is the intent of the Legislature that the board contract with the Regents of the University of California to provide equine drug testing.

(b) An Equine Drug Testing Laboratory may be constructed at the University of California, Davis campus.

(c) If constructed, the Equine Drug Testing Laboratory shall be located at the University of California at Davis in order to take advantage of the expertise of the veterinary specialists at that campus' School of Veterinary Medicine. The laboratory shall be a part of the California Veterinary Diagnostic Laboratory System. Any capital outlay expenditures for the Equine Drug Testing Laboratory shall comply with Section 13332.11 of the Government Code.

(d) Funds collected under Article 9.2 (commencing with Section 19605) and Article 9.5 (commencing with Section 19610) for purposes of the California Veterinary Diagnostic Laboratory System and the Equine Research Laboratory shall be deposited in a separate account in the Fair and Exposition Fund. The funds designated for the California Veterinary Diagnostic Laboratory System shall be distributed to that system and shall be used to conduct the tests required by Section 19577 and to fund the construction costs, equipment costs, and operating costs of the Equine Drug Testing Laboratory if it is constructed. The funds designated for the Equine Research Laboratory shall be distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis.

(e) Title to the Equine Drug Testing Laboratory shall vest in the Regents of the University of California. The laboratory shall be used in a manner that is consistent with Section 19577 and this section.

(f) The board shall contract to provide compensation for an equine medical director who shall advise the Equine Drug Testing Laboratory and be appointed by the Dean of the School of Veterinary Medicine under applicable university hiring rules with the advice of the board. The equine medical director shall be a member of the scientific advisory committee to the Equine Drug Testing Laboratory, and act as the primary advisor to the board on all matters relating to medication and drug testing, the practice of veterinary medicine within the areas regulated by the board, and the health and safety of horses within the inclosure.

(g) The budget for the Equine Drug Testing Laboratory shall be established as a permanent line item in the budget of the board. Operating budget requests shall be submitted annually by the university, and the board shall transfer funds appropriated for operation of the laboratory and for equipment, in accordance with the contract, to the university.

(h) If the Equine Drug Testing Laboratory is constructed, the board and the University of California may expand the services provided by the laboratory to the board in a manner that is mutually agreeable and is consistent with Section 19577 and this section.

SEC. 3. Section 19605.7 of the Business and Professions Code is amended to read:

19605.7. The total percentage deducted from wagers at satellite wagering facilities in the northern zone shall be the same as the deductions for wagers at the racetrack where the racing meeting is being conducted and shall be distributed as set forth in this section. Amounts deducted under this section shall be distributed as follows:

(a) For thoroughbred meetings, 2.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 4 percent on exotic wagers shall be distributed to the racing association for payment to the state as a license fee, 2 percent retained by the satellite wagering facility as a commission for the right to do business, as a franchise, and such commission is not for the use of any real property, 2.5 percent or the amount of actual operating expenses, as determined by the board, whichever is less, distributed to an organization described in Section 19608.2, and four-tenths of 1 percent deposited with the official registering agency pursuant to subdivision (a) of Section 19617.2 and shall thereafter be distributed in accordance with subdivisions (b) and (c) of Section 19617.2, and thirty-three hundredths of one-tenth of 1 percent distributed to the Equine Research Laboratory and sixty-seven hundredths of one-tenth of 1 percent distributed to the California Veterinary Diagnostic Laboratory System, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that the thirty-three hundredths of one-tenth of 1 percent of funds distributed to the Equine Research Laboratory shall supplement, and not supplant, other funding sources.

(b) For harness, quarter horse, Appaloosa, Arabian, or mixed breed meetings, 1 percent of the amount handled by the satellite wagering facility on conventional wagers and 1 percent on exotic wagers shall be distributed to the racing association for payment to the state as a license fee, for fair meetings, 1.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 3 percent on exotic wagers shall be distributed to the racing association for payment to the state as a license fee, 2 percent retained by the satellite wagering facility as a commission for the right to do business, as a franchise, and such commission is not for the use of any real property, and 6 percent of the amount handled by the

satellite wagering facility or the amount of actual operating expenses, as determined by the board, whichever is less, distributed to an organization described in Section 19608.2. In addition, in the case of quarter horses, four-tenths of 1 percent shall be deposited with the official registering agency pursuant to subdivision (b) of Section 19617.7 and shall thereafter be distributed in accordance with subdivisions (c), (d), and (e) of Section 19617.7; in the case of Appaloosas, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of Appaloosas; in the case of Arabians, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of Arabians; in the case of standardbreds, four-tenths of 1 percent shall be distributed for the California Standardbred Sires Stakes Program pursuant to Section 19619; in the case of thoroughbreds, four-tenths of 1 percent shall be deposited with the official registering agency pursuant to subdivision (a) of Section 19617.2 and shall thereafter be distributed in accordance with subdivisions (b) and (c) of Section 19617.2; and thirty-three hundredths of one-tenth of 1 percent shall be distributed to the Equine Research Laboratory and sixty-seven hundredths of one-tenth of 1 percent distributed to the California Veterinary Diagnostic Laboratory System, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that the thirty-three hundredths of one-tenth of 1 percent of funds distributed to the Equine Research Laboratory shall supplement, and not supplant, other funding sources.

(c) In addition to the distributions specified in subdivision (a) or (b), for thoroughbred and fair meetings only, six-tenths of 1 percent of the total amount handled by each satellite wagering facility authorized pursuant to Section 19605.1 and one-half of 1 percent of the total amount handled at each other satellite wagering facility shall be allocated to the facility for promotion of that meeting's program. For harness and mixed breed meetings, 1 percent of the total amount handled by each satellite wagering facility shall be distributed to an organization described in Section 19608.2 for promotion of the program at satellite wagering facilities. For quarter horse meetings, one-half of 1 percent of the total amount handled by each satellite wagering facility shall be distributed to an organization described in Section 19608.2 for the promotion of the program at satellite wagering facilities, and one-half of 1 percent of the total amount handled by each satellite wagering facility shall be distributed according to a written agreement for each race meeting between the licensed racing association and the organization representing the horsemen participating in the meeting.

(d) In addition to the distributions specified in subdivisions (a), (b), and (c), for thoroughbred meetings, four-tenths of 1 percent of the total amount handled at each satellite wagering facility authorized pursuant to Section 19605.1 and one-half of 1 percent of the total amount handled at each other satellite wagering facility shall be allocated to the association conducting the racing program to reimburse it for any costs of offsite stabling and vanning which are

required pursuant to Section 19535. The amount of the reimbursement payable to an association for offsite stabling shall not exceed the actual cost to the association of maintaining stalls at its racetrack plus the actual costs incurred by the association to provide vanning and transportation of racehorses from offsite stabling facilities to its racetrack.

(e) In addition to the distributions specified in subdivisions (a), (b), and (c), for fair meetings, four-tenths of 1 percent of the total amount handled at each satellite wagering facility authorized pursuant to Section 19605.1 and one-half of 1 percent of the total amount handled at each other satellite wagering facility shall be allocated to the organization representing racing fairs to reimburse fairs for the actual cost of providing offsite stabling required by the board pursuant to Section 19535. If fairs contract with associations to provide offsite stabling during fair meetings, the cost incurred by fairs shall not exceed the actual cost to the association of maintaining the stalls or the amount of reimbursement funds made available pursuant to this subdivision, whichever is less. In the event of a disagreement between an association and the organization representing racing fairs or the organization representing the majority of horsemen participating at the meeting with respect to the actual cost of maintaining stalls, the board, at the request of the association or the organization representing racing fairs or the organization representing the majority of horsemen participating at the meeting, shall determine within 60 days the amount of actual costs incurred. For purposes of this subdivision, "actual cost" does not include fixed overhead or administrative expenses which would be incurred by the association in the absence of an agreement to provide offsite stabling during fair meetings.

(f) Any of the promotional funds distributed pursuant to subdivision (c) that are not expended in the year in which they are collected may be expended in the following year. If promotion funds expended in any year exceed the amount collected for that year, the funds expended in the following year shall be reduced by the excess amount.

(g) Any of the stabling and vanning reimbursement funds distributed pursuant to subdivision (d) that are not expended during the meeting at which they are collected shall be retained by the racing association to offset its costs, in excess of payments by the organization representing fairs, of maintaining the stalls contracted for by fairs pursuant to subdivision (e).

(h) Additionally, for thoroughbred, harness, quarter horse, mixed breed, and fair meetings, thirty-three hundredths of 1 percent of the total amount handled by each satellite wagering facility shall be paid to the city or county in which the satellite wagering facility is located pursuant to Section 19610.3 or 19610.4.

(i) Notwithstanding any other provision of law, a racing association is responsible for the payment of the state license fee as required by this section.

SEC. 4. Section 19605.71 of the Business and Professions Code is amended to read:

19605.71. The total percentage deducted from wagers at satellite wagering facilities in the central and southern zone shall be the same as the percentage deducted from wagers at the racetrack where the racing meeting is being conducted and shall be distributed as set forth in this section. Amounts deducted by a satellite wagering facility under this section shall be distributed as follows:

(a) For thoroughbred meetings, 2.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 4 percent on exotic wagers shall be distributed to the racing association for payment to the state as a license fee, 2 percent retained by the satellite wagering facility as a commission for the right to do business, as a franchise, and such commission is not for the use of any real property, 2.5 percent or the amount of actual operating expenses, as determined by the board, whichever is less, distributed to an organization described in Section 19608.2, and four-tenths of 1 percent deposited with the official registering agency pursuant to subdivision (a) of Section 19617.2 and shall thereafter be distributed in accordance with subdivisions (b) and (c) of Section 19617.2, and thirty-three hundredths of one-tenth of 1 percent distributed to the Equine Research Laboratory and sixty-seven hundredths of one-tenth of 1 percent distributed to the California Veterinary Diagnostic Laboratory System, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that the thirty-three hundredths of one-tenth of 1 percent of funds distributed to the Equine Research Laboratory shall supplement, and not supplant, other funding sources.

(b) For harness, quarter horse, Appaloosa, Arabian, or mixed breed meetings, 1 percent of the amount handled by the satellite wagering facility on conventional wagers and 1 percent on exotic wagers shall be distributed to the racing association for payment to the state as a license fee, for fair meetings, 1.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 3 percent on exotic wagers shall be distributed to the racing association for payment to the state as a license fee, 2 percent retained by the satellite wagering facility as a commission for the right to do business, as a franchise, and such commission is not for the use of any real property, and 6 percent of the amount handled by the satellite wagering facility or the amount of actual operating expenses, as determined by the board, whichever is less, distributed to an organization described in Section 19608.2. In addition, in the case of quarter horses, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of quarter horses pursuant to Section 19617.6; in the case of Appaloosas, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of Appaloosas; in the case of Arabians, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of Arabians; in the case of standardbreds,

four-tenths of 1 percent shall be distributed for the California Standardbred Sires Stakes Program pursuant to Section 19619; in the case of thoroughbreds, four-tenths of 1 percent shall be deposited with the official registering agency pursuant to subdivision (a) of Section 19617.2 and shall thereafter be distributed in accordance with subdivisions (b) and (c) of Section 19617.2; and thirty-three hundredths of one-tenth of 1 percent shall be distributed to the Equine Research Laboratory and sixty-seven hundredths of one-tenth of 1 percent distributed to the California Veterinary Diagnostic Laboratory System, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that the thirty-three hundredths of one-tenth of 1 percent of funds distributed to the Equine Research Laboratory shall supplement, and not supplant, other funding sources.

(c) In addition, for thoroughbred meetings and harness, Appaloosa, mixed breed, or fair meetings, 1 percent shall be distributed to an organization described in Section 19608.2 for promotion of the program at satellite wagering facilities. Notwithstanding any other provision of law, on wagers made in the Counties of Orange and Los Angeles on thoroughbred races conducted in the County of Orange or Los Angeles, or both, excluding the 50th District Agricultural Association, the amount deducted for promotion of the satellite wagering program at satellite wagering facilities shall be one-half of 1 percent. Any of the promotion funds that are not distributed in the year in which they are collected may be distributed in the following year. If promotion funds distributed in any year exceed the amount collected for that year, the funds distributed in the following year shall be reduced by the excess amount. For quarter horse meetings, one-half of 1 percent of the total amount handled by each satellite wagering facility shall be distributed to an organization described in Section 19608.2 for the promotion of the program at satellite wagering facilities, and one-half of 1 percent of the total amount handled by each satellite wagering facility shall be distributed according to a written agreement for each race meeting between the licensed racing association and the organization representing the horsemen participating in the meeting. To the extent that funds representing a percentage greater than one-half of 1 percent of funds wagered on thoroughbred races conducted in the Counties of Orange and Los Angeles have been distributed, prior to July 27, 1992, to an organization described in Section 19608.2 for promotion activities, but remain unused, those funds shall be redistributed, 50 percent as commissions to the association that conducts the racing meeting, and 50 percent as purses to the horsemen participating in the racing meeting. Additionally, thirty-three hundredths of 1 percent of the total amount handled by the satellite wagering facility shall be paid to the city or county in which the satellite wagering facility is located pursuant to Section 19610.3 or 19610.4.

(d) Notwithstanding any other provision of law, a racing

association is responsible for the payment of the state license fee as required by this section.

SEC. 5. Section 19605.8 of the Business and Professions Code is amended to read:

19605.8. (a) For thoroughbred meetings, the funds remaining after distribution of the amounts set forth in Sections 19605.7 and 19605.71 shall be distributed 50 percent as commissions to the association that conducts the racing meeting and 50 percent as purses to the horsemen participating in the racing meeting.

(b) Notwithstanding subdivision (a), 50 percent of the amount deducted pursuant to Section 19610.2 from the satellite wagering handle shall be paid to the board for deposit in the General Fund, and 50 percent shall be distributed as purses to the horsemen participating in the racing meeting, notwithstanding the distribution specified in Section 19610.2.

SEC. 5.5. Section 19606 of the Business and Professions Code is amended to read:

19606. (a) For harness, quarter horse, Appaloosa, Arabian, mixed breed, and fair meetings, the funds remaining after the distribution of the amounts set forth in Sections 19605.7 and 19605.71 shall be distributed 50 percent as commissions to the association that conducts the racing meeting and 50 percent to the horsemen participating in the racing meeting in the form of purses. However, owners' premiums shall be paid from the amount distributed for purses in the same relative percentage as owners' premiums are paid at the racing meeting.

(b) Notwithstanding subdivision (a), 50 percent of the amount deducted pursuant to Section 19610.2 from the satellite wagering handle shall be paid to the board for deposit in the General Fund, and 50 percent shall be distributed as purses to the horsemen participating in the racing meeting notwithstanding the distribution specified in Section 19610.2.

SEC. 6. Section 19610.2 is added to the Business and Professions Code, to read:

19610.2. Every association that conducts a racing meeting shall deduct one-tenth of 1 percent of the total amount handled. The amount deducted on wagers at satellite wagering facilities shall be distributed as provided in subdivision (b) of Section 19605.8 and subdivision (b) of Section 19606. From the amount deducted on wagers made on-track, thirty-three one hundredths of the amount deducted shall be distributed to the Equine Research Laboratory and shall supplement, and not supplant, other funding sources. Sixty-seven one hundredths of the amount deducted shall be distributed to the California Veterinary Diagnostic Laboratory System to fund the equine drug testing program and laboratory at the University of California at Davis described in Section 19578.

SEC. 7. Section 522 of the Food and Agricultural Code is amended to read:

522. When a central diagnostic laboratory constructed on the

Davis campus of the university is ready for occupancy, the director shall contract with the Regents of the University of California for its School of Veterinary Medicine to establish and operate the California Veterinary Diagnostic Laboratory System. The system shall be headed by a director appointed by the Dean of the School of Veterinary Medicine under applicable university hiring rules. The system shall test, examine, and make diagnoses of infectious, nutritional, toxic, metabolic, and other diseases of domestic animals.

SEC. 8. The amendment of Sections 19605.7 and 19605.71 of the Business and Professions Code that states that the amount retained by the satellite wagering facility as a commission is for the right to do business as a franchise and that the commission is not for the use of any real property does not constitute a change in, but is declaratory of, the existing law.

CHAPTER 1086

An act to amend Section 19440 of, and to repeal and add Section 19577 of, the Business and Professions Code, relating to horseracing.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 19440 of the Business and Professions Code is amended to read:

19440. (a) The board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the board shall include, but not be limited to, all of the following:

(1) Adopting rules and regulations for the protection of the public and the control of horseracing and parimutuel wagering.

(2) Administration and enforcement of all laws, rules, and regulations affecting horseracing and parimutuel wagering.

(3) Adjudication of controversies arising from the enforcement of those laws and regulations dealing with horseracing and parimutuel wagering.

(4) Licensing of each racing association and all persons, other than the public at large, who participate in a horserace meeting with parimutuel wagering.

(5) Allocation of racing dates to qualified associations in accordance with law.

(b) The board may delegate to stewards appointed pursuant to Article 5 (commencing with Section 19510) any of its powers and duties that are necessary to carry out fully and effectuate the purposes of this chapter.

SEC. 2. Section 19577 of the Business and Professions Code is

repealed.

SEC. 3. Section 19577 is added to the Business and Professions Code, to read:

19577. (a) Any blood or urine test sample required by the board to be taken from a horse that is entered in any race shall be divided or taken in duplicate, if there is sufficient sample available after the initial test sample has been taken. The initial test sample shall be referred to as the official test sample and the secondary sample shall be referred to as the split sample. All samples immediately become and remain the property of the board. The board shall adopt regulations to ensure the security of obtaining and testing of all samples.

(b) If the official test sample is found to contain a prohibited drug substance, the secretary, after consulting with and agreeing with the equine medical director that the official test sample contains a prohibited substance, shall confidentially inform the owner and trainer of those results. The owner or the trainer of the horse, upon being so informed, may request that the split sample be tested by an independent laboratory selected from a list of laboratories provided by and approved by the board. The owner or trainer of the horse shall pay the cost of testing the split sample.

(c) If the split sample test results fail to confirm the finding of the prohibited drug substance found in the official test sample, a presumption affecting the burden of producing evidence pursuant to Section 603 of the Evidence Code of no evidentiary prohibited drug substance in the animal shall exist for purposes of this chapter.

(d) The secretary shall report to the board a finding of a prohibited drug substance in an official test sample within 24 hours of the confirmation of that prohibited drug substance in the split sample by the independent laboratory, or within 24 hours of waiver of split sample testing by the owner or trainer. Any recommendation to the board by the secretary to dismiss the matter shall be by mutual agreement with the equine medical director. The authority for the disposition of the matter shall be the responsibility of the board.

(e) The secretary shall maintain responsibility for all test samples until the secretary refers the matter to the board. Notwithstanding any other provision of law, and except as provided in subdivision (a), the results of the tests from the official testing laboratory, the California Veterinary Diagnostic Laboratory System and the independent laboratory shall be confidential until or unless the board files an official complaint.

(f) If the owner or trainer does not request that the split sample be tested within the time limits set by the board, they waive all rights to that sample and the board assumes all jurisdiction over the split sample.

CHAPTER 1087

An act to amend Sections 16115.5, 16118, 16119, 16120.1, and 16121 of, to amend, repeal, and add Section 16120 of, to add Sections 16120.05 and 16121.05 to, and to repeal Section 16116 of, the Welfare and Institutions Code, relating to public social services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 16115.5 of the Welfare and Institutions Code is amended to read:

16115.5. It is the intent of the Legislature in enacting this chapter to benefit children residing in foster homes by providing the stability and security of permanent homes, and in so doing, achieve a reduction in foster home care. It is not the intent of this chapter to increase expenditures but to provide for payments to adoptive parents to enable them to meet the needs of children who meet the criteria established in Sections 16116, 16120, and 16121.

SEC. 2. Section 16116 of the Welfare and Institutions Code is repealed.

SEC. 3. Section 16118 of the Welfare and Institutions Code is amended to read:

16118. (a) The department shall establish and administer the program to be carried out by the department or the county pursuant to this chapter. The department shall adopt any regulations necessary to carry out the provisions of this chapter.

(b) The department shall keep any records necessary to evaluate the program's effectiveness in encouraging and promoting the adoption of children eligible for the Adoption Assistance Program.

(c) The department or the county responsible for providing financial aid in the amount determined in Section 16120 shall have responsibility for certifying that the child meets the eligibility criteria and for determining the amount of financial assistance needed by the child and the adopting family.

(d) The department shall actively seek and make maximum use of federal funds that may be available for the purposes of this chapter. All gifts or grants received from private sources for the purpose of this chapter shall be used to offset public costs incurred under the program established by this chapter.

(e) For purposes of this chapter, the county responsible for determining the child's Adoption Assistance Program eligibility status and for providing financial aid in the amount determined in Sections 16120 and 16120.1 shall be the county that at the time of the adoptive placement would otherwise be responsible for making a

payment pursuant to Section 11450 under the Aid to Families with Dependent Children program or Section 11461 under the Aid to Families with Dependent Children-Foster Care program if the child were not adopted. The responsible county for all other eligible children shall be the county where the child is physically residing prior to placement with the adoptive family. The responsible county shall certify eligibility on a form prescribed by the department.

SEC. 4. Section 16119 of the Welfare and Institutions Code is amended to read:

16119. (a) At the time application for adoption of a child who is potentially eligible for Adoption Assistance Program benefits is made, the department or the licensed adoption agency, whichever is appropriate, shall provide the prospective adoptive family with information, in writing, on the availability of Adoption Assistance Program benefits, with an explanation of the difference between these benefits and foster care payments. The department or the licensed adoption agency shall also provide the prospective adoptive family with information, in writing, on the availability of reimbursement for the nonrecurring expenses incurred in the adoption of the Adoption Assistance Program eligible child.

(b) The department or the county, whichever is responsible for determining the child's eligibility for the Adoption Assistance Program, shall assess the needs of the child and the resources of the family to meet those needs, including the family's financial status relative to available statewide median income data.

(c) The amount of an adoption assistance cash benefit, if any, shall be a negotiated amount based upon the needs of the child and the ability of the family to meet the child's needs. There shall be no means test used to determine an adoptive family's eligibility for the Adoption Assistance Program. The statewide median income data shall be used as a guideline to assist agencies and adoptive families in negotiating the amount of the Adoption Assistance Program benefit to be awarded to families to meet a child's needs for which other resources are unavailable. In all instances, actual living expenses, including any unusual expenses, shall be considered in evaluating the amount of benefit needed by the family to meet the child's needs. In those instances where an otherwise eligible child does not require a cash benefit, Medi-Cal eligibility may be established for the child, as needed.

(d) In applying the statewide median income guideline, agencies shall be guided by the following assumptions:

(1) Families with income below the statewide median income may qualify for an amount up to the state approved basic foster care rate plus any state approved specialized care increment for which the child would be eligible if in foster care.

(2) Families with income above the statewide median income shall be considered to be able to meet the normal child rearing expenses encompassed in the state approved basic foster family home care rate, but may qualify to receive benefits in an amount up

to the state approved specialized care increments the child would be eligible to receive if in foster care.

(e) The department or the licensed adoption agency shall inform the prospective adoptive family regarding the county responsible for providing financial aid to the adoptive family in an amount determined pursuant to Sections 16120 and 16120.1.

SEC. 5. Section 16120 of the Welfare and Institutions Code is amended to read:

16120. A child shall be eligible for Adoption Assistance Program benefits if all of the following conditions are met:

(a) The child has at least one of the following characteristics that are barriers to his or her adoption:

(1) Adoptive placement without financial assistance is unlikely because of membership in a sibling group that should remain intact or by virtue of race, ethnicity, color, language, age of three years or older, or parental background of a medical or behavioral nature that can be determined to adversely affect the development of the child.

(2) Adoptive placement without financial assistance is unlikely because the child has a mental, physical, emotional, or medical disability that has been certified by a licensed professional competent to make an assessment and operating within the scope of his or her profession. This paragraph shall also apply to children with a developmental disability as defined in subdivision (a) of Section 4512, including those determined to require out-of-home nonmedical care as described in Section 11464.

(b) The need for adoption subsidy is evidenced by an unsuccessful search for an adoptive home to take the child without financial assistance, as documented in the case file of the prospective adoptive child. The requirement for this search shall be waived when it would be against the best interest of the child because of the existence of significant emotional ties with prospective adoptive parents while in the care of these persons as a foster child.

(c) The child is the subject of an agency adoption as defined in Section 220.20 of the Civil Code and was any of the following:

(1) Under the supervision of a county welfare department as the subject of a legal guardianship or juvenile court dependency.

(2) Relinquished for adoption to a licensed California private or public adoption agency, or the department, and would have otherwise been at risk of dependency as certified by the responsible public child welfare agency.

(3) Committed to the department pursuant to Section 224.37 or 226.66 of the Civil Code.

(d) The child is under 18 years of age, or under 21 years of age and has a mental or physical handicap that warrants the continuation of assistance.

(e) The adoptive family is responsible for the child pursuant to the terms of an adoptive placement agreement or a final decree of adoption and has signed an adoption assistance agreement.

(f) The adoptive family is legally responsible for the support of the

child and the child is receiving support from the adoptive parent.

(g) The department or the county responsible for determining the child's Adoption Assistance Program eligibility status and for providing financial aid, and the prospective adoptive parent, prior to or at the time the adoption decree is issued by the court, have signed an adoption assistance agreement that stipulates the need for, and the amount of, Adoption Assistance Program benefits.

(h) 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. 6. Section 16120 is added to the Welfare and Institutions Code, to read:

16120. A child shall be eligible for Adoption Assistance Program benefits if all of the following conditions are met:

(a) The child has at least one of the following characteristics that are barriers to his or her adoption:

(1) Adoptive placement without financial assistance is unlikely because of membership in a sibling group that should remain intact or by virtue of race, ethnicity, color, language, age of three years or older, or parental background of a medical or behavioral nature that can be determined to adversely affect the development of the child.

(2) Adoptive placement without financial assistance is unlikely because the child has a mental, physical, emotional, or medical disability that has been certified by a licensed professional competent to make an assessment and operating within the scope of his or her profession. This paragraph shall also apply to children with a developmental disability as defined in subdivision (a) of Section 4512, including those determined to require out-of-home nonmedical care as described in Section 11464.

(b) The need for adoption subsidy is evidenced by an unsuccessful search for an adoptive home to take the child without financial assistance, as documented in the case file of the prospective adoptive child. The requirement for this search shall be waived when it would be against the best interest of the child because of the existence of significant emotional ties with prospective adoptive parents while in the care of these persons as a foster child.

(c) The child is the subject of an agency adoption as defined in Section 8506 of the Family Code and was any of the following:

(1) Under the supervision of a county welfare department as the subject of a legal guardianship or juvenile court dependency.

(2) Relinquished for adoption to a licensed California private or public adoption agency, or the department, and would have otherwise been at risk of dependency as certified by the responsible public child welfare agency.

(3) Committed to the department pursuant to Section 8805 or 8918 of the Family Code.

(d) The child is under 18 years of age, or under 21 years of age and has a mental or physical handicap that warrants the continuation of assistance.

(e) The adoptive family is responsible for the child pursuant to the terms of an adoptive placement agreement or a final decree of adoption and has signed an adoption assistance agreement.

(f) The adoptive family is legally responsible for the support of the child and the child is receiving support from the adoptive parent.

(g) The department or the county responsible for determining the child's Adoption Assistance Program eligibility status and for providing financial aid, and the prospective adoptive parent, prior to or at the time the adoption decree is issued by the court, have signed an adoption assistance agreement that stipulates the need for, and the amount of, Adoption Assistance Program benefits.

(h) This section shall become operative on January 1, 1994.

SEC. 7. Section 16120.05 is added to the Welfare and Institutions Code, to read:

16120.05. The adoption assistance agreement shall, at a minimum, specify the amount and duration of assistance. The date for renewal of the agreement shall be set at the time of the initial negotiation of the adoption assistance agreement, and shall, thereafter be set at each subsequent renewal. The interval between any renewals shall not exceed two years. The renewal period shall be based on the specific qualifying condition of the child, and if applicable, documented by a licensed competent professional, operating within the scope of his or her profession, as to the diagnosis and prognosis of the child. Adoption Assistance Program payment levels shall be considered only after a full documentation of the costs to be incurred because of a child's qualifying condition, as well as an assessment of the adoptive family's resources to pay for identified needs of the child. An assessment of the availability of other community resources shall also be considered to pay or provide for identified costs. Adoption Assistance Program payments shall only be available to meet otherwise unmet needs when community or parental resources are not available for these purposes.

The adoption assistance agreement shall also specify the responsibility of the adopting family for reporting changes in circumstances.

SEC. 8. Section 16120.1 of the Welfare and Institutions Code, as amended by Section 133 of Chapter 722 of the Statutes of 1992, is amended to read:

16120.1. Upon the authorization of the department or, where appropriate, the county responsible for determining the child's Adoption Assistance Program eligibility status and for providing financial aid, the responsible county shall directly reimburse eligible individuals for reasonable nonrecurring expenses, as defined by the department, incurred as a result of the adoption of a child eligible for the Adoption Assistance Program. The state shall provide payment to the county for the reimbursement. Reimbursements shall conform to the eligibility criteria and claiming procedures established by the department and shall be subject to the following conditions:

(a) The amount of the payment shall be determined through

agreement between the adopting parent or parents and the department or the county responsible for determining the child's Adoption Assistance Program eligibility status and for providing financial aid. The agreement shall indicate the nature and the amount of the nonrecurring expenses to be paid. Payments shall be limited to an amount not to exceed four hundred dollars ($400) for each placement eligible for the Adoption Assistance Program.

(b) There shall be no income eligibility requirement for an adoptive parent or adoptive parents in determining whether payments for nonrecurring expenses shall be made.

(c) Reimbursement for nonrecurring expenses shall be limited to costs incurred by or on behalf of an adoptive parent or adoptive parents that are not reimbursed from other sources. No payments shall be made under this section if the federal program for reimbursement of nonrecurring expenses for the adoption of eligible for the Adoption Assistance Program children pursuant to Section 673 of Title 42 of the United States Code is terminated.

(d) Reimbursement for nonrecurring expenses shall be in addition to any adoption expenses paid pursuant to Section 16121 and shall not be included in the computation of maximum benefits for which the adoptive family is eligible pursuant to Section 16121.

(e) This section shall remain in effect only until January 1, 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. 9. Section 16120.1 of the Welfare and Institutions Code, as amended by Section 134 of Chapter 722 of the Statutes of 1992, is amended to read:

16120.1. Upon the authorization of the department or, where appropriate, the county responsible for determining the child's Adoption Assistance Program eligibility status and for providing financial aid, the responsible county shall directly reimburse eligible individuals for reasonable nonrecurring expenses, as defined by the department, incurred as a result of the adoption of a child eligible for the Adoption Assistance Program. The state shall provide payment to the county for the reimbursement. Reimbursements shall conform to the eligibility criteria and claiming procedures established by the department and shall be subject to the following conditions:

(a) The amount of the payment shall be determined through agreement between the adoptive parent or adoptive parents and the department or the county responsible for determining the child's Adoption Assistance Program eligibility status and for providing financial aid. The agreement shall indicate the nature and the amount of the nonrecurring expenses to be paid.

(b) There shall be no income eligibility requirement for an adoptive parent or adoptive parents in determining whether payments for nonrecurring expenses shall be made.

(c) Reimbursement for nonrecurring expenses shall be limited to costs incurred by or on behalf of an adoptive parent or adoptive parents which are not reimbursed from other sources. No payments

shall be made under this section if the federal program for reimbursement of nonrecurring expenses for the adoption of children eligible for the Adoption Assistance Program pursuant to Section 673 of Title 42 of the United States Code is terminated.

(d) Reimbursement for nonrecurring expenses shall be in addition to any adoption expenses paid pursuant to Section 16121 and shall not be included in the computation of maximum benefits for which the adoptive family is eligible pursuant to Section 16121.

(e) This section shall become operative on January 1, 1994.

SEC. 10. Section 16121 of the Welfare and Institutions Code is amended to read:

16121. In accordance with the adoption assistance agreement, the adoptive family shall be paid an amount of aid based on the child's needs otherwise covered in AFDC-FC payments and the circumstance of the adopting parents but that shall not exceed the age related state-approved foster family home care rate, and any applicable specialized care increment, for a child placed in a licensed or approved family home pursuant to subdivisions (a) to (d), inclusive, of Section 11461. Payment may be made on behalf of an otherwise eligible child in a state-approved group home or residential care treatment facility if the department or county responsible for determining payment has confirmed that the placement is necessary for the temporary resolution of mental or emotional problems related to a condition that existed prior to the adoptive placement. Out-of-home placements shall be in accordance with the applicable provisions of Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code and other applicable statutes and regulations governing eligibility for AFDC-FC payments for placements in in-state and out-of-state facilities. The designation of the placement facility shall be made after consultation with the family by the department or county welfare agency responsible for determining the Adoption Assistance Program eligibility and authorizing financial aid. Group home or residential placement shall only be made as part of a plan for return of the child to the adoptive family, that shall actively participate in the plan. Adoption Assistance Program benefits shall not be authorized for payment of an eligible child's group home or residential treatment facility placement that exceeds an 18-month cumulative period of time for a specific episode or condition justifying that placement.

In the event that a family signs an adoption assistance agreement where a cash benefit is not awarded, the adopting family shall be otherwise eligible to receive Medi-Cal benefits for the child if it is determined that the benefits are needed pursuant to this chapter.

This section shall apply to adoption assistance agreements signed on or after October 1, 1992.

SEC. 11. Section 16121.05 is added to the Welfare and Institutions Code, to read:

16121.05. (a) The adoptive parents shall report changes in the

family's or child's circumstances, including, but not limited to, financial status, to the department or county responsible for determining the child's eligibility for the Adoption Assistance Program and for providing financial aid. Failure to report these changes to the department or the county responsible for determining the child's Adoption Assistance Program eligibility status and for providing financial aid may result in current and future reduction of Adoption Assistance Program payments to recover past overpayments. A finding that an overpayment has occurred may also result in circumstances where the child has not received the services for which benefits were authorized. The department may recover any overpayments, and shall develop regulations that establish the means to recoup them, including an appropriate notice of action and appeal rights.

(b) Children on whose behalf an adoption assistance agreement had been executed prior to October 1, 1992, shall continue to receive adoption assistance in accordance with the terms of that agreement.

(c) Payment shall begin on or after the effective date of an adoption assistance agreement, or a deferred adoption assistance agreement, or a final decree of adoption, provided the adoption assistance agreement has been signed by all required parties prior to or at the time the adoption decree is issued by the court.

(d) Children on whose behalf an aid for adoption of children agreement had been executed prior to October 1, 1982, shall continue to receive aid for adoption of children benefits in accordance with the terms of that agreement. This aid for adoption of children agreement may be renewed, provided total benefits do not exceed five years. Prior to the end of the five-year period, if there is a continuing need related to a chronic health condition of the child that necessitated the initial financial assistance, the time period for which it may be given shall be determined by the department or the agency, but shall not extend past the time that the child reaches 18 years of age. Prior to the expiration of the extension period, if there is a continuing need, a parent may petition the department or the designated licensed adoption agency for a new period of termination. The department or the agency shall make its determination regarding the financial ability of the parents to meet the continuing medical needs of the child's health condition at the time of adoption, taking into consideration community resources.

SEC. 12. The State Department of Social Services shall develop regulations on an emergency basis for implementation of this act.

SEC. 13. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed 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. 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 prevent the disruption of adoption opportunities for children needing a permanent family at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1088

An act to add Section 1530.8 to the Health and Safety Code, and to amend Section 361.2 of, and to add Sections 319.2 and 11467.1 to, the Welfare and Institutions Code, relating to community care facilities.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. It is the intent of the Legislature that, in order to meet their specific needs resulting from the trauma of separation from their family, very young children, from birth to six years of age, who are removed from their home be placed in family homes, not group care or institutional settings. The Legislature recognizes that, due to a lack of existing resources in some counties, it is not yet possible to accomplish this intent and that currently some counties are moving in the direction of replacing large public institutional placements with smaller group settings for very young children. The Legislature further intends for the state, counties, and providers to work together to identify existing barriers to placing very young children in family homes and to develop the necessary family home resources in each county that meet the special needs of this population.

SEC. 2. Section 1530.8 is added to the Health and Safety Code, to read:

1530.8. (a) The department shall adopt regulations for community care facilities licensed as group homes, and for temporary shelter care facilities as defined in subdivision (c), that care for dependent children, children placed by a regional center, or voluntary placements, who are younger than 6 years of age. The department shall adopt these regulations after assessing the needs of this population and developing standards pursuant to Section 11467.1 of the Welfare and Institutions Code.

(b) The regulations shall include physical environment standards, including staffing and health and safety requirements, that meet or exceed state child care standards under Title 5 and Title 22 of the California Code of Regulations.

(c) For purposes of this section, a "temporary shelter care facility" means any residential facility that meets all of the following requirements:

(1) It is owned and operated by the county.

(2) It is a 24-hour facility that provides short-term residential care and supervision for dependent children under 18 years of age who have been removed from their homes as a result of abuse or neglect, as defined in Section 300 of the Welfare and Institutions Code, or both.

SEC. 3. Section 319.2 is added to the Welfare and Institutions Code, to read:

319.2. Notwithstanding Section 319, when a child under the age of six years is not released from the custody of the court, the child may be placed in a community care facility licensed as a group home for children or in a temporary shelter care facility, as defined in Section 1530.8 of the Health and Safety Code, only when the court finds that placement is necessary to secure a complete and adequate evaluation, including placement planning and transition time. The placement period shall not exceed 60 days unless a case plan has been developed and the need for additional time is documented in the case plan and has been approved by the supervisor of the caseworker's supervisor.

SEC. 4. Section 361.2 of the Welfare and Institutions Code is amended to read:

361.2. (a) When a court orders removal of a minor pursuant to Section 361, the court shall first determine whether there is a parent of the minor, with whom the minor was not residing at the time that the events or conditions arose that brought the minor within the provisions of Section 300, who desires to assume custody of the minor. If such a parent requests custody the court shall place the minor with the parent unless it finds that placement with that parent would be detrimental to the minor.

If the court places the minor with such a parent it may do either of the following:

(1) Order that such parent become legal and physical custodian of the child. The court may also provide reasonable visitation by the noncustodial parent. The court shall then terminate its jurisdiction over the minor. The custody order shall continue unless modified by a subsequent order of the superior court. The order of the juvenile court shall be filed in any domestic relation proceeding between the parents.

(2) Order that the parent assume custody subject to the supervision of the juvenile court. In such a case the court may order that reunification services be provided to the parent or guardian from whom the minor is being removed, or the court may order that

services be provided solely to the parent who is assuming physical custody in order to allow that parent to retain later custody without court supervision, or that services be provided to both parents, in which case the court shall determine, at review hearings held pursuant to Section 366, which parent, if either, shall have custody of the minor.

(b) When the court orders removal pursuant to Section 361, the court shall order the care, custody, control, and conduct of the minor to be under the supervision of the probation officer who may place the minor in any of the following:

(1) The home of a relative, including a noncustodial parent.

(2) A foster home in which the child has been placed before an interruption in foster care, if that placement is in the best interest of the child and space is available.

(3) A suitable licensed community care facility.

(4) With a foster family agency to be placed in a suitable licensed foster family home or certified family home which has been certified by the agency as meeting licensing standards.

(5) A home or facility in accordance with the federal Indian Child Welfare Act.

(6) A child under the age of six years may be placed in a community care facility licensed as a group home for children, or a temporary shelter care facility as defined in Section 1530.8 of the Health and Safety Code, only under any of the following circumstances:

(A) When a case plan indicates that placement is for purposes of providing specialized treatment to the child, the case plan specifies the need for, nature of, and anticipated duration of this treatment, and the facility meets the applicable regulations adopted under Section 1530.8 of the Health and Safety Code and standards developed pursuant to Section 11467.1. The specialized treatment period shall not exceed 120 days, unless additional time is needed pursuant to the case plan as documented by the caseworker and approved by the caseworker's supervisor. A placement may be extended beyond the 120 period if the child is terminally ill, as defined by regulations of the department.

(B) When a case plan indicates that placement is for purposes of providing family reunification services. In addition, the facility offers family reunification services that meet the needs of the individual child and his or her family, permits parents to have reasonable access to their children 24 hours a day, encourages extensive parental involvement in meeting the daily needs of their children, and employs staff trained to provide family reunification services. In addition, one of the following conditions exists:

(i) The child's parent is also a ward or dependent of the court and resides in the facility.

(ii) The child's parent is participating in a treatment program affiliated with the facility and the child's placement in the facility facilitates the coordination and provision of reunification services.

(iii) Placement in the facility is the only alternative that permits the parent to have daily 24-hour access to the child in accordance with the case plan, to participate fully in meeting all of the daily needs of the child, including feeding, and personal hygiene, and to have access to necessary reunification services.

(c) If the minor is taken from the physical custody of the minor's parents or guardians and unless the minor is placed with relatives, the minor shall be placed in foster care in the county of residence of the minor's parents or guardians in order to facilitate reunification of the family.

In the event that there are no appropriate placements available in the parents' or guardians' county, a placement may be made in an appropriate place in another county, preferably a county located adjacent to the parents' or guardians' community of residence.

Nothing in this section shall be interpreted as requiring multiple disruptions of the minor's placement corresponding to frequent changes of residence by the parents or guardians. In determining whether the minor should be moved, the probation officer will take into consideration the potential harmful effects of disrupting the placement of the minor and the parents' or guardians' reason for the move.

(d) Whenever the probation officer must change the placement of the minor and is unable to find a suitable placement within the county and must place the minor outside the county, the placement shall not be made until he or she has served written notice on the parents or guardians at least 14 days prior to the placement, unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given. The notice shall state the reasons which require placement outside the county. The parents or guardians may object to the placement not later than seven days after receipt of the notice and, upon objection the court shall hold a hearing not later than five days after the objection and prior to the placement. The court shall order out-of-county placement if it finds that the minor's particular needs require placement outside the county.

(e) Where the court has ordered a minor placed under the supervision of the probation officer and the probation officer has found that the needs of the child cannot be met in any available licensed or exempt facility, including emergency shelter, the minor may be placed in a suitable family home that has filed a license application with the State Department of Social Services, if all of the following certification conditions are met:

(1) A preplacement home visit is made by the probation officer to determine the suitability of the family home.

(2) The probation officer verifies to the licensing agency in writing that the home lacks any deficiencies which would threaten the physical health, mental health, safety, or welfare of the minor.

(3) The probation officer notifies the licensing agency of the proposed placement and determines that the foster family home

applicant has filed specific license application documents prior to and after the placement of the minor. If the license is subsequently denied, the minor shall be removed from the home immediately. The denial of the license constitutes a withdrawal of the certification.

(f) Where the court has ordered removal of the child from the physical custody of his or her parents pursuant to Section 361, the court shall consider whether the family ties and best interest of the minor will be served by granting visitation rights to the minor's grandparents. The court shall clearly specify those rights to the supervising probation officer.

SEC. 5. Section 11467.1 is added to the Welfare and Institutions Code, to read:

11467.1. (a) It is the intent of the Legislature that standards be developed to address the specific needs of very young children, from birth to six years of age, experiencing the trauma of separation from their family who must be placed in out-of-home care. These standards shall provide normative guidelines differentiated by the needs specific to infants from birth to two years of age, toddlers from two years of age to four years of age, and preschool from four years of age to six years of age and shall reflect the needs of all children for a family-like setting that provides culturally appropriate nurturing, and safety.

(b) The department shall assess the needs of young children and adopt standards in consultation with interested parties that shall include the following:

(1) A representative of a public interest law firm specializing in children's issues.

(2) A representative of an advocacy group representing children with developmental disabilities.

(3) A representative of the California Association of Children's Homes.

(4) A representative of the Association for Minority Adolescents in Residential Care Homes.

(5) A representative of the California Association of Services for Children.

(6) A representative of the County Welfare Directors Association.

(7) A representative of the National Association of Social Workers.

(8) A developmental psychologist specializing in children in shelter care.

(9) A psychiatrist specializing in the emotional development of young children.

(10) A pediatrician.

(11) An expert in family reunification issues.

(12) A specialist in the treatment of alcohol and other drug abuse.

(13) A representative of the Child Welfare League of America.

(14) A representative of the State Department of Developmental Services.

(15) A representative of the Association of Regional Center Agencies.

(c) The department shall develop standards that include, but are not limited to, all of the following:

(1) The elements of a safe nurturing environment that support all aspects of a child's development and provide opportunities to establish primary, trusting relationships with a carefully limited number of adults.

(2) Psychosocial needs, primary care, parental visits, developmental support, trauma recovery, appropriate discipline, and flexibility in daily activities.

(3) Guidelines for services to be provided pursuant to a case plan.

(4) To the maximum extent feasible, the requirement that significant placement changes be minimized, and that they be carefully planned and implemented.

(d) The standards shall be incorporated to the extent feasible into group home program statements required pursuant to Section 11467 of the Welfare and Institutions Code.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1089

An act to amend Section 1521.5 of, to add Section 1521.6 to, and to repeal Section 1525.1 of, the Health and Safety Code, to amend Sections 361.2, 727, 740, 11462.01, 11466.1, 11467, 11468, 11468.4, 11468.5, and 16000 of, to amend and repeal Section 16120.1 of, to amend and renumber Section 11466.4 of, to amend, renumber, and add Section 11466.3 of, and to add Sections 366.27, 903.8, 10605.2, 10609.3, 11462.03, 11466.22, 11466.25, 11466.31, 11466.32, 11466.33, 11466.34, 11466.35, 11466.36, 11468.6, 16001, 16002, 16518, 16520, and 16521 to, the Welfare and Institutions Code, relating to minors.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

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

(a) That there is a need for a statewide training effort to ensure that all foster parents, including relative foster parents, receive at

least the basic training needed to provide the best possible care to foster children.

(b) That the incidence of children in the foster care system with special needs is rising and California's foster parents are called on to care for children who are increasingly physically, emotionally, and mentally troubled.

(c) That the funding formula for foster parent training is unreliable as a support mechanism for essential foster parent training.

(d) That a variety of viable curricula and resources exist on which to base the development of a foster parent core curriculum.

(e) That alternative delivery models and competent service providers capable of delivering quality foster parent training exist, including, but not limited to county welfare departments, community colleges, foster parent associations, and nonprofit organizations.

(f) That greater efforts are needed in recruiting, training, and retaining foster families, especially minority families, in order to maintain a familylike atmosphere and to ensure culturally competent placements due to the disproportionate number of minority youth in the foster care system.

SEC. 2. Section 1521.5 of the Health and Safety Code is amended to read:

1521.5. (a) The county welfare director shall, prior to the issuance of any foster family home license, ensure that the county licensing staff, or the placement staff, conducts one or more home interviews with the prospective foster parent sufficient to collect information that may be used by the placement agency to evaluate the ability, willingness, and readiness of the prospective foster parent to meet the varying needs of children, including hard-to-place children. The inability of a prospective foster parent to meet the varying needs of children, including hard-to-place children shall not, in and of itself, preclude a prospective foster parent from obtaining a foster family home license. In counties in which the county has not contracted with the state to license foster family homes, the home interview shall be done by the placement agency.

(b) All home interviews required by this section shall be on an in-person basis.

(c) If the home interview is conducted by the licensing agency, it shall be a part of the licensing record, and shall be shared with the placement agency pursuant to subdivision (e) of Section 1798.24 of the Civil Code.

(d) The home interview required by this section shall be completed no later than 120 days following notification by the licensing agency.

(e) No license shall be issued unless a home interview has been conducted as required by this section.

(f) The activities performed pursuant to paragraphs (1), (2), and (3) of subdivision (b) of Section 16507.5 of the Welfare and

Institutions Code for the purpose of certifying a foster family home pending licensure, shall not substitute for the home interview required by subdivision (a) of this section.

(g) This section shall become inoperative on the date the regulations adopted pursuant to Section 1521.6 are filed with the Secretary of State.

SEC. 3. Section 1521.6 is added to the Health and Safety Code, to read:

1521.6. (a) The Legislature recognizes the importance of ensuring that prospective foster family homes meet specified health and safety requirements. Moreover, the Legislature acknowledges that there is a further need to evaluate a prospective foster parent's ability, readiness, and willingness to meet the varying needs of children in order to ensure competent placement resources. Therefore, it is the intent of the Legislature that the State Department of Social Services, in consultation with county placement agencies, foster care providers, and other interested parties, develop and implement through regulations, a comprehensive licensing process that integrates the decision outcome of the home study developed pursuant to Section 16518 of the Welfare and Institutions Code, as a criteria for licensure.

(b) This section shall become inoperative on the date the regulations adopted pursuant to this section are filed with the Secretary of State.

SEC. 4. Section 1525.1 of the Health and Safety Code is repealed.

SEC. 5. Section 361.2 of the Welfare and Institutions Code is amended to read:

361.2. (a) When a court orders removal of a minor pursuant to Section 361, the court shall first determine whether there is a parent of the minor, with whom the minor was not residing at the time that the events or conditions arose that brought the minor within the provisions of Section 300, who desires to assume custody of the minor. If such a parent requests custody the court shall place the minor with the parent unless it finds that placement with that parent would be detrimental to the minor.

If the court places the minor with such a parent it may do either of the following:

(1) Order that the parent become legal and physical custodian of the child. The court may also provide reasonable visitation by the noncustodial parent. The court shall then terminate its jurisdiction over the minor. The custody order shall continue unless modified by a subsequent order of the superior court. The order of the juvenile court shall be filed in any domestic relation proceeding between the parents.

(2) Order that the parent assume custody subject to the supervision of the juvenile court. In such a case the court may order that reunification services be provided to the parent or guardian from whom the minor is being removed, or the court may order that services be provided solely to the parent who is assuming physical

custody in order to allow that parent to retain later custody without court supervision, or that services be provided to both parents, in which case the court shall determine, at review hearings held pursuant to Section 366, which parent, if either, shall have custody of the minor.

(b) When the court orders removal pursuant to Section 361, the court shall order the care, custody, control, and conduct of the minor to be under the supervision of the probation officer who may place the minor in any of the following:

(1) The home of a relative, including a noncustodial parent.

(2) A foster home in which the child has been placed before an interruption in foster care, if that placement is in the best interest of the child and space is available.

(3) A suitable licensed community care facility.

(4) With a foster family agency to be placed in a suitable licensed foster family home or certified family home which has been certified by the agency as meeting licensing standards.

(5) A home or facility in accordance with the federal Indian Child Welfare Act.

(c) (1) If the minor is taken from the physical custody of the minor's parents or guardians and unless the minor is placed with relatives, the minor shall be placed in foster care in the county of residence of the minor's parents or guardians in order to facilitate reunification of the family.

(2) In the event that there are no appropriate placements available in the parents' or guardians' county of residence, a placement may be made in an appropriate place in another county, preferably a county located adjacent to the parents' or guardians' community of residence.

(3) Nothing in this section shall be interpreted as requiring multiple disruptions of the minor's placement corresponding to frequent changes of residence by the parents or guardians. In determining whether the minor should be moved, the probation officer will take into consideration the potential harmful effects of disrupting the placement of the minor and the parents' or guardians' reason for the move.

(4) When it has been determined that it is necessary for a minor to be placed in a county other than the minor's parents' or guardians' county of residence, the specific reason the out-of-county placement is necessary shall be documented in the minor's case plan. If the reason the out-of-county placement is necessary is the lack of resources in the sending county to meet the specific needs of the minor, those specific resource needs shall be documented in the case plan.

(5) When it has been determined that a minor is to be placed out-of-county either in a group home or with a foster family agency for subsequent placement in a certified foster family home, and the sending county is to maintain responsibility for supervision and visitation of the minor, the sending county shall develop a plan of

supervision and visitation that specifies the supervision and visitation activities to be performed and specifies that the sending county is responsible for performing those activities. In addition to the plan of supervision and visitation, the sending county shall document information regarding any known or suspected dangerous behavior of the minor that indicates the minor may pose a safety concern in the receiving county. Upon statewide implementation of the Child Welfare Services Case Management System, the plan of supervision and visitation, as well as information regarding any known or suspected dangerous behavior of the minor, shall be made available to the receiving county upon placement of the minor in the receiving county. If placement occurs on a weekend or holiday, the information shall be made available to the receiving county on or before the end of the next business day.

(6) When it has been determined that a minor is to be placed out-of-county and the sending county plans that the receiving county shall be responsible for the supervision and visitation of the minor, the sending county shall develop a formal agreement between the sending and receiving counties. The formal agreement shall specify the supervision and visitation to be provided the minor, and shall specify that the receiving county is responsible for providing the supervision and visitation. The formal agreement shall be approved and signed by the sending and receiving counties prior to placement of the minor in the receiving county. In addition, upon completion of the case plan, the sending county shall provide a copy of the completed case plan to the receiving county. The case plan shall include information regarding any known or suspected dangerous behavior of the minor that indicates the minor may pose a safety concern to the receiving county.

(d) Whenever the probation officer must change the placement of the minor and is unable to find a suitable placement within the county and must place the minor outside the county, no such placement shall be made until he or she has served written notice on the parents or guardians at least 14 days prior to the placement, unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given. The notice shall state the reasons which require placement outside the county. The parents or guardians may object to the placement not later than seven days after receipt of the notice and, upon objection the court shall hold a hearing not later than five days after the objection and prior to the placement. The court shall order out-of-county placement if it finds that the minor's particular needs require placement outside the county.

(e) Where the court has ordered a minor placed under the supervision of the probation officer and the probation officer has found that the needs of the child cannot be met in any available licensed or exempt facility, including emergency shelter, the minor may be placed in a suitable family home that has filed a license application with the State Department of Social Services, if all of the

following certification conditions are met:

(1) A preplacement home visit is made by the probation officer to determine the suitability of the family home.

(2) The probation officer verifies to the licensing agency in writing that the home lacks any deficiencies which would threaten the physical health, mental health, safety, or welfare of the minor.

(3) The probation officer notifies the licensing agency of the proposed placement and determines that the foster family home applicant has filed specific license application documents prior to and after the placement of the minor. If the license is subsequently denied, the minor shall be removed from the home immediately. The denial of the license constitutes a withdrawal of the certification.

(f) Where the court has ordered removal of the child from the physical custody of his or her parents pursuant to Section 361, the court shall consider whether the family ties and best interest of the minor will be served by granting visitation rights to the minor's grandparents. The court shall clearly specify those rights to the supervising probation officer.

SEC. 5.5. Section 361.2 of the Welfare and Institutions Code is amended to read:

361.2. (a) When a court orders removal of a minor pursuant to Section 361, the court shall first determine whether there is a parent of the minor, with whom the minor was not residing at the time that the events or conditions arose that brought the minor within the provisions of Section 300, who desires to assume custody of the minor. If such a parent requests custody the court shall place the minor with the parent unless it finds that placement with that parent would be detrimental to the minor.

If the court places the minor with such a parent it may do either of the following:

(1) Order that the parent become legal and physical custodian of the child. The court may also provide reasonable visitation by the noncustodial parent. The court shall then terminate its jurisdiction over the minor. The custody order shall continue unless modified by a subsequent order of the superior court. The order of the juvenile court shall be filed in any domestic relation proceeding between the parents.

(2) Order that the parent assume custody subject to the supervision of the juvenile court. In such a case the court may order that reunification services be provided to the parent or guardian from whom the minor is being removed, or the court may order that services be provided solely to the parent who is assuming physical custody in order to allow that parent to retain later custody without court supervision, or that services be provided to both parents, in which case the court shall determine, at review hearings held pursuant to Section 366, which parent, if either, shall have custody of the minor.

(b) When the court orders removal pursuant to Section 361, the court shall order the care, custody, control, and conduct of the minor

to be under the supervision of the probation officer who may place the minor in any of the following:

(1) The home of a relative, including a noncustodial parent.

(2) A foster home in which the child has been placed before an interruption in foster care, if that placement is in the best interest of the child and space is available.

(3) A suitable licensed community care facility.

(4) With a foster family agency to be placed in a suitable licensed foster family home or certified family home which has been certified by the agency as meeting licensing standards.

(5) A home or facility in accordance with the federal Indian Child Welfare Act.

(6) A child under the age of six years may be placed in a community care facility licensed as a group home for children, or a temporary shelter care facility as defined in Section 1530.8 of the Health and Safety Code, only under any of the following circumstances:

(A) When a case plan indicates that placement is for purposes of providing specialized treatment to the child, the case plan specifies the need for, nature of, and anticipated duration of this treatment, and the facility meets the applicable regulations adopted under Section 1530.8 of the Health and Safety Code and standards developed pursuant to Section 11467.1. The specialized treatment period shall not exceed 120 days, unless additional time is needed pursuant to the case plan as documented by the caseworker and approved by the caseworker's supervisor.

(B) When a case plan indicates that placement is for purposes of providing family reunification services. In addition, the facility offers family reunification services that meet the needs of the individual child and his or her family, permits parents to have reasonable access to their children 24 hours a day, encourages extensive parental involvement in meeting the daily needs of their children, and employs staff trained to provide family reunification services. In addition, one of the following conditions exists:

(i) The child's parent is also a ward of the court and resides in the facility.

(ii) The child's parent is participating in a treatment program affiliated with the facility and the child's placement in the facility facilitates the coordination and provision of reunification services.

(iii) Placement in the facility is the only alternative that permits the parent to have daily 24-hour access to the child in accordance with the case plan, to participate fully in meeting all of the daily needs of the child, including feeding, and personal hygiene, and to have access to necessary reunification services.

(c) (1) If the minor is taken from the physical custody of the minor's parents or guardians and unless the minor is placed with relatives, the minor shall be placed in foster care in the county of residence of the minor's parents or guardians in order to facilitate reunification of the family.

(2) In the event that there are no appropriate placements available in the parents' or guardians' county of residence, a placement may be made in an appropriate place in another county, preferably a county located adjacent to the parents' or guardians' community of residence.

(3) Nothing in this section shall be interpreted as requiring multiple disruptions of the minor's placement corresponding to frequent changes of residence by the parents or guardians. In determining whether the minor should be moved, the probation officer will take into consideration the potential harmful effects of disrupting the placement of the minor and the parents' or guardians' reason for the move.

(4) When it has been determined that it is necessary for a minor to be placed in a county other than the minor's parents' or guardians' county of residence, the specific reason the out-of-county placement is necessary shall be documented in the minor's case plan. If the reason the out-of-county placement is necessary is the lack of resources in the sending county to meet the specific needs of the minor, those specific resource needs shall be documented in the case plan.

(5) When it has been determined that a minor is to be placed out-of-county either in a group home or with a foster family agency for subsequent placement in a certified foster family home, and the sending county is to maintain responsibility for supervision and visitation of the minor, the sending county shall develop a plan of supervision and visitation that specifies the supervision and visitation activities to be performed and specifies that the sending county is responsible for performing those activities. In addition to the plan of supervision and visitation, the sending county shall document information regarding any known or suspected dangerous behavior of the minor that indicates the minor may pose a safety concern in the receiving county. Upon implementation of the Child Welfare Services Case Management System, the plan of supervision and visitation, as well as information regarding any known or suspected dangerous behavior of the minor, shall be made available to the receiving county upon placement of the minor in the receiving county. If placement occurs on a weekend or holiday, the information shall be made available to the receiving county on or before the end of the next business day.

(6) When it has been determined that a minor is to be placed out-of-county and the sending county plans that the receiving county shall be responsible for the supervision and visitation of the minor, the sending county shall develop a formal agreement between the sending and receiving counties. The formal agreement shall specify the supervision and visitation to be provided the minor, and shall specify that the receiving county is responsible for providing the supervision and visitation. The formal agreement shall be approved and signed by the sending and receiving counties prior to placement of the minor in the receiving county. In addition, upon completion

of the case plan, the sending county shall provide a copy of the completed case plan to the receiving county. The case plan shall include information regarding any known or suspected dangerous behavior of the minor that indicates the minor may pose a safety concern to the receiving county.

(d) Whenever the probation officer must change the placement of the minor and is unable to find a suitable placement within the county and must place the minor outside the county, the placement shall not be made until he or she has served written notice on the parents or guardians at least 14 days prior to the placement, unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given. The notice shall state the reasons which require placement outside the county. The parents or guardians may object to the placement not later than seven days after receipt of the notice and, upon objection the court shall hold a hearing not later than five days after the objection and prior to the placement. The court shall order out-of-county placement if it finds that the minor's particular needs require placement outside the county.

(e) Where the court has ordered a minor placed under the supervision of the probation officer and the probation officer has found that the needs of the child cannot be met in any available licensed or exempt facility, including emergency shelter, the minor may be placed in a suitable family home that has filed a license application with the State Department of Social Services, if all of the following certification conditions are met:

(1) A preplacement home visit is made by the probation officer to determine the suitability of the family home.

(2) The probation officer verifies to the licensing agency in writing that the home lacks any deficiencies which would threaten the physical health, mental health, safety, or welfare of the minor.

(3) The probation officer notifies the licensing agency of the proposed placement and determines that the foster family home applicant has filed specific license application documents prior to and after the placement of the minor. If the license is subsequently denied, the minor shall be removed from the home immediately. The denial of the license constitutes a withdrawal of the certification.

(f) Where the court has ordered removal of the child from the physical custody of his or her parents pursuant to Section 361, the court shall consider whether the family ties and best interest of the minor will be served by granting visitation rights to the minor's grandparents. The court shall clearly specify those rights to the supervising probation officer.

SEC. 6. Section 366.27 is added to the Welfare and Institutions Code, immediately preceeding Section 366.3 of the Welfare and Institutions Code, to read:

366.27. When a court, pursuant to Section 366.26, orders the placement of a minor in long-term foster care with a relative, the court may authorize the relative to provide the same legal consent

for the minor's medical, surgical, and dental care, and education as the custodial parent of the minor.

SEC. 7. Section 727 of the Welfare and Institutions Code is amended to read:

727. (a) When a minor is adjudged a ward of the court on the ground that he or she is a person described by Section 601 or Section 602 the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the minor, including medical treatment, subject to further order of the court. To facilitate coordination and cooperation among government agencies, the court may, after giving notice and an opportunity to be heard, join in the juvenile court proceedings any agency that the court determines has failed to meet a legal obligation to provide services to the minor. However, no governmental agency shall be joined as a party in a juvenile court proceeding in which a minor has been ordered committed to the Department of Youth Authority. In any proceeding in which an agency is joined, the court shall not impose duties upon the agency beyond those mandated by law. Nothing in this section shall prohibit agencies which have received notice of the hearing on joinder from meeting prior to the hearing to coordinate services for the minor.

The court has no authority to order services unless it has been determined through the administrative process of an agency that has been joined as a party, that the minor is eligible for those services. With respect to mental health assessment, treatment, and case management services pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, the court's determination shall be limited to whether the agency has complied with that chapter.

In the discretion of the court, a ward may be ordered to be on probation without supervision of the probation officer. The court, in so ordering, may impose on the ward any and all reasonable conditions of behavior as may be appropriate under this disposition. A minor who has been adjudged a ward of the court on the basis of the commission of any of the offenses described in subdivision (b) of Section 707, Section 459 of the Penal Code, or subdivision (a) of Section 11350 of the Health and Safety Code, shall not be eligible for probation without supervision of the probation officer. A minor who has been adjudged a ward of the court on the basis of the commission of any offense involving the sale or possession for sale of a controlled substance, except misdemeanor offenses involving marijuana, as specified in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, or of an offense in violation of Section 12220 of the Penal Code, shall be eligible for probation without supervision of the probation officer only when the court determines that the interests of justice would best be served and states reasons on the record for that determination.

In all other cases, the court shall order the care, custody, and control of the minor to be under the supervision of the probation

officer who may place the minor in any of the following:

(1) The home of a relative. When a decision has been made to place the minor in the home of a relative, the court may authorize the relative to give legal consent for the minor's medical, surgical, and dental care and education as if the relative caretaker were the custodial parent of the minor.

(2) A suitable licensed community care facility.

(3) With a foster family agency to be placed in a suitable licensed foster family home or certified family home which has been certified by the agency as meeting licensing standards.

(b) Where the court has ordered a specific minor placed under the supervision of the probation officer and the probation officer has found that the needs of the child cannot be met in any available licensed or exempt facility, including emergency shelter, the minor may be placed in a suitable family home that has filed a license application with the State Department of Social Services, provided that all the following certification conditions are met:

(1) A preplacement home visit is made by the probation officer to determine the suitability of the family home.

(2) The probation officer verifies to the licensing agency in writing that the home lacks any deficiencies which would threaten the physical health, mental health, safety, or welfare of the minor.

(3) The probation officer notifies the licensing agency of the proposed placement and determines that the foster family home applicant has filed specific license application documents prior to and after the placement of the minor. If the license is subsequently denied, the minor shall be removed from the home immediately. The denial of the license constitutes a withdrawal of the certification.

When a minor has been adjudged a ward of the court on the ground that he or she is a person described in Section 601 or 602 and the court finds that notice has been given in accordance with Section 661, and when the court orders that a parent or guardian shall retain custody of that minor either subject to or without the supervision of the probation officer, the parent or guardian may be required to participate with that minor in a counseling or education program including, but not limited to, parent education and parenting programs operated by community colleges, school districts, or other appropriate agencies designated by the court.

(c) The juvenile court may direct any and all reasonable orders to the parents and guardians of the minor who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out subdivisions (a) and (b), including orders to appear before a county financial evaluation officer.

When counseling or other treatment services are ordered for the minor, the parent, guardian, or foster parent shall be ordered to participate in those services, unless participation by the parent, guardian, or foster parent is deemed by the court to be inappropriate or potentially detrimental to the child.

SEC. 8. Section 740 of the Welfare and Institutions Code is

amended to read:

740. (a) Any minor adjudged to be a ward of the court on the basis that he or she is a person described in Section 602 and who is placed in a community care facility shall be placed in a community care facility within his or her county of residence, unless both of the following apply:

(1) He or she has identifiable needs requiring specialized care that cannot be provided in a local facility, or his or her needs dictate physical separation from his or her family.

(2) The county of residence agrees to pay the placement county the costs of providing services to the minor, pursuant to Section 1566.25 of the Health and Safety Code.

(b) (1) Before the placement of a minor adjudged to be a ward of the court on the basis that he or she is a person described in Section 602 in any community care facility outside the ward's county of residence, the probation officer of the county making the placement, or in the case of a Youth Authority ward, the parole officer in charge of his or her case, shall send written notice of the placement, including the name of the ward, the juvenile record of the ward (including any known prior offenses), and the ward's county of residence, to the probation officer of the county in which the community care facility is located; with regard to this requirement, it is the intention of the Legislature that the probation officer of the county making the placement, or in the case of a Youth Authority ward, the parole officer in charge of his or her case, shall make his or her best efforts to send, or to hand deliver, the notice at the same time the placement is made. When such a placement is terminated, the probation officer of the county making the placement, or in the case of a Youth Authority ward, the parole officer in charge of his or her case, shall send notice thereof to any person or agency receiving notification of the placement.

(2) When it has been determined that it is necessary for a ward whose board and care is funded through the Aid to Families with Dependent Children-Foster Care program, to be placed in a county other than the ward's parents' or guardians' county of residence, the specific reason the out-of-county placement is necessary shall be documented in the ward's case plan. If the reason is lack of resources in the sending county to meet the specific needs of the ward, those specific resources needs shall be documented in the case plan.

(3) When it has been determined that a ward whose board and care is funded through the Aid to Families with Dependent Children-Foster Care program, is to be placed out-of-county and that the sending county is to maintain responsibility for supervision and visitation of the ward, the sending county shall develop a plan of supervision and visitation activities to be performed, and shall specify that the sending county is responsible for performing those activities. The sending county shall send to the receiving county a copy of the plan of supervision and visitation, in addition to the notice of placement required in paragraph (1), prior to placement

of the ward. If placement occurs on a holiday or weekend, the plan of supervision and visitation and the notice of placement shall be provided to the receiving county on or before the end of the next business day.

(4) When it has been determined that a ward whose placement is funded through the Aid to Families with Dependent Children-Foster Care program, is to be placed out-of-county and the sending county plans that the receiving county shall be responsible for the supervision and visitation of the ward, the sending county shall develop a formal agreement between the sending and receiving counties. The formal agreement shall specify the supervision and visitation to be provided the ward, and shall specify that the receiving county is responsible for providing the supervision and visitation. The formal agreement shall be approved and signed by the sending and receiving counties prior to placement of the ward in the receiving county. Additionally, the notice of placement required by paragraph (1) shall be provided to the receiving county prior to placement of the ward in that county. Upon completion of the case plan, the sending county shall provide a copy of the completed case plan to the receiving county.

(c) A minor, the parent or guardian of any minor, and counsel representing a minor or the parent or guardian of a minor may petition the juvenile court for the review of any placement decision concerning the minor made by the probation officer pursuant to subdivision (a). The petition shall state the petitioner's relationship to the minor and shall set forth in concise language the grounds on which the review is sought. The court shall order that a hearing shall be held on the petition and shall give prior notice, or cause prior notice to be given, to the persons and by the means as prescribed by Section 776, and, in instances in which the means of giving notice is not prescribed by that section, then by any means as the court prescribes.

(d) If a minor is placed in a community care facility out of his or her county of residence and is then arrested and placed in juvenile hall pending a jurisdictional hearing, the county of residence shall pay to the probation department of the county of placement all reasonable costs resulting directly from the minor's stay in the juvenile hall, provided that these costs exceed one hundred dollars ($100).

(e) If, as a result of the hearing in subdivision (d), the minor is remanded back to his or her county of residence, the county of residence shall pay to the probation department of the county of placement, in addition to any payment made pursuant to subdivision (d), all reasonable costs resulting directly from transporting the minor to the county of residency, provided that these costs exceed one hundred dollars ($100).

(f) Claims made by the probation department in the county of placement, to the county of residence, pursuant to subdivisions (d) and (e), shall be paid within 30 days of the submission of these claims

and the probation department in the county of placement shall bear the remaining expense.

(g) As used in this section, "community care facility" shall be defined as provided in Section 1502 of the Health and Safety Code.

SEC. 9. Section 903.8 is added to the Welfare and Institutions Code, to read:

903.8. (a) Beginning January 1, 1994, the State Department of Social Services shall develop and implement an enhanced statewide basic foster parent training program. It is the intent of the Legislature to fund this program by allocating child welfare services funds from the 1992–93 fiscal year to the 1993–94 fiscal year, pursuant to the Budget Act, to support a two-year training effort.

(b) During this two-year period, the State Department of Social Services shall do all of the following, in cooperation with foster parents and representatives from county placement agencies and other foster care providers:

(1) Complete a comprehensive survey of existing foster parent training curricula and resources, evaluate the existing foster parent training delivery system and explore alternative delivery models, complete a needs assessment of foster parents, and develop and implement a statewide core curriculum.

(2) Develop and implement curricula for special needs topics, as identified in the needs assessment, to supplement the core curriculum.

(3) Evaluate the current foster parent training funding formula and explore funding alternatives to ensure that a permanent and adequate funding source is available.

(4) Evaluate current recruitment strategies and facilitate the expansion of recruitment activities, especially targeting minority families for the promotion of the placement of minority youth with trained and culturally competent families of the same ethnicity and cultural background.

(5) In its foster parent recruitment and training effort, place special emphasis on the recruitment of prospective foster parents willing to accept sibling placements and the training of foster parents to ensure they are able and ready to care for a sibling group.

SEC. 9.5. Section 10605.2 is added to the Welfare and Institutions Code, to read:

10605.2. If the director believes that a county probation department is substantially failing to comply with any provision of this code or any regulation pertaining to the placement activities required to be performed by the probation department to ensure that the needs of wards in placements whose board and care is funded through the Aid to Families with Dependent Children-Foster Care program are met, and the director determines that formal action may be necessary to secure compliance, he or she shall inform the chief probation officer, the presiding judge of the juvenile court, and the board of supervisors of that failure. The notice to the chief probation officer, the presiding judge of the juvenile

court, and board of supervisors shall be in writing and shall allow the county probation department a specified period of time, not less than 30 days, to correct its failure to comply with the law or regulations. If within the specified period the county probation department does not comply or provide reasonable assurances in writing that it will comply within the additional time as the director may allow, the director may take one or both of the following actions:

(a) Bring an action for injunctive relief to secure immediate compliance.

Any county probation department that is found to be failing in a substantial manner to comply with the law or regulations pertaining to placement activities required to be performed by the probation department to ensure that the needs of wards in placement whose board and care is funded through the Aid to Families with Dependent Children-Foster Care program are met, may be enjoined by any court of competent jurisdiction. The court may make orders or judgments as may be necessary to secure county probation department compliance.

(b) Order the county probation department to appear at a hearing before the director with the State Social Services Advisory Board Committee on Welfare and Social Services to show cause why the director should not take administrative action to secure compliance. The hearing shall be conducted pursuant to the rules and regulations of the department.

If the director determines, based on the record established at the hearing and the advice of the State Social Services Advisory Board Committee on Welfare and Social Services, that the county probation department is failing to comply with the provisions of this code or the regulations pertaining to the placement activities required to be performed by the probation department to ensure that the needs of wards in placement funded through the Aid to Families with Dependent Children-Foster Care program are met, or if the State Personnel Board certifies to the director that a county probation department is not in conformity with established merit system standards under Part 2.5 (commencing with Section 19800) of Division 5 of Title 2 of the Government Code, and that administrative sanctions are necessary to secure compliance, the director may invoke either of the following sanctions:

(1) Withhold all or part of state and federal funds from the county probation department until the county probation department demonstrates to the director that it has complied.

(2) Assume, temporarily, direct responsibility for fulfilling the placement activities required by law and regulations to ensure that the needs of the wards in placement funded through the Aid to Families with Dependent Children-Foster Care program are met, until the time as the county probation department provides reasonable assurances to the director of its intention and ability to comply. During the period of direct state administrative responsibility, the director or his or her authorized representative

shall have all of the powers and responsibilities of the chief probation officer with regard to placement requirements for wards whose board and care is funded through the Aid to Families with Dependent Children-Foster Care program, except that he or she shall not be subject to the authority of the board of supervisors.

In the event that the director invokes sanctions pursuant to this section, the county probation department shall be responsible for providing any funds as may be necessary for the continued fulfillment of placement activities as required by law and regulation for the placement of wards whose board and care is funded through the Aid to Families with Dependent Children-Foster Care program administered on behalf of the department in the county probation department. If a county probation department fails or refuses to provide these funds, including a sufficient amount to reimburse any and all costs incurred by the department in performing the activities required for the placement of wards whose board and care is funded through the Aid to Families with Dependent Children-Foster Care program in the county probation department, the Controller may deduct an amount certified by the director as necessary for the continued operation of these programs by the department from any state or federal funds payable to the county probation department for any purpose.

Nothing in this section shall be construed as preventing a county probation department from seeking judicial review under Section 1094.5 of the Code of Civil Procedure of any final decision of the director made after a hearing conducted under this section. This review shall be the exclusive remedy available to the county probation department for review of the director's decision.

Nothing in this section shall be construed as preventing the director from bringing an action for writ of mandamus or any other action in court as may be appropriate to ensure that there is no interruption in the provision of benefits to any person eligible therefor under the provisions of this code or the regulations of the department.

SEC. 10. Section 10609.3 is added to the Welfare and Institutions Code, to read:

10609.3. (a) By January 1, 1995, the State Department of Social Services shall complete, in consultation with county Independent Living Program administrators, placement agencies, providers, advocacy groups, and community groups, a comprehensive evaluation of the Independent Living Program established pursuant to the federal Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272) and develop recommendations available to the public on how independent living services could better prepare foster youth for independence and adulthood.

(b) The department shall investigate alternative transition housing models for youth between the ages of 17 and 18 who are in out-of-home placements under the supervision of the county department of social services or county probation department. To

the extent federal funds are available and it is in the best interests of the children, the department shall develop and implement a transitional housing model for youth who are preparing for emancipation from foster care.

(c) The department shall also investigate alternative transition models for youth discharged from foster care to live on their own. As part of this investigation, the department shall consider the needs of youth for housing, transportation, health care, access to community resources, employment, and other support services.

SEC. 11. Section 11462.01 of the Welfare and Institutions Code is amended to read:

11462.01. (a) As of July 1, 1994, group home programs that meet all of the following requirements shall be classified at RCL 13 and RCL 14:

(1) Generate the requisite number of points for RCL 13 or RCL 14.

(2) Only accept children with special treatment needs, as determined through the assessment process required by subdivision (d) of Section 11467.

(3) Have, as part of the group home program, measurable performance standards developed by the county of placement.

(b) Commencing July 1, 1992, and until June 30, 1994, a group home program shall be classified at RCL 13 or RCL 14 if the program meets all of the following requirements:

(1) The group home program is providing, or has proposed to provide, the level of care and services necessary to generate sufficient points in the ratesetting process to be classified at RCL 13 if the rate application is for RCL 13 or to be classified at RCL 14 if the rate application is for RCL 14.

(2) (A) (i) The group home provider shall agree not to accept for placement into a group home program AFDC-FC funded children, including voluntary placements and seriously emotionally disturbed children placed out-of-home pursuant to an individualized education program developed under Section 7572.5 of the Government Code, who have not been approved for placement by an interagency placement committee, as described by Section 4096. The approval shall be in writing and shall indicate that the interagency placement committee has determined the child is seriously emotionally disturbed, as defined by Section 5600.3 and subject to Section 1502.4 of the Health and Safety Code, and that the child needs the level of care provided by the group home.

(ii) For purposes of clause (i), group home providers who accept seriously emotionally disturbed children who are assessed and placed out-of-home pursuant to an individualized education program developed under Section 7572.5 of the Government Code shall be deemed to have met the interagency placement committee approval for placement requirements of clause (i) if the individualized education program assessment indicates that the child has been determined to be seriously emotionally disturbed, as defined in

Section 5600.3 and subject to Section 1502.4 of the Health and Safety Code, and needs the level of care described in clause (i).

(iii) Any group home program that, during the 1991–92 fiscal year, was paid a rate at RCL 13 or RCL 14 and applied for RCL 13 or RCL 14 on the 1992–93 fiscal year annual rate application, shall not be required by this subdivision to obtain an interagency placement committee approval, as required by this subdivision, for children placed prior to July 1, 1992, if the child has been certified pursuant to clauses (i) and (ii) of subparagraph (B) of paragraph (3) or clauses (i) and (ii) of subparagraph (B) of paragraph (5) of subdivision (g) of Section 11462, as amended by Section 4 of Chapter 610 of the Statutes of 1991.

(B) (i) Nothing in this subdivision shall prevent the emergency placement of a child into a group home program prior to the determination by the interagency placement committee pursuant to subclause (i) of subparagraph (A) if a licensed mental health professional, as defined in the department's AFDC-FC ratesetting regulations, has evaluated, in writing, the child within 72 hours of placement, and determined the child to be seriously emotionally disturbed and in need of the care and services provided by the group home program.

(ii) The interagency placement committee shall, within 30 days of placement pursuant to clause (i), make the determination required by clause (i) of subparagraph (A).

(iii) If, pursuant to clause (ii), the placement is determined to be appropriate, the committee shall transmit the approval, in writing, to the county placing agency and the group home provider.

(iv) If, pursuant to clause (ii) the placement is determined not to be appropriate, the child shall be removed from the group home and referred to a more appropriate placement, as specified in subdivision (g).

(C) (i) If a county does not have an interagency placement committee, or if a county has an interagency placement committee but procedures are not in place, the placing agency may, until 90 days from the effective date of the amendments adding this provision to this section, make placements in RCL 13 or RCL 14 group homes, if a licensed mental health professional, as defined in Sections 629 to 633, inclusive, of Title 9 of the California Code of Regulations, makes a determination prior to placement that the child is seriously emotionally disturbed.

(ii) With respect to the referral of children referred during the period commencing July 1, 1992, and ending 90 days from the effective date of the amendments adding this provision to this section, without the approval of an interagency placement committee, the committee shall subsequently review the referral within 30 days of the establishment of the committee or the adoption of procedures for the committee. If the committee determines that the placement is not appropriate or that the child no longer needs, or is not benefiting from, placement in an RCL 13 or RCL 14 group

home, the committee shall require the removal of the child and a new disposition of the child.

(iii) Commencing 90 days from the effective date of the amendments adding this provision to this section, with respect to AFDC-FC funded children, only those children who are approved for placement by an interagency placement committee may be accepted by a group home under this subdivision.

(iv) Any county that does not establish an interagency placement committee or does not adopt procedures for the committee within 90 days from the effective date of the amendments adding this provision to this section, shall remove any child placed in an RCL 13 or RCL 14 group home within 30 days. Any county that does not remove a child pursuant to this subclause shall be subject to a penalty in the amount of the state and federal financial participation in the AFDC-FC rate paid on behalf of the child commencing on the 31st day and continuing thereafter until the child is removed.

(3) The group home program is certified by the State Department of Mental Health pursuant to Section 4096.5.

(c) The department shall not establish a rate for a group home requesting a program change to RCL 13 or RCL 14 unless the group home provider submits a recommendation from both the host county and the primary placing county that the program is needed and that the provider is willing and capable of operating the program at the level sought. For purposes of this paragraph, "host county," "primary placing county," and "program change" mean the same as defined in the department's AFDC-FC ratesetting regulations.

(d) The effective date of rates set at RCL 13 or RCL 14 shall be the date that all the requirements are met, but not prior to July 1 of that fiscal year. Nothing in this section shall affect RCL 13 or RCL 14 ratesetting determinations in prior years.

(e) Any group home program that has been classified at RCL 13 or RCL 14 pursuant to the requirements of subdivision (b) shall immediately be reclassified at the appropriate lower RCL with a commensurate reduction in rate if either of the following occurs:

(1) The group home program fails to maintain the level of care and services necessary to generate the necessary number of points for RCL 13 or RCL 14, as required by paragraph (1) of subdivision (b), during any 90-day period. No average fiscal year RCL, as used in the department's AFDC-FC ratesetting regulations, or corrective action, as defined in the department's AFDC-FC ratesetting regulations, shall be used to determine the date at which that event has occurred.

(2) The group home program fails to maintain a certified mental health treatment program as required by paragraph (3) of subdivision (b).

(f) The interagency placement committee shall periodically review, but no less often than that required by current law, the placement of the child. If the committee determines that the child no longer needs, or is not benefiting from, placement in a RCL 13 or

RCL 14 group home, the committee shall require the removal of the child and a new disposition.

(g) (1) (A) If, at any time subsequent to placement in an RCL 13 or RCL 14 group home program, the interagency placement committee determines either that the child is not seriously emotionally disturbed or is not in need of the care and services provided by the group home program, it shall notify, in writing, both the county placing agency and the group home provider within 10 days of the determination.

(B) The county placing agency shall notify the group home provider, in writing, within five days from the date of the notice from the committee, of the county's plan for removal of the child.

(C) The county placing agency shall remove the child from the group home program within 30 days from the date of the notice from the interagency placement committee.

(2) (A) If a county placing agency does not remove a child within 30 days from the date of the notice from the interagency placement committee, the group home provider shall notify the interagency placement committee and the department, in writing, of the county's failure to remove the child from the group home program.

(B) The group home provider shall make the notification required by subparagraph (A) within five days of the expiration of the 30-day removal period.

(3) Any county placing agency that fails to remove a child from a group home program under this paragraph within 30 days from the date of the notice from the interagency placement committee shall be assessed a penalty in the amount of the state and federal financial participation in the AFDC-FC rate paid on behalf of the child commencing on the 31st day and continuing until the child is removed.

(h) (1) Except as provided in subparagraph (C) of paragraph (2) of subdivision (b), any RCL 13 or RCL 14 group home provider discovers that it does not have written approval for placement of any AFDC-FC funded child placed on or after July 1, 1992, from the interagency placement committee, it shall notify the county placing agency, in writing, and shall request the county to obtain approval from the interagency placement committee or remove the child from the group home program. A group home provider shall have 30 days from the child's first day of placement to discover the placement error and to notify the county placing agency.

(2) Any county placing agency that receives notification pursuant to paragraph (2) of subdivision (g) shall obtain approval for placement from the interagency placement committee or remove the child from the group home program within 30 days from the date of the notice from the group home provider. The program shall not be reclassified to a lower RCL for a violation of the provisions referred to in this paragraph.

(3) (A) If a county placing agency does not have the placement of a child approved by the interagency placement committee or

removed from the group home within 30 days from the date of the notice from the group home provider, the group home provider shall notify the county placing agency and the department, in writing, of the county's failure to have the placement of the child approved or remove the child from the group home program.

(B) The group home provider shall make the notification required by subparagraph (A) within five days after the expiration of the 30-day approval or removal period.

(C) Any group home provider that fails to notify the county placing agency pursuant to subparagraph (A) shall be assessed a penalty in the amount of the AFDC-FC rate paid to the group home provider on behalf of the child commencing on the 31st day of placement and continuing until the county placing agency is notified.

(4) Any county placing agency that fails to have the placement of a child approved or to have the child removed from the group home program within 30 days shall be assessed a penalty in the amount of the state and federal financial participation in the AFDC-FC rate paid on behalf of the child commencing on the 31st day of placement and continuing until the child is removed.

(5) If an RCL 13 or RCL 14 group home provider discovers that it does not have the child's certification as required by clauses (i) and (ii) of subparagraph (B) of paragraph (3) and clauses (i) and (ii) of subparagraph (B) of paragraph (5), of subdivision (g) of Section 11462, as amended by Section 4 of Chapter 610 of the Statutes of 1991 for a child placed prior to July 1, 1992, the group home provider shall be subject to all requirements and penalties provided for in this section beginning July 1, 1992.

(i) The department shall develop regulations to reclassify a program RCL, to reduce a program rate, to recover overpayment, and to obtain payment of assessed penalties as provided in this section.

(j) (1) Nothing in this subparagraph shall prohibit a group home classified at RCL 13 or RCL 14 for purposes of the AFDC-FC program, from accepting private placements of children.

(2) In cases where a referral is not from a public agency and no public funding is involved, there shall be no requirement for public agency review or determination of need.

(3) Children subject to paragraphs (1) and (2) shall have been assessed as seriously emotionally disturbed, as defined in Section 5600.3 and subject to Section 1502.4 of the Health and Safety Code, by a licensed mental health professional, as defined in Sections 629 to 633, inclusive, of Title 9 of the California Code of Regulations.

(k) A child shall not be placed in a group home program classified at an RCL 13 or RCL 14 if the placement is paid for with county-only funds unless the child is assessed as seriously emotionally disturbed, as defined in Section 5600.3, subject to Section 1502.4 of the Health and Safety Code, by a licensed mental health professional, as defined in Sections 629 to 633, inclusive, of Title 9 of the California Code of

Regulations.

(*l*) Subdivisions (c) to (j), inclusive, shall remain operative only until June 30, 1994.

(m) Notwithstanding subparagraph (B) of paragraph (8) of subdivision (g) of Section 11462, as amended by Section 4 of Chapter 610 of the Statutes of 1991, a group home provider shall be assessed a penalty in the amount of the difference between the rate paid and the standard rate for RCL 3 for the 1991–92 fiscal year for each month of placement for each child for which a program audit conducted on or after July 1, 1992, pursuant to Section 11466.2, finds that the child was not certified during the 1991–92 fiscal year, as required by clauses (i) and (ii) of subparagraph (A) of paragraph (1) of subdivision (b) of Section 1502.4 of the Health and Safety Code, and clauses (i) and (ii) of subparagraph (B) of paragraph (3) and clause (i) of subparagraph (B) of paragraph (5) of subdivision (g) of Section 11462, as amended by Section 4 of Chapter 610 of the Statutes of 1991. The program shall not be reclassified to a lower RCL for a violation of the requirements referred to in this paragraph.

SEC. 12. Section 11462.03 is added to the Welfare and Institutions Code, to read:

11462.03. (a) Notwithstanding subdivision (c) of Section 11462, the data obtained by the department pursuant to that subdivision using 1985 calendar year costs shall be updated and revised by January 1, 1994. The department may use unaudited cost data submitted by group home providers and shall submit its best estimate of what the costs would have been had fiscal audits been completed.

(b) When the department updates the 1985 calendar year costs using unaudited cost information submitted by group home providers, the department shall adjust costs by applying offsets and reasonableness adjustments to the unaudited cost data. The department shall report both adjusted and unadjusted cost data pursuant to this section and subdivision (c) of Section 11462.

SEC. 13. Section 11466.1 of the Welfare and Institutions Code is amended to read:

11466.1. (a) (1) The department shall adopt regulations that shall specify the type of information requested from group homes, including reasonable timeframes. All group home providers shall upon request of the department for any records, or for any information contained in records pertaining to an individual group home program, make the requested records or information available to the department for inspection or copying. The information required to be made available pursuant to this section shall include, but not be limited to, information necessary to establish a rate, collect group home provider sustained overpayments in a timely and efficient manner, or to perform a fiscal or program audit. This section shall not be construed to modify applicable rules of confidentiality.

(2) Group home providers, upon request of the department, shall allow timely access to a group home provider's records and facilities

in order to conduct a fiscal or program audit.

(3) Group home providers shall allow the department immediate access to group home program information or access to a facility if the deputy director of the children and family services division of the department serves the group home provider with notice that, in the opinion of the deputy director, the immediate access to a facility or group home program information is required based on one of the following conditions or circumstances:

(A) A temporary suspension order has been served on a group home provider.

(B) Based on reliable evidence, the department has a valid basis for believing that proceedings have been, or will shortly be, instituted against a group home provider in a state or federal court for purposes of determining whether the provider is insolvent or bankrupt under appropriate state or federal law.

(C) A group home provider is, or will shortly be taking, action that might reasonably hinder or defeat the department's ability to collect overpayments in the future.

(4) The department shall adopt regulations that specify timeframes and penalties for failure to submit requested information or allow facility access that may include reduction or termination of the AFDC-FC rate. Penalties shall not be imposed until the group home has been given a reasonable opportunity to respond or provide access.

(b) The department shall apply and enforce only those statutes and regulations that are made available to group home providers, in writing, for any period for which a rate is effective.

(c) The department shall consult with representatives of group home providers concerning the development of those standards and the modification of existing standards. Group home providers shall receive written notice of, and have the opportunity to comment upon, new and modified standards proposed by the department.

(d) The department shall make available to group home providers, in writing, any new or modified standards prior to the beginning of the period upon which a rate is calculated, if possible, or as quickly as it is administratively practical to do so. Notwithstanding subdivisions (b) and (c), in the event of an unanticipated circumstance or unusual expenditure, the department may exercise its discretion in interpreting what is an allowable or a reasonable expenditure. However, the department shall make those interpretations available to group home providers, in writing, as quickly as it is practical to do so.

SEC. 14. Section 11466.22 is added to the Welfare and Institutions Code, to read:

11466.22. (a) It is the intent of the Legislature to ensure overall program integrity in the AFDC-FC program through the establishment of an effective and efficient process for the collection of group home provider sustained overpayments. Furthermore, the intent of the Legislature is to ensure that children placed in an

AFDC-FC group home program receive the level of care and supervision commensurate with the group home program's rate classification level.

(b) For the purposes of this section, a group home provider is a licensee of one or more group homes, as defined in subdivision (h) of Section 11400, receiving foster care maintenance payments under the AFDC-FC program. The department may collect a sustained overpayment from the party responsible for the sustained overpayment, regardless of whether the party remains in the business of providing group home programs, and regardless of whether the party remains licensed by the department.

(c) For the purposes of this section, a group home provider overpayment is an overpayment that results in an audit period when a group home provider receives a rate reimbursement to which it is not entitled. If a group home provider receives a rate reimbursement to which it is not entitled, it shall be liable to repay the overpayment.

(d) (1) Overpayments shall be determined by either a group home provider audit or a group home provider self-reporting an overpayment.

(2) If an informal hearing is not requested, or on the 60th day after an informal decision if a provider or the department does not file a notice of intent to file a formal appeal, or on the 30th day following a formal appeal hearing decision, whichever is latest, a group home provider overpayment shall be sustained for collection purposes and the department shall issue a demand letter for repayment of the sustained overpayment.

(3) The department shall establish a voluntary repayment agreement procedure with a maximum repayment period of nine years. The procedure shall take into account the amount of the overpayment, projected annual income of the program that caused the overpayment, a minimum repayment amount, including principal and interest, of 3 percent of annual income prorated on a monthly basis, simple interest for the first seven years of the voluntary repayment agreement on the overpayment amount based on the Surplus Money Investment Fund, and simple interest for the eighth and ninth years of the voluntary repayment agreement based on the prime rate at that time plus 3 percent. The department may adopt regulations permitting the director, at his or her discretion, to renegotiate the volunteer repayment agreement if the director determines that the agreement would cause severe harm to children in placement.

(4) The department shall establish an involuntary overpayment collection procedure, that shall take into account the amount of the overpayment, projected annual income, a minimum required repayment amount, including principal and interest, of 5 percent of the annual income prorated on a monthly basis, simple interest on the overpayment amount based on the Surplus Money Investment Fund, and a maximum repayment period of seven years. The

department may establish regulations permitting the director at his or her discretion to renegotiate the involuntary payment agreement if the director determines that the agreement would cause severe harm to children in placement.

(e) The department shall develop regulations for recovery of any group home provider sustained overpayments. The regulations shall prioritize collection methods, that shall include voluntary repayment agreement procedures, involuntary overpayment collection procedures, including the use of a statutory lien, rate request denials, rate decreases without an RCL reduction, and rate terminations.

(f) Whenever the department determines that a group home provider sustained overpayment has occurred, the department shall recover from the group home provider the full amount of the sustained overpayment, and simple interest on the sustained overpayment amount, pursuant to methods described in subdivision (e), against the group home provider's income or assets.

(g) If a provider is successful in its appeal of a collected overpayment, it shall be repaid the collected overpayment plus simple interest based on the Surplus Money Investment Fund.

SEC. 15. Section 11466.25 is added to the Welfare and Institutions Code, to read:

11466.25. (a) Interest begins to accrue on a group home provider overpayment at the latest of the following:

(1) Sixty days after the notice of the final audit report if an informal hearing is not requested.

(2) Sixty days after the notice of the informal hearing decision if the final audit findings are adjusted and a provider or the department does not request a formal appeal.

(3) Thirty days after a formal appeal hearing decision if the final audit findings or the informal hearing decision is adjusted by the hearing officer.

(d) Interest shall not accrue for the period between the date a hearing decision is due and the date that the decision is rendered.

SEC. 16. Section 11466.3 of the Welfare and Institutions Code is amended and renumbered to read:

11466.5. The department shall collect group home cost data and monitor the cost of providing care and supervision, and social work services, to AFDC-FC recipients. These data shall include, but not be limited to, the costs incurred by group homes for employee wages and benefits.

SEC. 17. Section 11466.3 is added to the Welfare and Institutions Code, to read:

11466.3. (a) The department shall offer a voluntary repayment agreement procedure to group home providers that owe a sustained overpayment. A group home provider may enter into a voluntary repayment agreement with the department to repay a sustained overpayment. The voluntary repayment agreement shall, at a minimum, meet the requirements developed pursuant to paragraph (3) of subdivision (d) of Section 11466.2.

(b) The department shall charge simple interest on the voluntary repayment agreement in accordance with paragraph (3) of subdivision (d) of Section 11466.2.

SEC. 18. Section 11466.31 is added to the Welfare and Institutions Code, to read:

11466.31. When it has been determined that a group home provider participating in the AFDC-FC program owes an overpayment that is due and payable, the department may implement involuntary offset collection procedures to collect sustained overpayments from a group home provider if the provider does not enter into a voluntary repayment agreement with the department or the provider has three outstanding payments on a voluntary repayment agreement before the overpayment is repaid.

The minimum monthly overpayment offset amount from monthly rate reimbursements shall be determined using the involuntary collection procedures developed pursuant to paragraph (4) of subdivision (d) of Section 11466.2. Overpayments shall be offset against current monthly rate reimbursement payments due and payable to a group home provider under this chapter.

SEC. 19. Section 11466.32 is added to the Welfare and Institutions Code, to read:

11466.32. (a) If a group home provider that owes a sustained overpayment pursuant to paragraph (2) of subdivision (d) of Section 11466.2 does not enter into a voluntary repayment agreement with the department, or the provider has three outstanding payments on a voluntary repayment agreement before the overpayment is repaid, in addition to the monthly overpayment offset amount, 50 percent of any increases resulting from California Necessities Index (CNI) adjustments and group home provider's rate adjustments to the standard rate that are due to a group home provider shall be withheld until the sustained overpayment amount is collected. Once the overpayment amount is collected, the group home provider shall begin to prospectively receive the full amount of any California Necessities Index and rate adjustment to which it is entitled.

(b) Any group home provider subject to involuntary repayment of a sustained overpayment pursuant to Section 11466.31 shall be ineligible to receive an RCL increase until the repayment is completed or until the host county or the primary placement county provide the department with a request for waiver of this paragraph.

SEC. 20. Section 11466.33 is added to the Welfare and Institutions Code, to read:

11466.33. (a) If any amount is due and payable to the department as a result of sustained overpayment to a group home provider for care and services in the AFDC-FC program, the department may file, in the office of any county clerk of any county in which the group home provider has real or personal property, a certificate if any of the following conditions are met:

(1) No informal hearing is requested and if a provider has not submitted a voluntary repayment agreement with the first payment,

and 60 days have elapsed from the notice of audit results.

(2) No formal appeal is requested and if a provider has not submitted a voluntary repayment agreement along with the first payment, and 60 days have elapsed from the notice of the informal hearing decision.

(3) A provider has not submitted a voluntary repayment agreement along with the first payment, and 30 days have elapsed after an adverse appeal decision by a hearing officer that sustains an overpayment.

(b) The certificate provided for pursuant to subdivision (a) shall contain:

(1) The amount due, owing, and unpaid, plus simple interest on the amount owing and unpaid beginning on the date the certificate is filed.

(2) A statement that the department has complied with this section prior to the filing of the certificate.

(3) A request that a lien be recorded against the group home provider in the amount set forth in the certificate.

(c) The county clerk immediately upon the filing of the certificate shall record the lien for the State of California against the group home provider in the amount set forth in the certificate. The lien may be filed in the chain of title of the property.

(d) The department shall pay the cost of the first lien, and group home providers shall be responsible for any subsequent liens on a sustained overpayment.

(e) For the first certificate filed by the department pursuant to this section, the county shall waive all filing fees.

SEC. 21. Section 11466.34 is added to the Welfare and Institutions Code, to read:

11466.34. (a) (1) At any time within 10 years of the recording of a lien pursuant to Section 11466.33, the department may bring an action, in a superior court in the county in which the lien is filed, seeking a judgment to establish the lien as a judgment lien.

(2) If a judgment is obtained pursuant to paragraph (1), the county recorder shall record the lien as a judgment lien.

(b) An abstract of a judgment obtained pursuant to subdivision (a) or a copy thereof may be recorded with the county recorder of any county. From the time of recording, the judgment shall constitute a lien upon all real or personal property of the group home provider in that county owned by the group home provider at the time, or that the group home provider may afterwards, but before the lien expires, acquire. The judgment lien shall continue for 10 years from the time of recording of the abstract of judgment obtained pursuant to subdivision (a), unless sooner released or otherwise discharged.

(c) The judgment lien may, within 10 years from the date of recording of the abstract of judgment or within 10 years from the date of the last extension of the lien in the manner provided in this section, be extended by recording a new abstract in the office of the

county recorder of any county. From the date of that recording, the lien shall be extended for 10 years, unless sooner released or otherwise discharged.

(d) The department may release any lien imposed pursuant to this chapter, at the provider's cost, in which case any judgment pertaining to that lien is for all purposes null and void, if all of the following conditions are met:

(1) No temporary suspension order or license revocation actions by the department's community care licensing division is pending against a provider.

(2) A provider has made at least three timely payments on a voluntary repayment agreement.

(3) The provider submits to the department corroborative evidence that it is unable to obtain a loan from an institutional lender unless the lien is released.

(e) Execution shall issue upon a judgment obtained pursuant to this section upon request of the department in the same manner as execution may issue upon other judgments. Sale shall be held under that execution as prescribed in the Code of Civil Procedure. In all proceedings under this section, the director or his or her authorized agents may act on behalf of the state.

SEC. 22. Section 11466.35 is added to the Welfare and Institutions Code, to read:

11466.35. (a) Any licensee who has been determined to owe a sustained overpayment under this chapter, and who, subsequent to notice of the sustained overpayment, has its group home rate terminated, shall be ineligible to apply or receive a rate for any future group home program until the overpayment is repaid.

(b) An annual rate application shall be denied for a group home provider that meets either of the following conditions:

(1) A provider owing a sustained overpayment under this chapter, upon the occurrence of any additional sustained overpayment, shall be ineligible to apply or receive a rate for an existing or future group home program until the sustained overpayments are repaid, unless a voluntary repayment agreement is approved by the department.

(2) A provider incurring a sustained overpayment that constitutes more than 60 percent of the provider's annual rate reimbursement shall be ineligible to apply or receive a rate for any existing or future group home programs until the sustained overpayments are repaid, unless a voluntary repayment agreement is approved by the department.

SEC. 23. Section 11466.36 is added to the Welfare and Institutions Code, to read:

11466.36. (a) The department may terminate a group home rate if any of the following conditions are met:

(1) The director determines that, based upon the findings of a hearing officer, a rate application or information submitted by a provider was fraudulently submitted to the department.

(2) A provider with an outstanding sustained overpayment incurs a second sustained overpayment, and is unable to repay the sustained overpayments.

(3) A provider has a sustained overpayment that represents 100 percent of a provider's annual rate reimbursement.

(b) This chapter shall not be construed to affect the department's authority under other provisions of law for collection of group home provider sustained overpayments.

SEC. 24. Section 11466.4 of the Welfare and Institutions Code is amended and renumbered to read:

11466.6. A group home provider who disagrees with the rate determined by the department or adjusted by a program audit shall request an appeal by the director or the director's designee. The department shall adopt regulations establishing procedures for the departmental appeal process.

SEC. 25. Section 11467 of the Welfare and Institutions Code is amended to read:

11467. (a) The Legislature finds and declares the following:

(1) That there is a need to ensure the safety of children placed in out-of-home care.

(2) That the process of assessing and ensuring the safety needs of a child is closely tied to assessing and meeting the needs of a child for structure, supervision, and services.

(3) That the level of care assessment process, including instrument and program statements, should identify the needs of a child and match them with an appropriate level and type of placement.

(4) That, therefore, it is appropriate for the level of care assessment process to be utilized to address the safety needs of a child in relation to the structure, supervision, and services provided by the placement, and in relation to other characteristics of children placed in the facility, as defined in the program statement.

(b) It is the intent of the Legislature that dependent children of the court and wards of the court in need of, or at risk of, out-of-home care are appropriately placed with caregivers that meet their needs. This can initially be accomplished by developing and implementing a level of care assessment process and instrument or instruments that identify the child's needs for structure, supervision, and services, and matches those needs to program statements for group homes, foster family agencies, and small family homes that identify the level of structure, supervision, and services provided by the facility. Ultimately, the goal of the level of care assessment process is to ensure that all dependent children of the court and wards of the court are appropriately placed by matching assessed needs to the full range of placement resources.

(c) By July 1, 1994, the State Department of Social Services, in consultation with the State Department of Developmental Services, county probation, social service, and mental health departments and foster care providers, shall develop a standard form for program

statements for ratesetting, community care licensing, and county placement purposes for all of the following facility types, in the order listed:

(1) Group homes.

(2) Foster family agencies.

(3) Small family homes.

(d) By July 1, 1994, the State Department of Social Services, in consultation with the State Department of Mental Health, county probation, social service, and mental health departments and foster care providers, shall develop and implement a level of care assessment instrument and process which shall match the assessed needs of the dependent child of the court or ward of the court and his or her family with the structure, supervision, and services provided by appropriate placement resources, as determined by the standard program statements established pursuant to this section. The level of care assessment instrument and process shall consider the needs of the child for safety and compatibility with other characteristics of children placed in a facility, as defined in the program statement.

(e) The level of care assessment instrument developed pursuant to subdivision (d) shall include specified indicators of a child's need for mental health treatment, for purposes of placement determination. The department shall annually analyze, on a sampling basis, the indicators of mental health need specified on the level of care assessment instrument for all dependent children of the court and wards of the court in out-of-home placement, in order to determine their unmet mental health services needs, and shall make that information available to the Legislature, on request.

(f) No later than January 1, 1995, the department and the Department of Mental Health, jointly, shall report to the Legislature on the requirements specified, and on the progress of plans for meeting the Legislature's intent for a level of care assessment instrument process for all dependent children of the court and wards of the court in out-of-home placement.

SEC. 26. Section 11468 of the Welfare and Institutions Code is amended to read:

11468. The director shall establish administrative procedures to review the rate set by the department for a foster family agency and a group home program.

SEC. 27. Section 11468.4 of the Welfare and Institutions Code is amended to read:

11468.4. (a) The hearing held pursuant to Section 11468.1 shall be conducted no later than 180 days after the filing of a timely and specific statement of disputed issues by the provider.

(b) The hearing officer shall take the matter under submission at the conclusion of the hearing. A proposed decision, in a form that may be adopted as the decision of the director, shall be submitted to the director within 180 days after the closure of the record.

(c) Within 120 days after submission of the hearing officer's

proposed decision, the director shall:

(1) Adopt the proposed decision with or without reading or hearing the record.

(2) Reject the proposed decision and adopt an alternative decision based upon the documentary and electronically recorded record, with or without taking additional evidence.

(3) Refer the matter to the same or a different hearing officer to take additional evidence. If the case is so assigned, the hearing officer shall, within 90 days, prepare a proposed decision, based upon the additional evidence and the documentary and electronically recorded record of the prior hearing. The director may then take one of the actions described in subdivision (c) in regard to the new proposed decision. The director may return a proposed decision only twice on the same appeal.

(d) (1) The director's decision shall be final when the decision is mailed to the parties. However, the director retains jurisdiction to correct clerical errors.

(2) Copies of the final decision of the director and the hearing officer's proposed decision if it was not adopted by the director, shall be mailed by certified mail to the parties.

SEC. 28. Section 11468.5 of the Welfare and Institutions Code is amended to read:

11468.5. The provider or foster family agency may request review of the final decision of the department pursuant to Section 11468.4 in accordance with Section 1094.5 of the Code of Civil Procedure, within six months of the issuance of the director's final decision.

SEC. 29. Section 11468.6 is added to the Welfare and Institutions Code, to read:

11468.6. (a) The director shall establish administrative procedures to review group home audit findings.

(b) A group home provider may request a hearing to examine any disputed audit finding that results in an overpayment or adjustment to the provider's rate, or that reduces the provider's overall RCL point total pursuant to Section 11462. The administrative review process established in this section shall not examine issues regarding the authority of the department to set rates, determine RCL points, conduct audits, or collect overpayments from a group home provider.

(c) The administrative appeal process established pursuant to this section shall commence with an informal hearing, and provide for a formal administrative hearing of the informal level appeal record and decision by a hearing officer appointed by the director. The department shall make every effort to contract with the State Department of Health Services to conduct the informal hearings required by this subdivision during the first year of implementation of this section.

(d) An amended audit report may be issued by the department for the fiscal period or periods for which the proceedings are pending

under this section, if at the time of the hearing, the group home provider submits additional documentation or evidence that was not available to the department at the time of the audit. The proceedings shall be suspended for a period not exceeding 120 days while the department completes an amended audit and the provider identifies any additional disputes that result from an amended audit report. Additional audit findings included in an amended audit report may also be included in the proceedings at the request of the provider.

(e) Within 120 days after submission of a proposed decision, the director shall do one of the following:

(1) Adopt the proposed decision with or without reading or hearing the record.

(2) Reject the proposed decision and adopt an alternative decision based upon the documentary and electronically recorded record, with or without taking additional evidence.

(3) Refer the matter to the same or a different hearing officer to take additional evidence. If the case is so assigned, the hearing officer shall, within 90 days, prepare a proposed decision, based upon the additional evidence and the documentary and electronically recorded record of the prior hearing. The director may then take one of the actions described in this subdivision in regard to the new proposed decision. The director may return a proposed decision twice on the same appeal.

(f) (1) The director's decision shall be final when the decision is mailed to the parties. However, the director retains jurisdiction to correct clerical errors.

(2) Copies of the final decision of the director and the hearing officer's proposed decision, if it was not adopted by the director, shall be mailed by certified mail to the parties.

(g) The group home provider may request review of the final decision of the director pursuant to this section in accordance with Section 1094.5 of the Code of Civil Procedures within six months of the issuance of the director's final decision.

SEC. 30. Section 16000 of the Welfare and Institutions Code is amended to read:

16000. It is the intent of the Legislature to preserve and strengthen a child's family ties whenever possible, removing the child from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public. When the child is removed from his or her own family, it is the purpose of this chapter to secure as nearly as possible for the child the custody, care, and discipline equivalent to that which should have been given to the child by his or her parents. It is further the intent of the Legislature to reaffirm its commitment to children who are in out-of-home placement to live in the least restrictive, most familylike setting and to live as close to the child's family as possible pursuant to subdivision (c) of Section 16501.1. Family reunification services shall be provided for expeditious reunification of the child with his or her family, as required by law. If reunification is not possible or

likely, a permanent alternative shall be developed.

SEC. 31. Section 16001 is added to the Welfare and Institutions Code, to read:

16001. (a) The State Department of Social Services shall provide technical assistance to encourage and facilitate the county placement agency's evaluation of placement needs and the development of needed placement resources and programs. County placement agencies shall, on a regular basis, conduct an evaluation of the county's placement resources and programs in relation to the needs of children placed in out-of-home care. County placement agencies shall examine the adequacy of existing placement resources and programs and identify the type of additional placement resources and programs needed. The county placement agency shall specifically examine placements which are out of county and shall determine the reason the placement was necessary, and identify the additional placement resources and programs which need to be developed and available to allow a child to remain within the county and as close as possible to his or her home. The department shall also support the development and operation of a consortia of county placement agencies on a regional basis for the purpose of developing specialized programs serving a multicounty area.

(b) It is the intent of the Legislature that the reason for each out-of-county and out-of-state placement be included in the Child Welfare Services Case Management System, and that the State Department of Social Services utilize that data to evaluate out-of-county and out-of-state placements and to assist in the identification of resource and placement needs.

(c) It is the intent of the Legislature that the State Department of Social Services review the out-of-state placement of children to determine the reason for out-of-state placement. The department shall make the information available to the Legislature upon request.

SEC. 32. Section 16002 is added to the Welfare and Institutions Code, to read:

16002. (a) It is the intent of the Legislature to maintain the continuity of the family unit, and ensure the preservation and strengthening of the minor's family ties by ensuring that when siblings have been removed from their home, either as a group on one occurrence or individually on separate occurrences, the siblings will be placed in foster care together, unless it has been determined that placement together is not in the best interest of one or more siblings. The Legislature recognizes that in order to ensure the placement of a sibling group in the same foster care placement, placement resources need to be expanded.

(b) To achieve this by July 1, 1994, the State Department of Social Services shall conduct a study, including the review of existing licensing laws and regulations, to identify barriers which limit the placement resources available for sibling groups and to develop solutions to those barriers. The study shall include exploring the feasibility of: providing incentives to foster parents to ensure their

availability to accept sibling groups; and providing support services to foster parents and relatives which would enable them to accept sibling groups. The study shall also explore appropriate alternatives to placement of siblings.

SEC. 33. Section 16120.1 of the Welfare and Institutions Code, as amended by Section 133 of Chapter 722 of the Statutes of 1992, is amended to read:

16120.1. Upon the authorization of the department or, where appropriate, the county responsible for determining the child's Adoption Assistance Program eligibility status and for providing financial aid, the responsible county shall directly reimburse eligible individuals for reasonable nonrecurring expenses, as defined by the department, incurred as a result of the adoption of a child eligible for the Adoption Assistance Program. The state shall provide payment to the county for the reimbursement. Reimbursements shall conform to the eligibility criteria and claiming procedures established by the department and shall be subject to the following conditions:

(a) The amount of the payment shall be determined through agreement between the adopting parent or parents and the department or the county responsible for determining the child's Adoption Assistance Program eligibility status and for providing financial aid. The agreement shall indicate the nature and the amount of the nonrecurring expenses to be paid. Payments shall be limited to an amount not to exceed four hundred dollars ($400) for each placement eligible for the Adoption Assistance Program.

(b) There shall be no income eligibility requirement for an adoptive parent or adoptive parents in determining whether payments for nonrecurring expenses shall be made.

(c) Reimbursement for nonrecurring expenses shall be limited to costs incurred by or on behalf of an adoptive parent or adoptive parents that are not reimbursed from other sources. No payments shall be made under this section if the federal program for reimbursement of nonrecurring expenses for the adoption of children eligible for the Adoption Assistance Program pursuant to Section 673 of Title 42 of the United States Code is terminated.

(d) Reimbursement for nonrecurring expenses shall be in addition to any adoption expenses paid pursuant to Section 16121 and shall not be included in the computation of maximum benefits for which the adoptive family is eligible pursuant to Section 16121.

SEC. 34. Section 16120.1 of the Welfare and Institutions Code, as amended by Section 134 of Chapter 722 of the Statutes of 1992, is repealed.

SEC. 35. Section 16518 is added to the Welfare and Institutions Code, to read:

16518. The State Department of Social Services, in consultation with county placement agencies, foster care providers, and other interested community parties, shall establish criteria to be used for conducting a home study of a prospective foster parent that evaluates the ability, readiness, and willingness of the prospective

foster parent to meet the varying needs of children, including, but not limited to, hard-to-place children. The department shall consult with the Task Force on Accreditation of Services for Children established pursuant to Section 1565 of the Health and Safety Code, and shall, as appropriate, consider the accreditation standards that are included in the accreditation plan when developing the home study criteria. The home study criteria developed pursuant to this section shall become operative at such time as the regulations adopted pursuant to Section 1521.6 of the Health and Safety Code are filed with the Secretary of State.

SEC. 36. Section 16520 is added to the Welfare and Institutions Code, to read:

16520. The Legislature recognizes that wards and dependent children share many characteristics, often have similar family histories, and often require similar services such as out-of-home placement. The Legislature also recognizes that while there are similarities in the characteristics and service needs of the ward and dependent populations, there are also significant differences, the first being that the wards have been found responsible for committing offenses. Given this difference, the Legislature deems it imperative that placement agencies give special consideration when placing wards to factors which are not as significant when placing dependent children, including the effect on, including safety of, the community in which the out-of-home placement facility is located. However, the Legislature also acknowledges that for some wards, separate from the issue of accountability and punishment with regard to the offense, after satisfying the orders of the court with regard to the offense, placement in the out-of-home care system, with board and care funded through the Aid to Families with Dependent Children-Foster Care program, is appropriate and in their best interest.

In order to ensure that wards in the out-of-home care system, with board and care funded through the Aid to Families with Dependent Children-Foster Care program, receive appropriate services, and to ensure that applicable federal and state statutory requirements are met, it is the intent of the Legislature that the State Department of Social Services, regulate and monitor these placement activities.

SEC. 37. Section 16521 is added to the Welfare and Institutions Code, to read:

16521. The State Department of Social Services, in consultation with representatives of local probation departments, foster care providers, and other interested parties, shall review federal and state statutes, federal requirements, and state regulations pertaining to the placement of children whose board and care is funded through the Aid to Families with Dependent Children-Foster Care program, and shall by January 1, 1995, develop regulations which identify specific initial and ongoing placement activities which must be performed by the probation department to ensure the needs of wards in placement whose board and care is funded through the Aid

to Families with Dependent Children-Foster Care program are met.

SEC. 38. The State Department of Social Services shall adopt regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code in order to implement this act. The adoption of any emergency regulations that are filed with the Office of Administrative Law on or before June 30, 1995, pursuant to this section shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, and general welfare.

SEC. 39. Section 8 of Senate Bill 415 of the 1993–94 Regular Session is amended to read:

Sec. 8. The State Department of Social Services shall, before July 1, 1994, adopt emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code to implement this act. The adoption of regulations pursuant to this section in order to implement this act shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, emergency regulations adopted pursuant to this section shall not be subject to 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 for more than 120 days unless the adopting agency complies with all of the provisions of Chapter 3.5 (commencing with Section 11340), as required by subdivision (e) of Section 11346.1 of the Government Code.

SEC. 40. Section 5.5 of this bill incorporates amendments to Section 361.2 of the Welfare and Institutions Code proposed by both this bill and AB 1197. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 361.2 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1197, in which case Section 5 of this bill shall not become operative.

SEC. 41. 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 1090

An act to amend Sections 74921.9 and 74921.10 of, and to add Section 74922.5 to, the Government Code, relating to courts.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 74921.9 of the Government Code is amended to read:

74921.9. There shall be one marshal for the County of Tulare, who shall receive a biweekly salary set at range 235.

SEC. 2. Section 74921.10 of the Government Code is amended to read:

74921.10. The number of positions within each job classification which may be filled by appointment by the municipal court administrator and the marshal are, as follows:

(1) Appointed by the municipal court administrator:

Number	Title	Range
3	Deputy Clerk/Administrator II	186
5	Deputy Clerk/Administrator I	171
19	Courtroom Clerk	156
2	Collections Worker II	140
14	Court Clerk II	143
4	Account Clerk	126
1	Office Assistant III	134
28	Legal Office Assistant II	130

(2) Appointed by the marshal, except as provided in Section 74922.5:

Number	Title	Range
1	Chief Marshal's Assistant	220
3	Marshal's Assistant	206
14	Deputy Marshal	175
1	Legal Office Assistant III	140
4	Legal Office Assistant II	130

The marshal shall be management class A-4 and entitled to the benefits in that class as an appointed department head. The chief marshal's assistant and the three marshal's assistants shall be the equivalent of the current management class B and entitled to the general benefits in that class as management personnel.

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

SEC. 3. Section 74922.5 is added to the Government Code, to

read:

74922.5. (a) The Marshal of the County of Tulare shall be appointed by and serve at the pleasure of a majority of the judges of the municipal courts in the county.

The marshal initially appointed pursuant to this section shall be selected from those individuals who hold the position of marshal in any one of the divisions of the municipal court of Tulare County immediately prior to the effective date of this section. The deputies and other Tulare County employees in the offices of each superseded marshal shall become employees in the office of the Marshal of Tulare County at classifications and salaries determined by this article, but in no event shall the salaries and benefits be less than those received by such personnel on the effective date of this section.

(b) Branch offices of the Marshal of Tulare County shall be maintained in the Central Division, Porterville, Tulare-Pixley, and Dinuba Divisions with the office of the marshal maintained in Visalia.

(c) The marshal shall appoint one chief marshal's assistant who shall serve at the pleasure of the marshal. The initial selection of the chief marshal's assistant shall be from one of the individuals who is marshal of one of the divisions of the municipal court of Tulare County immediately prior to the effective date of this section.

(d) The marshal shall appoint three marshal's assistants who shall be selected from those individuals who are marshals of the divisions of the municipal court in Tulare County immediately prior to the effective date of this section. Whenever there is a vacancy at the position of marshal's assistant, that position shall be reclassified within the marshal's office.

(e) Enactment of this legislation abolishes the five elected marshal positions in Tulare County.

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 1091

An act to amend Sections 69893.5, 69900, 69994.2, 70045.77, 72607, 72608, 72609, 72627.5, 72646, 72703, 72704, 72704.5, 72763, 72764, 72766, 72767, 72770, 72771, 72777, 72778, 72779, 72780, 72782, 72784, 73084.1, 73084.2, 73084.3, 73084.4, 73084.5, 73086, 73089, 73096, 73346, 73348, 73351, 73354, 73358, 73484, 73485, 73487, 73489, 73562, 73565, 73566, 73567, 73568, 73601, 73602, 73682, 73683, 73684, 73691, 73692, 73705, 73706, 73710, 73713, 73715, 73793, 73794, 73796, 73797, 73798, 74023, 74030, 74134, 74136, 74138, 74141, 74143, 74191.7, 74192, 74193, 74201, 74207, 74208, 74502, 74503, 74504, 74607, 74642, 74643, 74644, 74645, 74693, 74705, 74708, 74803, 74805, 74807, 74808, 74809, 74905, 74907, 74909, 74912, 74921.9, 74921.10, 74921.11, 74937, 74940, 74953, 74954, 74954.5, 74955, 74956, 74984, 74985, 74986, and 74987 of, to add Sections 72771.1, 72778.1, and 73357 to, to repeal and add Sections 73353 and 73773 of, and to repeal Sections 73703, 73717, and 74807.6 of, the Government Code, relating to courts.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 69893.5 of the Government Code is amended to read:

69893.5. In each county with a population of 480,000 and not more than 503,000, as determined by the 1960 Federal Census, the superior court may establish such titles as are required and, with the approval of the board of supervisors, may appoint and employ a court administrator, probate file examiner, master calendar clerk, legal secretaries, assistants, and other employees as it deems necessary for the performance of the duties and exercise of the powers conferred by law upon it and its members. Rates of compensation of all officers, assistants, and other employees may be established and adjusted by the board of supervisors. Notwithstanding any other provision of law, juvenile court referees appointed pursuant to Section 247 of the Welfare and Institutions Code and superior court commissioners shall earn vacation credit at the rate of 6.5 hours for each biweekly pay period of full-time service, except that those juvenile court referees appointed by the court prior to November 5, 1976, shall be entitled to earn vacation credit at the rate of 7.7 hours for each biweekly pay period of full-time service.

SEC. 1.3. Section 69893.5 of the Government Code is amended to read:

69893.5. In each county with a population of 480,000 and not more than 503,000, as determined by the 1960 Federal Census, the superior court may establish such titles as are required and, with the approval of the board of supervisors, may appoint and employ a court administrator, probate file examiner, master calendar clerk, legal

secretaries, assistants, and other employees as it deems necessary for the performance of the duties and exercise of the powers conferred by law upon it and its members. Rates of compensation of all officers, assistants, and other employees may be established and adjusted by the board of supervisors.

At the direction of the presiding judge of the superior and municipal courts, court commissioners appointed pursuant to Section 70141 and juvenile court referees appointed pursuant to Section 247 of the Welfare and Institutions Code, shall exercise the jurisdiction and perform the duties of a municipal court commissioner.

Notwithstanding any other provision of law, juvenile court referees appointed pursuant to Section 247 of the Welfare and Institutions Code and superior court commissioners shall earn vacation credit at the rate of 6.5 hours for each biweekly pay period of full-time service, except that those juvenile court referees appointed by the court prior to November 5, 1976, shall be entitled to earn vacation credit at the rate of 7.7 hours for each biweekly pay period of full-time service.

SEC. 1.5. Section 69900 of the Government Code is amended to read:

69900. In the City and County of San Francisco, a majority of the judges of the superior court may appoint the following employees, whose annual salaries shall be as set forth hereafter. The class numbers set forth refer to the superior court position classifications contained in the salary ordinance of the City and County of San Francisco.

	Title	Class Number
1	Executive Officer	0555
1	Assistant County Clerk	0583
1	Assistant Executive Officer	0584
1	Manager of Budget and Admin.	0585
20	Court Coordinators	0588
4	Court Assistants	0589
4	Court Assistants, Senior	0590
65	Superior Court Clerks	0591
1	Payroll/Personnel Director	0592
1	Deputy Jury Commissioner	0622
3	Managers of Court Operations	0634
6	Division Chiefs	0636
1	Director — Family Court Services	0640
1	Assistant Director — Family Court Services	0641
1	Assistant Director — Probate	0646
1	Director, Probate	0647
4	Court Investigators	0648
3	Probate Examiners	0649
1	Traffic Hearing Officer	0650

5	Counselors — Family Court Services	0655
1	Mental Health Coordinator	0657
10	Legal Research Assistants	0676
1	Judicial Secretary Coordinator	0677
2	Executive Secretaries	0678
6	Judicial Secretaries	0680
23	Judicial Clerks, Senior	0681
40	Judicial Clerks	0697
1	Judicial Clerk II	0705
29	Court Reporters	0710
1	Legal Research Assistant — Presiding Judge	0735
1	MIS Specialist II	0818
4	MIS Specialists III	0819
1	Superior Court Computer Coordinator	0821
5	Attorneys, Civil and Criminal	0174
1	Juvenile Justice Director	0637

Those positions shall be paid biweekly the equivalent amount as specified in the salary ordinance. All salaries for original appointments shall be at step 1, provided that on the first anniversary of appointment the employee shall advance to the second step, and thereafter on the second anniversary of appointment the employee shall advance to step 3, and thereafter on the third anniversary of appointment the employee shall advance to step 4, and thereafter shall be paid at the rate established by step 4.

Service in any position enumerated herein prior to the effective date of the amendments to this section enacted at the 1991–92 Regular Session of the Legislature shall constitute service for the purpose of determining the step at which the attaché is paid. Service in any position wherein substantially the same duties have been performed shall also be deemed service for the purpose of determining at which step the attaché is to be paid.

Employment by the court shall be deemed to be employment by the city and county, if approved by resolution of the court, for purposes of determining court employees' rights to sick leave, vacation, and holiday pay and accumulation thereof, as provided either by charter or ordinances of the city and county for miscellaneous employees.

With the approval of the board of supervisors, the court may establish such additional titles and pay rates as are required and, with the approval of the board of supervisors, may appoint and employ such additional commissioners, officers, and assistants and other employees as it deems necessary for the performance of the duties and exercise of the powers conferred by law upon it and its members.

Rates of compensation of all officers and assistants and other employees may be altered by joint action and approval of the board of supervisors and a majority of the judges of the court. The salaries of the employees of the superior court shall be paid by the city and

county.

SEC. 2. Section 69994.2 of the Government Code is amended to read:

69994.2. The regular official phonographic reporters shall be compensated at an annual salary of forty-seven thousand seven hundred eleven dollars ($47,711), except that these reporters may be employed at an annual salary of thirty-nine thousand two hundred thirty-four dollars ($39,234) for the first year of service, at an annual salary of forty-one thousand one hundred ninety-six dollars ($41,196) for the second year of service, at an annual salary of forty-three thousand two hundred sixty-three dollars ($43,263) for the third year of service, and at an annual salary of forty-five thousand four hundred thirty-five dollars ($45,435) for the fourth year of service. The judges of the superior and municipal courts of such county, a majority concurring, may appoint a supervising phonographic reporter at an annual salary of forty-nine thousand six hundred fifty-three dollars ($49,653) except that such reporter may be employed at an annual salary of forty-five thousand thirty-eight dollars ($45,038) for the first year of service and at an annual salary of forty-seven thousand two hundred ninety-three dollars ($47,293) for the second year of service.

SEC. 3. Section 70045.77 of the Government Code is amended to read:

70045.77. Notwithstanding any other provision of law, including, but not limited to, Sections 70040, 70041, 70042, and 70045, the following provisions shall be applicable to the full-time official court reporters, if any, in El Dorado County:

(a) The regular full-time official court reporters shall perform the following duties:

(1) Report all criminal proceedings.

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

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

(4) Report all family law proceedings.

(5) Report all civil jury trials.

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

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

(8) Report any other court proceedings when a party requests a court reporter in accordance with rules of the court.

(9) Report the preliminary examination of those accused of crimes before magistrates within El Dorado County.

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

(11) Report proceedings for the El Dorado County Board of Equalization when requested by the board.

(b) The regular full-time official court reporter shall be compensated at a range recommended by the judges of the superior

court and approved by the board of supervisors by ordinance or resolution.

The foregoing salary is for compensation for reporting services in the superior court under subdivision (a) of this section. For all transcriptions incident to reporting services, each reporter shall receive the fees provided for in Article 9 (commencing with Section 69941) of this chapter.

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

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

SEC. 3.5. Section 72607 of the Government Code is amended to read:

72607. Notwithstanding the numbers and classifications of court officers and attachés specified in Articles 1.5 (commencing with Section 72620), 1.6 (commencing with Section 72630), 2 (commencing with Section 72640), 3 (commencing with Section 72700), and 4 (commencing with Section 72750), the judges of a municipal court in a county having a population of 3,000,000 or over, with the approval of the board of supervisors, may appoint and employ additional commissioners, officers, and attachés that are necessary to the performance of duties and exercise of powers within the jurisdiction of the court. The compensation of these appointees shall be as provided in that chapter for the same position, or, where not so provided, as may be established by the judges with the approval of the board of supervisors.

The majority of municipal court judges in the county, with the approval of the board of supervisors, may authorize the marshal, and the judges of any municipal court in that county, with that approval, may authorize the clerk of the court, to adjust rates of compensation, to appoint additional deputies in any classifications that may be required for the prompt and faithful discharge of the duties of the respective offices. Deputies so appointed shall receive the respective rates of pay provided for existing classifications, or, if there be no existing classification for which a pay rate has been established, then they shall receive the rates of pay as shall be established by the judges authorizing the appointments and approved by the board of

supervisors.

Appointments and adjustments made pursuant to this section shall be on an interim basis and shall expire 90 days after the adjournment of the next regular session of the Legislature unless ratified at such session. It is the intention of the Legislature that this section be cumulative to, and not in abrogation of, other provisions of law governing the additional or emergency appointment of deputy clerks and deputy marshals.

SEC. 4. Section 72608 of the Government Code is amended to read:

72608. Certain classes of positions prescribed in Article 1.5 (commencing with Section 72620), Article 1.6 (commencing with Section 72630), Article 2 (commencing with Section 72640), Article 3 (commencing with Section 72700), and Article 4 (commencing with Section 72750) are deemed to be related in job and compensation to position classifications included in the Los Angeles County Code, and in the case of certain classes of positions, to the administrative series included in Section 69894.1. In order to maintain the relationship of compensation and employee rights and benefits between officers and attachés of municipal courts and county or superior court employees having commensurate duties and responsibilities and to provide appropriate salary adjustments and employee rights and benefits for related classes of court positions, this section shall govern salary adjustments and employee rights and benefits for officers and attachés of municipal courts in Los Angeles County.

On the effective date of any amendment to that code adjusting the salary of a county employee classification listed in the table of positions set forth in this section, or on the effective date of a resolution or ordinance by the board of supervisors approving interim salary adjustments for superior court classes pursuant to Section 69894.2, the salary of the related municipal court position listed opposite thereto shall be adjusted an equivalent number of schedules or steps in a schedule in the salary schedule to which that position is attached. If the level of compensation established by any salary adjustment is not reflected in the salary schedule number provided for any court classification, the adjustment shall apply to each position in the classification on the effective date of the act fixing the salary schedule number. Classes of positions in the Performance-Based Pay Plan shall be compensated and adjusted in accordance with provisions approved by the board of supervisors.

Likewise, the salary of any court classification being enumerated in Article 1.5 (commencing with Section 72620), Article 1.6 (commencing with Section 72630), Article 2 (commencing with Section 72640), Article 3 (commencing with Section 72700), or Article 4 (commencing with Section 72750) for the first time as an amendment to this chapter shall be adjusted as necessary on the effective date of that amendment to provide the same relationship to the county classification to which it is attached as that established

when the court classification was approved in accordance with Section 72607.

Table of Positions

Municipal Court Class	County or Superior Court Class
Officer Series	
Marshal	Commander
Assistant Marshal	Commander
Commander, Marshal	Commander
Captain, Marshal	Captain
Lieutenant, Marshal	Lieutenant
Sergeant, Marshal	Sergeant
Deputy Marshal IV	Deputy Sheriff IV
Deputy Marshal	Deputy Sheriff
Deputy Marshal Trainee	Deputy Sheriff Trainee
Deputy Marshal, Matron	Custody Assistant
Deputy Clerk, Custody Officer	Custody Assistant
Legal Services Specialist, Marshal	Safety Police Officer II
Security Officer I, Marshal	Safety Police Officer I
Security Officer II, Marshal	Safety Police Officer I
Municipal Courts Planning and Research	
Chief Staff Attorney, P & R	Senior Deputy County Counsel
Assistant Chief Staff Attorney, P & R	Senior Deputy County Counsel
Staff Attorney III, P & R	Senior Deputy County Counsel
Staff Attorney II, P & R	Senior Deputy County Counsel
Staff Attorney I, P & R	Senior Deputy County Counsel
Legal Research Assistant, P & R	Senior Deputy County Counsel
Planning Analyst, P & R	Program Specialist I, CAO
Planning Analyst Aide, P & R	Administrative Staff Trainee, CAO
Principal Budget Analyst, P & R	Program Specialist I, CAO
Head, Management Services, P & R	Program Specialist I, CAO
Senior Planning Analyst, P & R	Program Specialist I, CAO

Courtroom Series

All positions subject to civil service provisions enumerated in Articles 2, 3, and 4 which are not listed in this table.	Superior Court Clerk
Court Clerk, M.C.	Judicial Assistant, S.C. (Salary adjustments and insurance benefits only) Intermediate Typist-Clerk (All other benefits)
Municipal Court Clerk Trainee	Administrative Aide
Municipal Court Judicial Assistant, NCS	Judicial Assistant, S.C. (Salary adjustments and insurance benefits only) Intermediate Typist-Clerk (All other benefits)
Municipal Court Judicial Assistant Trainee, NCS	Administrative Aide (Salary adjustments and insurance benefits only) Intermediate Typist-Clerk (All other benefits)

Management Series

Court Administrator, LAMC	Performance-Based Pay Plan
Assistant Court Administrator, LAMC	Performance-Based Pay Plan
Deputy Court Administrator, Admin. and Financial Service, LAMC	Performance-Based Pay Plan
Deputy Court Administrator, Operations, LAMC	Performance-Based Pay Plan
Division Chief, Operations, LAMC	Performance-Based Pay Plan
Division Chief, Operations, NCS, LAMC	Performance-Based Pay Plan
Personnel Administrator, NCS, M.C.	Performance-Based Pay Plan
Senior Program & System Analyst, M.C.	Performance-Based Pay Plan
Senior Program & System Analyst, NCS, M.C.	Performance-Based Pay Plan
Managing Court Reporter,	Performance-Based Pay Plan

NCS, LAMC	
Capital Projects Manager, M.C., NCS	Performance-Based Pay Plan
Assistant Capital Projects Manager, NCS, LAMC	Performance-Based Pay Plan
Court Information Officer, M.C., NCS	Performance-Based Pay Plan
Chief, Systems Division, NCS, M.C.	Performance-Based Pay Plan
Assistant Chief, Systems Division, M.C., NCS	Performance-Based Pay Plan
Senior Court Manager, NCS, LAMC	Performance-Based Pay Plan
Assistant Division Chief Operations	Performance-Based Pay Plan
Assistant Division Chief Operations, NCS, LAMC	Performance-Based Pay Plan
Court Manager, LAMC, NCS	Performance-Based Pay Plan
Administrative Services Manager, M.C., NCS	Performance-Based Pay Plan
Court Administrator (except Los Angeles Judicial District)	Structure adjustment to the nearest one-quarter of one percent approved by the board of supervisors for application to the ranges established for classes assigned to the Performance-Based Pay Plan.
Assistant Chief Deputy, Clerk, M.C.	Program Specialist I, CAO
Assistant Court Administrator (1 judge court)	Court Administrator (1 judge court)
Assistant Court Administrator (2 judge court)	Court Administrator (2 judge court)
Assistant Court Administrator (3,4,5 judge court)	Court Administrator (3,4,5 judge court)
Assistant Court Administrator (6 judge court)	Court Administrator (6 judge court)
Assistant Court Administrator (7 judge court)	Court Administrator (7 judge court)
Assistant Court Administrator (8 judge court)	Court Administrator (8 judge court)
Assistant Court Administrator (9 judge court)	Court Administrator (9 judge court)
Assistant Court Administrator (10,11,12 judge court)	Court Administrator (10,11,12 judge court)
Judicial Management Intern, M.C., NCS	Administrative Assistant II
Division Chief, Long Beach M.C.	Program Specialist I, CAO

Principal Clerk, Los Angeles	Supervising Superior Court Clerk
Training Officer, NCS, M.C.	Performance-Based Pay Plan
Chief Deputy Clerk	Program Specialist I, CAO
Division Chief, NCS, M.C.	Program Specialist I, CAO

Personnel-Administrative Services-Accounting Series

Head, Fiscal & Administrative Services, Marshal	Program Specialist I, CAO
Head Personnel Technician, M.C., NCS	Head Departmental Personnel Technician
Head Personnel Technician, Marshal	Head Departmental Personnel Technician
Personnel Technician, M.C.	Senior Departmental Personnel Technician
Personnel Technician, M.C., NCS	Senior Departmental Personnel Technician
Personnel Technician, Marshal	Senior Departmental Personnel Technician
Personnel Assistant, M.C.	Departmental Personnel Assistant
Personnel Assistant, M.C., NCS	Departmental Personnel Assistant
Personnel Assistant, Marshal	Departmental Personnel Assistant
Safety Officer, Marshal	Safety Officer
Senior Personnel Assistant, M.C.	Senior Departmental Personnel Assistant
Senior Personnel Assistant, Marshal	Senior Departmental Personnel Assistant
Senior Personnel Assistant, M.C., NCS	Senior Departmental Personnel Assistant
Senior Personnel Technician, M.C.	Head, Departmental Personnel Technician
Senior Staff Assistant, Marshal	Program Specialist I, CAO
Staff Assistant, Marshal	Program Specialist I, CAO
Principal Clerk, Marshal	Program Specialist I, CAO
Assistant Head, Fiscal & Administrative Services, Marshal	Program Specialist I, CAO
Executive Assistant, Presiding Judges Association	Program Specialist I, CAO
Principal Administrative Assistant, M.C.	Administrative Assistant III
Principal Administrative Assistant, M.C., NCS	Administrative Assistant III
Principal Assistant, Fiscal	Program Specialist I,

Services, Marshal	CAO
Principal Personnel Assistant, M.C.	Principal Departmental Personnel Assistant
Principal Personnel Assistant, M.C., NCS	Principal Departmental Personnel Assistant
Supervising Accountant, M.C., NCS	Senior Accountant Auditor
Senior Administrative Assistant, M.C.	Administrative Assistant II
Senior Administrative Assistant, M.C., NCS	Administrative Assistant II
Administrative Assistant, M.C.	Administrative Assistant I
Administrative Assistant, M.C., NCS	Administrative Assistant I
Staff Assistant, M.C.	Staff Assistant I
Staff Assistant, M.C., NCS	Staff Assistant I
Statistical Analyst, M.C.	Statistical Analyst
Statistical Analyst, M.C., NCS	Statistical Analyst
Accountant, M.C.	Accountant II
Accountant, M.C., NCS	Accountant II
Accounting Technician, M.C.	Accounting Technician I
Accounting Technician, M.C., NCS	Accounting Technician I
Intermediate Accountant, M.C.	Intermediate Accountant Auditor
Intermediate Accountant, M.C., NCS	Intermediate Accountant Auditor
Senior Accountant, M.C.	Intermediate Accountant Auditor
Senior Accountant, M.C., NCS	Intermediate Accountant Auditor
Facilities Services Assistant, M.C.	Facilities Services Assistant
Facilities Services Assistant, M.C., NCS	Facilities Services Assistant
Facilities Planning Assistant, M.C.	Facilities Planning Assistant
Facilities Planning Assistant, M.C., NCS	Facilities Planning Assistant
Staff Development Specialist, Muni Crt	Staff Development Specialist, D.A.
Staff Development Specialist, M.C., NCS	Staff Development Specialist, D.A.
Account Clerk, M.C.	Account Clerk II
Personnel Clerk, M.C.	Senior Typist-Clerk
Personnel Clerk, M.C., NCS	Senior Typist-Clerk

Management Services Specialist, M.C., NCS	Program Specialist I, CAO

Secretarial and Stenographic Series

Secretary to Presiding Judge, LAMC	Executive Secretary II
Secretary to Presiding Judge, M.C., NCS	Executive Secretary II
Executive Secretary, M.C.	Executive Secretary II
Executive Secretary, M.C., NCS	Executive Secretary II
Senior Management Secretary, LAMC	Executive Secretary II
Senior Management Secretary, M.C., NCS	Executive Secretary II
Management Secretary, M.C.	Executive Secretary II
Management Secretary, M.C., NCS	Executive Secretary II
Management Secretary II, M.C., NCS	Senior Management Secretary II
Executive Secretary, Marshal	Executive Secretary II
Senior Secretary II, Muni Ct	Senior Secretary II
Senior Secretary II, M.C., NCS	Senior Secretary II
Management Secretary, Marshal	Senior Secretary II
Senior Judicial Secretary, Muni Ct	Senior Secretary II
Senior Judicial Secretary, M.C., NCS	Senior Secretary II
Senior Secretary III, Muni Ct	Senior Secretary II
Senior Secretary III, M.C., NCS	Senior Secretary II
Senior Secretary I, Muni Ct	Senior Secretary II
Senior Secretary I, M.C., NCS	Senior Secretary II
Secretary, Marshal	Senior Secretary II
Secretary, Muni Ct	Senior Secretary II
Secretary, M.C., NCS	Senior Secretary II
Senior Secretary, Marshal	Senior Secretary II
Stenographer, M.C.	Legal Office Support Assistant II
Stenographer, M.C., NCS	Legal Office Support Assistant II

Clerical Series

Deputy Municipal Court Clerk I	Intermediate Typist-Clerk
Deputy Clerk II, Marshal	Intermediate Typist-Clerk
Deputy Clerk I, Marshal	Intermediate Typist-Clerk
Deputy Municipal Court Clerk II	Intermediate Typist-Clerk
Deputy Clerk III, M.C.	Intermediate Typist-Clerk
Deputy Clerk III, Marshal	Intermediate Typist-Clerk
Administrative Clerk, Marshal	Intermediate Typist-Clerk
Clerical Aide, Municipal Court	Intermediate Typist-Clerk
Clerical Aide, M.C., NCS	Intermediate Typist-Clerk
Office Services Assistant I, M.C., NCS	Intermediate Typist-Clerk
Office Services Assistant II, M.C., NCS	Intermediate Typist-Clerk
Office Services Assistant III, M.C., NCS	Intermediate Typist-Clerk
Senior Payroll Clerk, Marshal	Payroll Clerk II
Supervising Payroll Clerk, Marshal	Supervising Payroll Clerk I
Payroll Clerk, Marshal	Assistant Payroll Clerk II
Assistant Payroll Technician, M.C., NCS	Payroll Clerk I
Payroll Technician, M.C., NCS	Payroll Clerk II
Supervising Payroll Technician, M.C., NCS	Supervising Payroll Clerk II
Marshal's Dispatcher I	Communication Operator II, Sheriff
Marshal's Dispatcher II	Communication Operator II, Sheriff
Supervising Deputy Clerk I, M.C.	Supervising Typist-Clerk
Deputy Clerk Supervisor, NCS, LAMC	Supervising Typist-Clerk
Senior Courtroom Clerk, M.C., NCS	Senior Judicial Assistant

Supply, Duplicating, and Miscellaneous Series

Supply and Reproduction Supervisor, Marshal	Warehouse Worker II
Supply and Reproduction Assistant, Marshal	Warehouse Worker II
Warehouse Worker Aide, M.C.,	Warehouse Worker Aide

NCS	
Procurement Assistant I, M.C., NCS	Procurement Assistant I
Procurement Assistant II, M.C.	Procurement Assistant II
Procurement Assistant II, M.C., NCS	Procurement Assistant II
Procurement Aide, M.C.	Procurement Aide
Procurement Aide, M.C., NCS	Procurement Aide
Light Vehicle Driver, Marshal	Communications Messenger Driver
Light Vehicle Driver, M.C.	Light Vehicle Driver
Light Vehicle Driver, M.C., NCS	Light Vehicle Driver
General Maintenance Supervisor, M.C.	General Maintenance Supervisor
General Maintenance Supervisor, M.C., NCS	General Maintenance Supervisor
General Maintenance Worker, M.C.	General Maintenance Worker
General Maintenance Worker, M.C., NCS	General Maintenance Worker
Warehouse Worker I, Marshal	Warehouse Worker I
Warehouse Worker I, M.C., NCS	Warehouse Worker I
Warehouse Worker II, M.C.	Warehouse Worker II
Warehouse Worker II, M.C., NCS	Warehouse Worker II
Warehouse Manager, M.C.	Warehouse Manager
Warehouse Manager, M.C., NCS	Warehouse Manager
Graphic Artist, M.C.	Graphic Artist
Graphic Artist, M.C., NCS	Graphic Artist
Supervising Law Clerk, M.C.	Supervising Law Clerk (SC)
Law Clerk	Law Clerk (SC)
Interpreter, M.C., NCS	Interpreter (SC)

Management Information and Data Processing Series

Data Systems Coordinator, M.C.	Data Systems Coordinator
Data Systems Coordinator, M.C., NCS	Data Systems Coordinator
Data Systems Analyst Aide, M.C., NCS	Data Systems Analyst Aide

Data Systems Analyst I, M.C.	Data Systems Analyst I
Data Systems Analyst I, M.C., NCS	Data Systems Analyst I
Data Systems Analyst II, M.C.	Data Systems Analyst II
Data Systems Analyst II, M.C., NCS	Data Systems Analyst II
Data Conversion Supervisor I, M.C.	Data Conversion Supervisor I
Data Conversion Supervisor I, M.C., NCS	Data Conversion Supervisor I
Data Conversion Supervisor III, M.C.	Data Conversion Supervisor III
Data Conversion Supervisor III, M.C., NCS	Data Conversion Supervisor III
EDP Staff Aide, M.C.	Systems Aide
EDP Staff Aide, M.C., NCS	Systems Aide
EDP Support Analyst II, M.C., NCS	EDP Support Analyst II
Supervising Computer Operator, M.C.	Supervising Computer Operator
Supervising Computer Operator, M.C., NCS	Supervising Computer Operator
Computer Operations Supervisor, M.C.	Supervising Computer Operator
Computer Operations Supervisor, M.C., NCS	Supervising Computer Operator
Computer Equipment Operator, M.C.	Computer Equipment Operator
Computer System Operator, M.C.	Computer Systems Operator
Senior Data Control Clerk, M.C.	Senior Data Control Clerk
Data Control Clerk, M.C.	Data Control Clerk
Senior Data Conversion Equipment Operator, M.C.	Senior Data Conversion Equipment Operator
Data Conversion Equipment Operator I, M.C.	Data Conversion Equipment Operator I
Principal Programmer Analyst, M.C.	EDP Principal Programmer Analyst
Principal Programmer Analyst, M.C., NCS	EDP Principal Programmer Analyst
Senior Programmer Analyst, M.C.	EDP Programmer Analyst II
Senior Programmer Analyst, M.C., NCS	EDP Programmer Analyst II

Systems Programmer, M.C.	EDP Systems Programmer
Systems Programmer, M.C., NCS	EDP Systems Programmer
Telecommunications Technician, M.C.	Computer Systems Operator
Telecommunications Technician, M.C., NCS	Computer Systems Operator
Senior Telecommunications Systems Engineer, M.C., NCS	Senior Telecommunications Systems Engineer
Data Processing Specialist I, M.C., NCS	Data Processing Specialist I
Systems Aide, M.C., NCS	Systems Aide
Senior Systems Aide, M.C., NCS	Senior Systems Aide

All classes of positions approved by a majority of the judges of the municipal court and the board of supervisors for inclusion in the Los Angeles County Performance-Based Pay Plan will be compensated in accordance with this plan as set forth in Part 3, Chapter 6.08, of the Los Angeles County Code. All of these provisions are applicable to participants in the marshal's department, except that for the marshal, the appointing authority is the municipal court judges of Los Angeles County, and for all other participants in the marshal's department, the appointing authority is the marshal. For purposes of PBP administration only, the appointing authority for the court administrator, Los Angeles Judicial District, is the court's executive committee. The court administrator, is the appointing authority for all other participants in the Los Angeles Judicial District.

The presiding judge, the immediate past presiding judge (if still a member of the Los Angeles Municipal Court) and the assistant presiding judge will confer with the court administrator to establish new performance goals and evaluate the completion of previously established goals; these judges will then rate the court administrator's performance using the PBP rating categories established in the county code. The presiding judge shall present this rating to the executive committee for ratification at its July meeting. In the event that the executive committee does not act upon the rating, the presiding judge shall forward the rating to the CAO for inclusion in the Los Angeles Municipal Court's Merit Salary Increase Guideline. In the event a rating is not completed, the court administrator's salary will be adjusted in accordance with the Los Angeles Municipal Court Merit Increase Guideline based on a "fully meets expectations" rating.

Any existing special pay provision applicable to court classes included in PBP and which is expressed in terms of additional schedules of compensation will be converted to a percentage basis in accordance with the county's plan which equates each schedule with 2.75 percent.

Salary adjustments made pursuant to this section shall be on an interim basis and shall expire 90 days after the adjournment of the next regular session of the Legislature unless ratified at such session.

Officers and attachés of municipal courts in Los Angeles County shall be entitled to all employee rights, programs and benefits, including, but not limited to, paid medical plans, management incentive, pay for performance, deferred compensation plans, flexible benefit plans, and early separation programs, parking and cafeteria privileges, longevity pay, shooting allowance, uniform and equipment allowance, and the same rights to meet with those entities which prescribe their compensation, that are provided for or made applicable to the related Los Angeles County and superior court employee classification. Participation in management incentive early separation programs and pay for performance shall be established by joint action and approval of a majority of the board of supervisors and a majority of the judges of the court, except in the Los Angeles Judicial District where joint action shall be approved by a majority of the board of supervisors and a majority of the court's executive committee.

Bonus Level I assignments of deputy marshals are as follows:

Nineteen positions—assistant commander, small division.

Twelve positions—court supervisor.

Nine positions—field supervisor.

Nine positions—office supervisor.

Three positions—communications and fleet management supervisor.

One position—training officer.

One position—real estate levy/bookkeeping section supervisor.

Bonus Level II assignments of deputy marshals are as follows:

One position—security liaison and investigations.

Deputy marshals with Bonus Level I assignments shall receive additional compensation in the same amounts, for the same periods, and paid on the same terms, as deputy sheriffs assigned to Bonus Level I positions. Deputy marshals with Bonus Level II assignments shall receive additional compensation in the same amounts, for the same periods, and paid on the same terms, as deputy sheriffs assigned to Bonus Level II positions.

In addition to the salary adjustment otherwise provided by this section, persons employed in the classifications of executive secretary, M.C., senior management secretary, M.C., and secretary to the presiding judge shall receive a one-time only two-schedule salary increase effective January 1, 1989. The resulting salary rate shall constitute the base rates for subsequent salary adjustments.

In addition to the salary provided by the applicable performance-based pay provisions, a 16.5 percent bonus shall be paid to no more than one position of deputy court administrator in the Los Angeles Municipal Court who is admitted to practice law before all courts in California and required to render legal opinions and

provide legal advice to the court administrator and judges.

Any deputy municipal court clerk I, deputy municipal court clerk II, deputy clerk III, M.C., or deputy clerk IV, M.C. who, in addition to a regular courtroom assignment, is required to operate and monitor electronic recording equipment to produce the official record of the court proceedings shall receive a two-schedule increase in compensation while so engaged. Effective January 3, 1989, any deputy clerk IV, M.C. assigned to a courtroom, who in addition to his or her regular duties, is required to operate and monitor electronic recording equipment to produce a record of court proceedings shall receive an increase of eight standard salary levels while so engaged. However, in no event shall a person who is receiving additional compensation for performing duties involving greater skill and responsibility as described in subdivision (b) of Section 72705 or subdivision (k), (*l*), or (m) of Section 72755 be eligible to receive additional compensation pursuant to this subdivision, except for a deputy clerk III, M.C. assigned to the regular duties of a deputy clerk IV, M.C. as provided in subdivision (j) of Section 72755.

SEC. 5. Section 72609 of the Government Code is amended to read:

72609. Except where otherwise provided by law, officers and attachés of municipal courts in Los Angeles County shall receive a monthly salary at a rate specified in the Los Angeles County Code as follows:

Title	Range/ Schedule
Account Clerk, M.C.	51C
Accountant, M.C.	64G
Accountant, M.C., NCS	64G
Accounting Technician, M.C.	53L
Accounting Technician, M.C., NCS	53L
Administrative Assistant, M.C.	N2 57J
Administrative Assistant, M.C., NCS	N2 57J
Administrative Clerk, Marshal	58F
Administrative Services Manager, M.C., NCS	N23 R9
Assistant Capital Projects Manager, NCS, LAMC	N23 R8
Assistant Chief Deputy Clerk, M.C.	76G
Assistant Chief Staff Attorney, Planning and Research	NW 95K
Assistant Chief, Systems Division, M.C., NCS	N23 R10
Assistant Court Administrator LAMC	N23 R15
Assistant Court Administrator (1 judge court)	80D
Assistant Court Administrator (2 judge court)	81D
Assistant Court Administrator (3, 4, 5 judge court)	82D
Assistant Court Administrator (6 judge court)	83D
Assistant Court Administrator (7 judge court)	84D
Assistant Court Administrator (8 judge court)	85D
Assistant Court Administrator (9 judge court)	86D

Assistant Court Administrator (10, 11, 12 judge court)	87D
Assistant Division Chief, Operations	N23 R8
Assistant Division Chief, Operations, NCS, LAMC	N23 R8
Assistant Head, Fiscal & Administrative Services, Marshal	82K
Assistant Marshal	114C
Assistant Payroll Technician, M.C., NCS	53B
Capital Projects Manager, M.C., NCS	N23 R10
Captain, Marshal	100H
Chief Deputy Clerk	75G
Chief Staff Attorney, Planning and Research	NX 100A
Chief, Systems Division, NCS, M.C.	N23 R12
Clerical Aide, Municipal Court	33G
Clerical Aide, M.C., NCS	33G
Commander, Marshal	105B
Computer Equipment Operator, M.C.	52A
Computer Operations Supervisor, M.C.	74D
Computer Operations Supervisor, M.C., NCS	74D
Computer Systems Operator, M.C.	57H
Court Administrator (1 judge court)	88D
Court Administrator (2 judge court)	89D
Court Administrator (3, 4, 5 judge court)	90D
Court Administrator (6 judge court)	91D
Court Administrator (7 judge court)	92D
Court Administrator (8 judge court)	93D
Court Administrator (9 judge court)	94D
Court Administrator (10, 11, 12 judge court)	95D
Court Administrator, Los Angeles Municipal Court	N23 R18
Court Clerk, M.C.	NX 67J
Court Information Officer, M.C., NCS	N23 R8
Court Manager, LAMC, NCS	N23 R6
Data Control Clerk, M.C.	47J
Data Conversion Equipment Operator I, M.C.	50C
Data Conversion Supervisor I, M.C.	57E
Data Conversion Supervisor I, M.C., NCS	57E
Data Conversion Supervisor III, M.C.	66L
Data Conversion Supervisor III, M.C., NCS	66L
Data Processing Specialist I, M.C., NCS	92A
Data Systems Analyst Aide, M.C., NCS	65D
Data Systems Analyst I, M.C.	71K
Data Systems Analyst I, M.C., NCS	71K
Data Systems Analyst II, M.C.	74F
Data Systems Analyst II, M.C., NCS	74F
Data Systems Coordinator, M.C.	81J
Data Systems Coordinator, M.C., NCS	81J
Deputy Clerk I, Marshal	N4 48H
Deputy Clerk II, Marshal	51L

Deputy Clerk III, Marshal	54G
Deputy Clerk III, M.C.	54G
Deputy Clerk IV, M.C.	NX 66B
Deputy Clerk-Custody Officer, Marshal	57H
Deputy Clerk Supervisor, NCS, LAMC	60L
Deputy Court Administrator, Administrative & Financial Services, LAMC	N23 R13
Deputy Court Administrator, Operations, LAMC	N23 R13
Deputy Marshal	NW 74D
Deputy Marshal IV	78D
Deputy Marshal Matron	NW 62K
Deputy Marshal Trainee	75D
Deputy Municipal Court Clerk I	N3 48H
Deputy Municipal Court Clerk II	51L
Division Chief, NCS, M.C.	80G
Division Chief, Long Beach, M.C.	80G
Division Chief, Operations, LAMC	N23 R11
Division Chief, Operations, NCS, LAMC	N23 R11
EDP Staff Aide, M.C.	56J
EDP Staff Aide, M.C., NCS	56J
EDP Support Analyst II, M.C., NCS	N2 74K
Executive Assistant to Presiding Judges Association	74J
Executive Secretary, M.C.	N3 77E
Executive Secretary, M.C., NCS	N3 77E
Executive Secretary, Marshal	N3 73F
Facilities Planning Assistant, M.C.	66A
Facilities Planning Assistant, M.C., NCS	66A
Facilities Services Assistant, M.C.	60A
Facilities Services Assistant, M.C., NCS	60A
General Maintenance Supervisor, M.C.	65L
General Maintenance Supervisor, M.C., NCS	65L
General Maintenance Worker, M.C.	56H
General Maintenance Worker, M.C., NCS	56H
Graphic Artist, M.C.	62K
Graphic Artist, M.C., NCS	62K
Head, Fiscal and Administrative Services, Marshal	89G
Head, Management Services, Planning and Research	80D
Head, Personnel Technician, M.C., NCS	79G
Head, Personnel Technician, Marshal	79G
Intermediate Accountant, M.C.	75A
Intermediate Accountant, M.C., NCS	75A
Interpreter, M.C., NCS	56A
Judicial Management Intern, M.C., NCS	67B
Law Clerk	73F
Legal Research Assistant, Planning and Research	FH 11.66
Legal Services Specialist, Marshal	56F
Lieutenant, Marshal	91C
Light Vehicle Driver, M.C.	45K

Light Vehicle Driver, M.C., NCS	45K
Light Vehicle Driver, Marshal	45K
Management Secretary, M.C.	N3 67E
Management Secretary, M.C., NCS	N3 67E
Management Secretary II, M.C., NCS	N3 71E
Management Secretary, Marshal	N3 70F
Management Services Specialist, M.C., NCS	NCRT 60B
Managing Court Reporter, NCS, LAMC	N23 R9
Marshal	117L
Marshal's Dispatcher I	57D
Marshal's Dispatcher II	63D
Municipal Court Clerk Trainee	F 2123.19
Municipal Court Judicial Assistant, NCS	NX 67J
Municipal Court Judicial Assistant Trainee, NCS	F 2123.19
Office Services Assistant I, M.C., NCS	N3 48H
Office Services Assistant II, M.C., NCS	51L
Office Services Assistant III, M.C., NCS	54G
Payroll Clerk, Marshal	54C
Payroll Technician, M.C., NCS	59B
Personnel Administrator, NCS, M.C.	N23 R11
Personnel Assistant, M.C.	55A
Personnel Assistant, M.C., NCS	55A
Personnel Assistant, Marshal	55A
Personnel Clerk, M.C.	53B
Personnel Clerk, M.C., NCS	53B
Personnel Technician, Marshal	75G
Personnel Technician, M.C.	75G
Personnel Technician, M.C., NCS	75G
Planning Analyst Aide, Planning and Research	N2 61A
Planning Analyst, Planning and Research	71E
Principal Administrative Assistant, M.C.	71B
Principal Administrative Assistant, M.C., NCS	71B
Principal Assistant, Fiscal Services, Marshal	78F
Principal Budget Analyst, Planning and Research	92G
Principal Clerk, Los Angeles	72H
Principal Clerk, Marshal	61K
Principal Personnel Assistant, M.C.	71G
Principal Personnel Assistant, M.C., NCS	71G
Principal Programmer Analyst, M.C.	84K
Principal Programmer Analyst, M.C., NCS	84K
Procurement Aide, M.C.	54F
Procurement Aide, M.C., NCS	54F
Procurement Assistant I, M.C., NCS	58E
Procurement Assistant II, M.C.	62E
Procurement Assistant II, M.C., NCS	62E
Safety Officer, Marshal	74F
Secretary, Marshal	61E
Secretary, Muni Ct	59E
Secretary, M.C., NCS	59E

Secretary to Presiding Judge, LAMC	N3 79E
Secretary to Presiding Judge, M.C., NCS	N3 79E
Security Officer I, Marshal	F1435.00
Security Officer II, Marshal	54 F
Senior Accountant, M.C.	77J
Senior Accountant, M.C., NCS	77J
Senior Administrative Assistant, M.C.	67B
Senior Administrative Assistant, M.C., NCS	67B
Senior Courtroom Clerk, M.C., NCS	76F
Senior Court Manager, NCS, LAMC	N23 R8
Senior Data Control Clerk, M.C.	51G
Senior Data Conversion Equipment Operator	54C
Senior Judicial Secretary, Muni Ct	N3 66E
Senior Judicial Secretary, M.C., NCS	N3 66E
Senior Management Secretary, LAMC	N3 73E
Senior Management Secretary, M.C., NCS	N3 73E
Senior Payroll Clerk, Marshal	57C
Senior Personnel Assistant, M.C.	64J
Senior Personnel Assistant, M.C., NCS	64J
Senior Personnel Assistant, Marshal	64J
Senior Personnel Technician, M.C.	79E
Senior Planning Analyst, Planning and Research	74J
Senior Program and System Analyst, M.C.	N23 R6
Senior Program and System Analyst, M.C., NCS	N23 R6
Senior Programmer Analyst, M.C.	79F
Senior Programmer Analyst, M.C., NCS	79F
Senior Secretary I, Muni Ct	61E
Senior Secretary I, M.C., NCS	61E
Senior Secretary II, Muni Ct	63E
Senior Secretary II, M.C., NCS	63E
Senior Secretary III, Muni Ct	N3 66E
Senior Secretary III, M.C., NCS	N3 66E
Senior Secretary, Marshal	65E
Senior Staff Assistant, Marshal	74G
Senior Systems Aide, M.C., NCS	62J
Senior Telecommunications Systems, Engineer, M.C., NCS	N4 87H
Sergeant, Marshal	84K
Staff Assistant, Marshal	64J
Staff Assistant, Muni Ct	58H
Staff Assistant, M.C., NCS	58H
Staff Attorney I, Planning and Research	N3 75F
Staff Attorney II, Planning and Research	NW 86K
Staff Attorney III, Planning and Research	NW 95K
Staff Development Specialist, Muni Ct	72F
Staff Development Specialist, M.C., NCS	72F
Statistical Analyst, M.C.	61A
Statistical Analyst, M.C., NCS	61A
Stenographer, M.C.	N3-Z 58C

Stenographer, M.C., NCS	N3-Z 58C
Supervising Accountant, M.C., NCS	80L
Supervising Branch Clerk	NX 70L
Supervising Computer Operator, M.C.	64D
Supervising Computer Operator, M.C., NCS	64D
Supervising Deputy Clerk I, M.C.	58L
Supervising Deputy Clerk II, M.C.	NX 68B
Supervising Law Clerk	75F
Supervising Law Clerk, M.C., NCS	75F
Supervising Payroll Clerk, Marshal	60C
Supervising Payroll Technician, M.C., NCS	66E
Supply and Reproduction Assistant, Marshal	51C
Supply and Reproduction Supervisor, Marshal	57C
Systems Aide, M.C., NCS	56J
Systems Programmer, M.C.	77F
Systems Programmer, M.C., NCS	77F
Telecommunications Technician, M.C.	65H
Telecommunications Technician, M.C., NCS	65H
Training Officer, NCS, M.C.	N23 R7
Warehouse Manager, M.C.	65E
Warehouse Manager, M.C., NCS	65E
Warehouse Worker I, Marshal	53J
Warehouse Worker I, M.C., NCS	53J
Warehouse Worker II, M.C.	57J
Warehouse Worker II, M.C., NCS	57J
Warehouse Worker Aide, M.C., NCS	51J

The term "schedule" as used in this section refers to the salary schedule of the Los Angeles County Code. The term "range" as used in this section refers to the Performance-Based Pay Plan of Los Angeles County.

SEC. 6. Section 72627.5 of the Government Code is amended to read:

72627.5. (a) The chief staff attorney, planning and research, municipal courts, may appoint:

(1) Two assistant chief staff attorneys, planning and research.

(2) One staff attorney III, planning and research.

(3) Four staff attorneys II, planning and research.

(4) One staff attorney I, planning and research.

(5) One senior programmer analyst, M.C.

(6) One principal budget analyst, planning and research.

(7) One staff assistant, M.C.

(8) One senior secretary III, municipal courts, who shall receive a monthly salary at the rate specified for senior judicial secretary.

(9) One senior secretary II, municipal courts.

(10) One stenographer, municipal courts.

(11) Fifteen legal research assistants, planning and research.

(12) Three planning analyst aides, planning and research.

(13) Two planning analysts, planning and research.

(14) Two senior planning analysts, planning and research.
(15) One data systems analyst I, municipal courts.
(16) One data systems analyst II, municipal courts.
(17) One head of management services, planning and research.
(18) Three principal program analysts.
(19) One law clerk.

(b) The positions appointed pursuant to this section shall not be deemed civil service positions. Each person appointed to these positions shall serve at the pleasure of the chief staff attorney.

SEC. 7. Section 72646 of the Government Code is amended to read:

72646. The marshal shall appoint:

(a) One head, fiscal and administrative services, marshal.
(b) One senior staff assistant, marshal.
(c) One executive secretary, marshal. Appointment to this position shall be at step 3 of the schedule.
(d) Four staff assistants, marshal.
(e) Three management secretaries, marshal.
(f) One principal clerk.
(g) One supply and reproduction supervisor, marshal.
(h) Four senior secretaries, marshal.
(i) Nine administrative clerks.
(j) One supervising payroll clerk, marshal.
(k) One supply and reproduction assistant, marshal.
(*l*) Sixty deputy clerks, grade III.
(m) Three secretaries, marshal.
(n) Fifty-two deputy clerks, grade II.
(o) Eight deputy clerks, grade I.
(p) Deputies who shall be keepers, that may be reasonably required pursuant to law, at the fee allowed by law for keeping property.
(q) Five marshal's dispatchers I.
(r) One safety officer, marshal.
(s) One head personnel technician, marshal.
(t) One assistant head, fiscal and administrative services, marshal.
(u) One personnel technician, marshal.
(v) One senior payroll clerk, marshal.
(w) Four payroll clerks, marshal.
(x) One light vehicle driver, marshal.
(y) Five marshal's dispatchers II.
(z) Five personnel assistants, marshal.
(aa) One hundred thirty-six security officers I, marshal.
(bb) Seventy-five security officers II, marshal.
(cc) Three senior personnel assistants, marshal.
(dd) One principal assistant, fiscal services, marshal.
(ee) One warehouse worker I, marshal.

SEC. 8. Section 72703 of the Government Code is amended to read:

72703. The clerk may appoint:

(a) One chief, systems division; and 11 division chiefs, operations.
(b) Eighteen senior court managers, and one assistant chief, systems division.
(c) Nine principal administrative assistants, municipal court.
(d) One personnel administrator, municipal court.
(e) Four personnel technicians, municipal court.
(f) Six personnel assistants, municipal court.
(g) Fifteen senior administrative assistants, municipal court.
(h) Five administrative assistants, municipal court.
(i) Three accounting technicians, municipal court.
(j) Seven staff assistants, municipal court.
(k) Five accountants, municipal court.
(*l*) Seven intermediate accountants, municipal court.
(m) Four senior accountants, municipal court.
(n) Sixteen account clerks, municipal court.
(o) One assistant capital projects manager, municipal court.
(p) One capital projects manager, municipal court.
(q) One court information officer, municipal court.
(r) Three head personnel technicians, municipal court.
(s) One judicial management intern, municipal court.
(t) One managing court reporter, municipal court.
(u) One personnel clerk, municipal court.
(v) One principal personnel assistant, municipal court.
(w) Three senior personnel assistants, municipal court.
(x) One procurement assistant II, municipal court.
(y) One supervising accountant, municipal court.
(z) One warehouse manager, municipal court.
(aa) Four warehouse workers II, municipal court.
(bb) Three warehouse worker aides, municipal court.
(cc) Forty court managers, municipal court.
(dd) Two graphic artists, municipal court.
(ee) One assistant payroll technician, municipal court.
(ff) One payroll technician, municipal court.
(gg) One supervising payroll technician, municipal court.
(hh) One warehouse worker I, municipal court.
(ii) One procurement assistant I, municipal court.
(jj) One data systems analyst aide, municipal court.
(kk) One EDP support analyst II, municipal court.
(*ll*) One administrative services manager, M.C., NCS.
(mm) One senior systems aide, municipal court.
(nn) One systems aide, municipal court.
(oo) One management secretary II, municipal court.
(pp) One management services specialist, municipal court.
(qq) One office services assistant I, M.C., NCS.
(rr) One office services assistant II, M.C., NCS.
(ss) One office services assistant III, M.C., NCS.

SEC. 9. Section 72704 of the Government Code is amended to read:

72704. The clerk may also appoint:

(a) One hundred fifty-seven deputy clerks IV, plus one additional deputy clerk IV for each judge in excess of 88 and each commissioner or traffic referee in excess of 22 to which the court is or may become entitled by law.
(b) One secretary to the presiding judge.
(c) One executive secretary, Los Angeles Municipal Court.
(d) One senior management secretary, municipal court.
(e) Fourteen senior judicial secretaries who shall receive a monthly salary at the same rate specified for the superior court class of senior judicial secretary. Appointments to the positions shall be at step 3 of the schedule.
(f) One hundred five deputy clerks III.
(g) Three hundred fifty-two deputy municipal court clerks II.
(h) Eleven senior secretaries II, municipal court.
(i) Six secretaries, municipal court.
(j) Four management secretaries, municipal court.
(k) Three facilities services assistants, municipal court.
(*l*) Two procurement aides, municipal court.
(m) One facilities planning assistant, municipal court.
(n) One statistical analyst.
(o) Three staff development specialists, municipal court.
(p) One municipal court clerk trainee.
(q) Five clerical aides.
(r) Forty-one deputy clerk supervisors.
(s) One general maintenance supervisor, municipal court.
(t) Two general maintenance workers, municipal court.
(u) One court clerk, municipal court.
(v) One municipal court judicial assistant.
(w) One municipal court judicial assistant trainee.

SEC. 9.3. Section 72704.5 of the Government Code is amended to read:

72704.5. The clerk may also appoint:
(a) One computer operations supervisor, municipal court.
(b) One data conversion supervisor I, municipal court.
(c) Two senior data conversion equipment operators.
(d) Twenty-four data systems analysts II, municipal court.
(e) Three data systems analysts I, municipal court.
(f) Two supervising computer operators, municipal court.
(g) Four computer systems operators, municipal court.
(h) Two computer equipment operators, municipal court.
(i) Two senior data control clerks, municipal court.
(j) Six data control clerks, municipal court.
(k) Twelve data systems coordinators, municipal court.
(*l*) Five senior program and systems analysts.
(m) One principal programmer analyst.
(n) Nine senior programmer analysts, municipal court.
(o) One systems programmer, municipal court.
(p) Two telecommunications technicians.
(q) One senior telecommunications systems engineer, municipal

court.

(r) Two data processing specialists I, municipal court.

(s) One EDP staff aide, municipal court.

SEC. 9.5. Section 72763 of the Government Code is amended to read:

72763. In the Antelope Municipal Court District, the officers and the attachés shall be appointed, as follows:

(a) There is one court administrator who shall be the clerk appointed by the judges of that court.

(b) The clerk may appoint:

(1) Nine deputy municipal court clerks I.

(2) Eleven deputy municipal court clerks II.

(3) Nine deputy clerks III, M.C.

(4) Seven deputy clerks IV, M.C.

(5) One accountant, M.C.

(6) Two student workers.

(7) Two supervising deputy clerks II, M.C.

(8) One student professional worker.

(9) One assistant court administrator who shall receive a monthly salary eight schedules less than the schedule specified for the court administrator of that court.

SEC. 10. Section 72764 of the Government Code is amended to read:

72764. In the Beverly Hills Municipal Court District, the officers and attachés shall be appointed as follows:

(a) There is one court administrator who shall be the clerk appointed by the judges of the court and who shall hold office at the pleasure of the judges of that court.

(b) The clerk may appoint:

(1) Seven deputy municipal court clerks I.

(2) Eleven deputy municipal court clerks II.

(3) Four deputy clerks III, M.C.

(4) Six deputy clerks IV, M.C.

(5) One student worker.

(6) One administrative assistant, M.C.

(7) One data systems analyst I, M.C.

(8) One management secretary, M.C.

(9) Three student professional workers.

(10) One chief deputy clerk.

(11) One assistant court administrator who shall receive a monthly salary eight schedules less than the schedule specified for the court administrator of that court.

SEC. 11. Section 72766 of the Government Code is amended to read:

72766. In the Citrus Municipal Court District, the officers and attachés shall be appointed, as follows:

(a) There is one court administrator who shall be the clerk appointed by the judges of the court and who shall hold office at the pleasure of the judges of that court.

(b) The clerk may appoint:
(1) Eighteen deputy municipal court clerks I.
(2) Fifteen deputy municipal court clerks II.
(3) Nine deputy clerks III, M.C.
(4) Thirteen deputy clerks IV, M.C.
(5) One senior secretary III, Muni Ct.
(6) Twelve student workers.
(7) Four supervising deputy clerks I, M.C.
(8) Three supervising deputy clerks II, M.C.
(9) Four assistant chief deputy clerks, M.C.
(10) One senior administrative assistant, M.C.
(11) Two student professional workers.
(12) One assistant court administrator who shall receive a monthly salary eight schedules less than the schedule specified for the court administrator of that court.

SEC. 11.5. Section 72767 of the Government Code is amended to read:

72767. In the Compton Municipal Court District, the officers and attachés shall be appointed, as follows:

(a) There is one court administrator who shall be the clerk appointed by the judges of the court and who shall hold office at the pleasure of the judges of that court.

(b) The clerk may appoint:
(1) Thirty-two deputy municipal court clerks I.
(2) Thirty-two deputy municipal court clerks II.
(3) Twenty-two deputy clerks III, M.C.
(4) Fifteen deputy clerks IV, M.C.
(5) One senior administrative assistant, M.C.
(6) Six assistant chief deputy clerks, M.C.
(7) One data systems analyst II, M.C.
(8) One head personnel technician, M.C., NCS.
(9) One senior judicial secretary, Muni Ct.
(10) One senior secretary III, Muni Ct.
(11) One student professional worker.
(12) Four student workers.
(13) Five supervising deputy clerks I, M.C.
(14) Five supervising deputy clerks II, M.C.
(15) Two data systems analysts I, M.C.
(16) Five division chiefs, M.C., NCS.
(17) One personnel assistant, M.C.
(18) One staff assistant, Muni Ct.
(19) One assistant court administrator who shall receive a monthly salary eight schedules less than the schedule specified for the court administrator of that court and who shall serve at the pleasure of the court administrator.

SEC. 12. Section 72770 of the Government Code is amended to read:

72770. In the East Los Angeles Municipal Court District, the officers and attachés shall be appointed, as follows:

(a) There is one court administrator who shall be the clerk appointed by the judges of the court and who shall hold office at the pleasure of the judges of that court.

(b) The clerk may appoint:

(1) Nine deputy municipal court clerks I.

(2) Twelve deputy municipal court clerks II.

(3) Nine deputy clerks III, M.C.

(4) Twelve deputy clerks IV, M.C.

(5) Six student workers.

(6) One assistant court administrator who shall receive a monthly salary eight schedules less than the schedule specified for the court administrator of the court.

SEC. 13. Section 72771 of the Government Code is amended to read:

72771. In the Glendale Municipal Court District, the officers and attachés shall be appointed, as follows:

(a) There is one court administrator who shall be the clerk appointed by the judges of the court and who shall hold office at the pleasure of the judges of that court.

(b) The clerk may appoint:

(1) Fifteen deputy municipal court clerks II.

(2) Five deputy clerks III, M.C.

(3) Seven deputy clerks IV, M.C.

(4) One principal administrative assistant, M.C.

(5) One senior secretary II, Muni Ct.

(6) Two supervising deputy clerks I, M.C.

(7) Two supervising deputy clerks II, M.C.

(8) Three student workers.

(9) One assistant court administrator who shall receive a monthly salary eight schedules less than the schedule specified for the court administrator of that court.

SEC. 14. Section 72771.1 is added to the Government Code, to read:

72771.1. Notwithstanding Section 72604, in the Glendale Municipal Court District, official reporters shall be appointed as follows:

(a) The judges may appoint as many phonographic reporters, not exceeding five, as the business of the court may require. The reporters shall be known as official reporters and shall serve at the pleasure of the judges of the court.

(b) In lieu of any other compensation provided by law for his or her services in reporting testimony and proceedings in the court, each official reporter shall receive the same monthly salary and benefits received by official reporters of the Los Angeles Municipal Court District, pursuant to Section 72709. Fees for transcription shall be as provided in Article 9 (commencing with Section 69941) of Chapter 5.

SEC. 15. Section 72777 of the Government Code is amended to read:

72777. In the Pasadena Municipal Court District, the officers and attachés shall be appointed, as follows:

(a) There is one court administrator who shall be the clerk appointed by the judges of the court and who shall hold office at the pleasure of the judges of that court.

(b) The clerk may appoint:

(1) Twelve deputy municipal court clerks I.

(2) Ten deputy municipal court clerks II.

(3) Seven deputy clerks III, M.C.

(4) Eight deputy clerks IV, M.C.

(5) Four student workers.

(6) One student professional worker.

(7) One secretary, Muni.Ct.

(8) One administrative assistant, M.C.

(9) One principal clerk, Los Angeles.

(10) One assistant court administrator who shall receive a monthly salary eight schedules less than the schedule specified for the court administrator of that court.

SEC. 16. Section 72778 of the Government Code is amended to read:

72778. In the Pomona Municipal Court District, the officers and attachés shall be appointed, as follows:

(a) There is one court administrator who shall be the clerk appointed by the judges of the court and who shall hold office at the pleasure of the judges of that court.

(b) The clerk may appoint:

(1) Ten deputy municipal court clerks I.

(2) Eleven deputy municipal court clerks II.

(3) Ten deputy clerks III, M.C.

(4) Nine deputy clerks IV, M.C.

(5) One student professional worker.

(6) Four student workers.

(7) One assistant chief deputy clerk, M.C.

(8) One staff assistant, Muni Ct.

(9) One assistant court administrator who shall receive a monthly salary eight schedules less than the schedule specified for the court administrator of that court.

SEC. 17. Section 72778.1 is added to the Government Code, to read:

72778.1. Notwithstanding Section 72604, in the Pomona Municipal Court District, official reporters shall be appointed as follows:

(a) The judges may appoint as many phonographic reporters, not exceeding five, as the business of the court may require. The reporters shall be known as official reporters and shall serve at the pleasure of the judges of the court.

(b) In lieu of any other compensation provided by law for his or her services in reporting testimony and proceedings in the court, each official reporter shall receive the same monthly salary and

benefits received by official reporters of the Los Angeles Municipal Court District, pursuant to Section 72709. Fees for transcription shall be as provided in Article 9 (commencing with Section 69941) of Chapter 5.

SEC. 18. Section 72779 of the Government Code is amended to read:

72779. In the Rio Hondo Municipal Court District, the officers and attachés shall be appointed, as follows:

(a) There is one court administrator who shall be the clerk appointed by the judges of the court and who shall hold office at the pleasure of the judges of that court.

(b) The clerk may appoint:

(1) Eleven deputy municipal court clerks I.

(2) Ten deputy municipal court clerks II.

(3) Seven deputy clerks III, M.C.

(4) Five deputy clerks IV, M.C.

(5) Three supervising deputy clerks I, M.C.

(6) Three supervising deputy clerks II, M.C.

(7) One student professional worker.

(8) Four student workers.

(9) One assistant court administrator who shall receive a monthly salary eight schedules less than the schedule specified for the court administrator of that court.

SEC. 19. Section 72780 of the Government Code is amended to read:

72780. In the Santa Anita Municipal Court District, the officers and attachés shall be appointed, as follows:

(a) There is one court administrator who shall be the clerk appointed by the judges of the court and who shall hold office at the pleasure of the judges of that court.

(b) The clerk may appoint:

(1) Four deputy municipal court clerks I.

(2) Eight deputy municipal court clerks II.

(3) Two deputy clerks III, M.C.

(4) Five deputy clerks IV, M.C.

(5) Two senior administrative assistants, M.C.

(6) One student professional worker.

(7) Two student workers.

(8) One assistant court administrator who shall receive a monthly salary eight schedules less than the schedule specified for the court administrator of that court.

SEC. 20. Section 72782 of the Government Code is amended to read:

72782. In the South Bay Municipal Court District, the officers and attachés shall be appointed, as follows:

(a) There is one court administrator who shall be the clerk appointed by the judges of the court and who shall hold office at the pleasure of the judges of that court.

(b) The court administrator may appoint:

(1) Seventeen deputy municipal court clerks I.
(2) Seventeen deputy municipal court clerks II.
(3) Eighteen deputy clerks III, M.C.
(4) Fourteen deputy clerks IV, M.C.
(5) One deputy clerk, accountant, M.C.
(6) One deputy clerk, administrative assistant, M.C.
(7) Four assistant chief deputy clerks, M.C.
(8) One deputy clerk, data systems analyst I, M.C.
(9) One deputy clerk, personnel assistant, M.C.
(10) One deputy clerk, senior judicial secretary, Muni Ct.
(11) One deputy clerk, senior secretary III, Muni Ct.
(12) Six student workers.
(13) One general maintenance worker, M.C., NCS.
(14) Five supervising deputy clerks I, M.C.
(15) One student professional worker.
(16) One deputy clerk, assistant court administrator, who shall receive a monthly salary eight schedules less than the schedule specified for the court administrator of that court.

SEC. 21. Section 72784 of the Government Code is amended to read:

72784. In the Whittier Municipal Court District, the officers and attachés shall be appointed, as follows:

(a) There is one court administrator who shall be the clerk appointed by the judges of the court and who shall hold office at the pleasure of the judges of that court.

(b) The clerk may appoint:
(1) Nine deputy municipal court clerks I.
(2) Eleven deputy municipal court clerks II.
(3) Eight deputy clerks III, M.C.
(4) Seven deputy clerks IV, M.C.
(5) One principal administrative assistant, M.C.
(6) One student professional worker.
(7) Six student workers.
(8) One supervising deputy clerk I, M.C.
(9) One supervising deputy clerk II, M.C.
(10) One assistant court administrator who shall receive a monthly salary eight schedules less than the schedule specified for the court administrator of that court.

SEC. 21.5. Section 73084.1 of the Government Code is amended to read:

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

(a) One chief deputy clerk.
(b) Two deputy clerks, municipal courtroom clerk.
(c) Three deputy clerks, division chiefs.
(d) Three deputy clerks, senior municipal court clerk.
(e) Eight deputy clerks, municipal court clerk.
(f) One deputy clerk, clerk II.

(g) One deputy clerk, supervising accountant I.
(h) One deputy clerk, secretary II.
Not more than one such deputy clerk may be assigned as court interpreter at the additional percentage compensation provided for county employees required to possess bilingual capabilities.

SEC. 22. Section 73084.2 of the Government Code is amended to read:

73084.2. The clerk and administrative officer of the municipal court for the Berkeley-Albany Judicial District may appoint the following deputy clerks:
(a) One chief deputy clerk.
(b) Three deputy clerks, division chief.
(c) One deputy clerk, financing hearing officer.
(d) Five deputy clerks, municipal courtroom clerk.
(e) Six deputy clerks, senior municipal court clerk.
(f) Eight deputy clerks, municipal court clerk.
(g) Three deputy clerks, clerk II.
(h) One deputy clerk, secretary II.
(i) One deputy clerk, supervising accountant I.
(j) One deputy clerk, account clerk II.
(k) One deputy clerk, account clerk I.
(*l*) Four deputy clerks, data input clerk.
(m) One deputy clerk, court attendant.
Not more than three such deputy clerks may be assigned as court interpreter at the additional percentage compensation provided for county employees required to possess bilingual capabilities.

SEC. 23. Section 73084.3 of the Government Code is amended to read:

73084.3. The clerk and administrative officer of the municipal court for the Oakland-Piedmont-Emeryville Judicial District may appoint the following deputy clerks:
(a) One chief deputy clerk.
(b) Three deputy clerks, division chiefs. The clerk and administrative officer may transfer the division chiefs from one division to another regardless of any resulting change in salary as set forth in subdivision (a) of Section 73086.
(c) Four deputy clerks, assistant division chiefs.
(d) One deputy clerk, calendar coordinator.
(e) Six deputy clerks, supervising municipal court clerk II.
(f) Nineteen deputy clerks, municipal courtroom clerk.
(g) Six deputy clerks, supervising municipal court clerk I.
(h) Eight deputy clerks, senior municipal court clerk.
(i) Sixty-two deputy clerks, municipal court clerk.
(j) Twelve clerks, clerk II.
(k) One deputy clerk, supervising secretary II.
(*l*) Three deputy clerks, secretary II.
(m) Ten deputy clerks, data input clerk.
(n) One deputy clerk, information systems analyst.
(o) One deputy clerk, management specialist.

(p) Two deputy clerks, financial hearing officers.
(q) One deputy clerk, systems analyst.
(r) Twelve court reporters.
(s) One deputy clerk, court training officer.

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

SEC. 24. Section 73084.4 of the Government Code is amended to read:

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

(a) One assistant clerk and court administrator.
(b) Five deputy clerks, division chiefs. The clerk and court administrator may transfer the division chiefs from one division to another regardless of any resulting change in salary as set forth in Section 73086.
(c) Nine deputy clerks, municipal courtroom clerk.
(d) Five deputy clerks, supervising municipal court clerk I.
(e) Four deputy clerks, senior municipal court clerk.
(f) Thirty-eight deputy clerks, municipal court clerk.
(g) One deputy clerk, supply clerk II.
(h) One deputy clerk, supervising secretary II.
(i) One deputy clerk, secretary II.
(j) One deputy clerk, supervising accountant I.
(k) One deputy clerk, court attendant.
(*l*) Two deputy clerk, financial hearing officer.

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

SEC. 25. Section 73084.5 of the Government Code is amended to read:

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

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

(o) One deputy clerk, supervising municipal court clerk II.

(p) One deputy clerk, court attendant.

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

SEC. 26. Section 73086 of the Government Code is amended to read:

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

	Ordinance Class No.
Oakland-Piedmont-Emeryville Judicial District, criminal	1680M
Oakland-Piedmont-Emeryville Judicial District, civil	1681M
Oakland-Piedmont-Emeryville Judicial District, traffic	1682M
Berkeley-Albany Judicial District, division chief	1683M
San Leandro-Hayward Judicial District, division chief	1684M
Fremont-Newark-Union City Judicial District, division chief	1685M

SEC. 27. Section 73089 of the Government Code is amended to read:

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

If the board of supervisors provides by ordinance or resolution for any increase in the number or rate of compensation of any municipal court personnel pursuant to this section, such increase shall be effective only until January 1, 1996, and shall be effective at the same time and in the same manner as such increases for Alameda County employees generally.

SEC. 28. Section 73096 of the Government Code is amended to read:

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

(a) Two hundred seven dollars and sixty-three cents ($207.63) a day for the days they actually are on duty under order of the court.

(b) A minimum payment of one hundred three dollars and eighty-two cents ($103.82) for serving four hours or less a day.

(c) Regular official court reporters shall receive a salary, vacation leave, and sick leave, in the same amounts as the official reporters of the Superior Court in Alameda County as set forth in Alameda County Salary Ordinance for item number classification 1625.

Rates of compensation of regular official reporters and official reporters pro tempore may be adjusted by joint action and approval of the board of supervisors and a majority of the judges of the court, provided, however, that any changes in compensation which are made pursuant to this section shall be on an interim basis and shall remain in effect only until January 1, 1996, unless ratified by statute by the Legislature prior to that date.

SEC. 29. Section 73346 of the Government Code is amended to read:

73346. (a) Fees for transcription of testimony and proceedings in the court shall be paid by the litigants to official reporters and 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 fund including fees for transcription of testimony and proceedings in criminal cases as provided in Sections 69947 to 69953, inclusive, which shall be paid from the county treasury.

(b) In addition to any fee otherwise required in civil trials that last longer than one judicial day, a fee of one hundred dollars ($100) shall be charged per half-day of service to the parties, on a pro rata basis, for the services of an official reporter on the second and each succeeding day those services are required.

(c) In addition to any fee otherwise required, in civil cases in which the court orders a daily transcript necessitating the services of two phonographic 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.

(d) All parties shall deposit their pro rata share of such fees with a clerk at the beginning of the second and each succeeding day's court session.

(e) For purposes of this section, "one-half day" means any period of judicial time during either the morning or afternoon court session.

(f) The fees shall be taxed as costs in favor of any party paying the fees and to whom costs are awarded by the judgment of the court. The fee is not subject to Section 6103.

SEC. 30. Section 73348 of the Government Code is amended to read:

73348. (a) In Contra Costa County, the annual salary of each regular official reporter shall be based on a four-step salary plan with

one-year increments. Effective October 1, 1992, the four salary steps are as follows:

Step 1. Forty-six thousand one hundred sixty-four dollars ($46,164).

Step 2. Forty-eight thousand four hundred sixty-eight dollars ($48,468).

Step 3. Fifty thousand eight hundred ninety-two dollars ($50,892).

Step 4. Fifty-three thousand four hundred thirty-six dollars ($53,436).

The step of entry to the above schedule shall be Step 1. However, the judges of the court may appoint a court reporter to a duly allocated exempt position at a higher step if, in the opinion of the appointing judge, an individual to be appointed has the experience and qualifications to entitle that individual to the higher initial step, and if the higher initial salary has the approval of the presiding judge of the court and the board of supervisors, but in no case may the initial salary be above the third step of the salary range. Except as provided below, official reporters shall advance to the next higher step on the salary plan annually. The compensation of each official reporter pro tempore shall be an amount which is equivalent to 1.05 times the daily wage of the fourth step in the salary range for full-time official reporters in Contra Costa County for each day the reporter actually is on duty under order of the court which per diem rate shall apply when an official reporter is appointed pursuant to Section 869 of the Penal Code.

Irrespective of the step of the salary range to which initially appointed, an official court reporter shall be eligible for advancement to the next higher step in the salary range after six months' service, and thereafter shall advance on the salary range based on annual reviews.

(b) During the hours which the court is open for the transaction of judicial business, the regular official reporter shall perform the duties required by law. When not engaged in the performance of any other duty imposed upon him or her by law, he or she shall render stenographic or clerical assistance to the judge of the court to which he or she is assigned as the judge may direct.

(c) The board of supervisors shall adjust the salary of regular official reporters as part of its regular review of county employee compensation. The adjustment shall be to that salary level closest to the average percentage adjustment in basic salaries of the county classes of superior court clerk, legal clerk, secretary, and clerk (experienced level). The reporter salary adjustment shall be effective on the same day as the effective date of the board's action as to all of the aforesaid county classifications, but for official reporters of each municipal court district shall be effective only until January 1 of the second year following the calendar year in which the adjustment is made. The compensation of each official reporter pro tempore shall remain at the rate specified in subdivision (a) for the days he or she actually is on duty until changed by the board of

supervisors at the same time and on the same basis as regular official reporters.

SEC. 31. Section 73351 of the Government Code is amended to read:

73351. There are the following classes of positions into which each of the positions of the municipal courts shall be assigned as prescribed in the section pertaining to each court:

(a) Deputy clerk-beginning level, which shall include all municipal court employments assigned routine clerical tasks under continuous immediate supervision.

(b) Deputy clerk-data entry operator I, which shall include all municipal court employments at the entry level assigned to operate data entry devices for the purpose of entering and verifying a wide variety of data from coded or uncoded source documents.

(c) Deputy clerk-experienced level, which shall include all municipal court employments assigned clerical tasks requiring exercise of discretion as to methods and priorities and for which supervision is available on a periodic basis only.

(d) Deputy clerk-data entry operator II, which shall include all municipal court employments at the experienced working level assigned to operate data entry devices for the purpose of entering and verifying a wide variety of data from coded or uncoded source documents.

(e) Deputy clerk-senior level, which shall include all municipal court employments assigned complex clerical work involving responsibility for the establishment, maintenance, calendaring, issuance of process, and updating of case records using manual and automated systems.

(f) Deputy clerk-specialist level, which shall include all municipal court employments assigned clerical duties of a complex administrative nature, requiring exercise of initiative and discretion in work organization, methods, and priorities and which may include lead direction of a work section.

(g) Deputy clerk-courtroom clerk, which shall include all municipal court employments assigned clerical duties involving responsibility for keeping the minutes of court proceedings and the processing and maintenance of a variety of documents and records.

(h) Deputy clerk-division supervisor, which shall include all municipal court employments assigned responsibility for planning, organizing, and directing the clerical activities of a division or branch office in a municipal court including the supervision of clerical staff.

(i) Court operations coordinator, which shall include implementation of the calendar management and trial court delay reduction program, as directed by the judges, supervisory and management duties associated with the calendar management and trial court delay reduction program, and being responsible for court operations in the absence of the district court manager. Chief deputy clerks holding the position on January 1, 1989, shall be retitled court operations coordinator-A.

(j) District court manager, which shall include any municipal court position charged with the overall responsibility for managing and supervising court clerical operations including courtroom duties. Clerk-administrators holding such position on January 1, 1989, shall be retitled district court manager A or B (Schedule A in a court with five to seven judges, inclusive; Schedule B in a court with two to four judges, inclusive). Whenever the single district court manager A position vacates, the salary shall be downgraded to that currently paid to district court manager B. Whenever a district court manager B position vacates, the salary shall be downgraded to that currently paid to district court manager C (in a court with two to four judges, inclusive).

(k) Court probation officer, which shall include all municipal court employments assigned to exercise the same powers and duties of deputy probation officers with respect to the business of the court.

(*l*) Court commissioner, which shall include all municipal court employments who exercise the same powers and duties of judges of the court with respect to traffic and small claims matters.

(m) Executive secretary, which shall be assigned to serve as the confidential secretary to the county municipal court administrator.

(n) Deputy clerk-senior data entry operator, which shall include all municipal court employments assigned to complex data entry activities of a varied nature. Positions of this class may assign and review the work of several deputy clerks-data entry operator I or II.

(o) County municipal court administrator, which shall be responsible for the overall administration of all municipal court judicial districts in the county.

(p) Assistant county municipal court administrator, which shall be responsible for assisting in the overall administration of all municipal court judicial districts in the county and may act for the county municipal court administrator in his or her absence.

(q) Municipal court systems manager, which shall be responsible for managing the development, implementation, and enhancement of court systems.

(r) Municipal court fiscal officer, which shall be responsible for planning, reviewing, and coordinating fiscal and accounting activities of the county's municipal courts.

(s) Municipal court training officer, which shall be responsible for planning, reviewing, and coordinating training and educational activities of the county's municipal courts, and related work as required.

(t) Municipal court management analyst, which shall be responsible under general direction for planning, developing, and implementing projects and assignments for the county's municipal courts, and related work as required.

The board of supervisors may create a new class or classes by specifying the number of positions for each new class and the compensation therefor, provided that the new class or classes shall be effective only until January 1 of the second year following the

calendar year in which the classes are created.

SEC. 32. Section 73353 of the Government Code is repealed.

SEC. 33. Section 73353 is added to the Government Code, to read:

73353. Effective October 1, 1992, classes of positions provided in Section 73351 are allocated to the salary schedule as follows:

Class Title	Salary Schedule	Pay Level
Deputy Clerk-Beginning Level	C5-1219	1537-1868
Deputy Clerk-Experienced Level	C5-1390	1824-2217
Deputy Clerk-Senior Level	XB-1553	2044-2609
Deputy Clerk-Specialist Level	XC-1624	2194-2801
Deputy Clerk-DEO I	C5-1317	1695-2061
Deputy Clerk-DEO II	C5-1414	1868-2270
Deputy Clerk-Senior DEO	C5-1487	2009-2442
Deputy Clerk-Courtroom Clerk	C5-1785	2706-3290
Deputy Clerk-Division Supervisor	C5-1830	2831-3441
Court Operations Coordinator-B	C5-1986	3309-4022
Court Operations Coordinator-A	C5-2083	3646-4431
District Court Manager-A	C5-2382	4915-5975
District Court Manager-B	C5-2272	4404-5353
District Court Manager-C	C5-2132	3829-4654
Court Probation Officer	C5-1885	2991-3636
Executive Secretary	C3-1805	3044-3356
Municipal Court Training Officer	C5-2003	3365-4091
Municipal Court Management Analyst	C5-2077	3624-4405
Municipal Court Systems Manager	C5-2146	3882-4719
Municipal Court Fiscal Officer	C5-2114	3875-4710
Assistant County Municipal Court Administrator	C5-2389	4950-6017
County Municipal Court Administrator	C1-2543	7018 F

SEC. 33.2. Section 73354 of the Government Code is amended to read:

73354. Certain classifications in the municipal courts are deemed to be equivalent in job and salary level to certain classifications in the service of Contra Costa County and whenever the salary of a classification in the service of Contra Costa County is adjusted by the board of supervisors, the salary of the comparable classification in the municipal courts shall be adjusted a commensurate number of levels on the salary schedule. The adjustment shall be effective on the same day as the effective date of the action by the board of supervisors as it applies to the county classifications, but the adjustment shall be effective only until January 1 of the second year following the calendar year in which the adjustment is made.

(a) The individual court class and equivalent county class or relationship are as follows:

Court Class	Equivalent County Class
Deputy Clerk-Beginning	Clerk-Beginning
Deputy Clerk-Experienced	Clerk-Experienced
Deputy Clerk-Senior	Clerk-Senior
Deputy Clerk-Specialist	Clerk-Specialist
Deputy Clerk-DEO I	Data Entry Operator I
Deputy Clerk-DEO II	Data Entry Operator II
Deputy Clerk-Senior DEO	7.5% above Data Entry Operator II
Municipal Court Reporter	Superior Court Reporter
Deputy Clerk-Courtroom Clerk	17.8% above Clerk-Specialist

(b) The municipal court classes listed below are designated management classes and are eligible for all of the compensation and benefit considerations that the board of supervisors may extend to county management employees. Whenever the board of supervisors adopts a general salary adjustment for county management classes, the respective salary schedules of municipal court management classes shall be adjusted by an equivalent percentage amount. In no event shall the salary of Deputy Clerk-Division Supervisor be less than 2.5 percent above the salary of Deputy Clerk-Courtroom Clerk.

Management Positions:

Deputy Clerk-Division Supervisor
Court Operations Coordinator A
Court Operations Coordinator B
District Court Manager-A
District Court Manager-B
District Court Manager-C
Court Probation Officer
Executive Secretary
Municipal Court Training Officer
Municipal Court Management Analyst
Municipal Court Systems Manager
Municipal Court Fiscal Officer
Assistant County Municipal Court Administrator
County Municipal Court Administrator

(c) The class of court probation officer shall be allocated to a five-step salary schedule in 5 percent incremental steps with the top step equivalent to the top step of deputy probation officer III. Upon appointment, a new court probation officer shall be allocated to the first step of the salary schedule, except that an appointee with exceptionally high qualifications and experience may be appointed at a higher step with the board of supervisors' approval.

(d) The class of court commissioner shall be allocated to a

three-step salary schedule, in 5 percent incremental steps with the third step equivalent to 85 percent of the salary of a municipal court judge in the County of Contra Costa. Upon appointment, a new court commissioner shall be allocated to the first step of the schedule, except that an appointee with exceptionally high qualifications and experience may be appointed at a higher step with the board of supervisors' approval.

SEC. 33.4. Section 73357 is added to the Government Code, to read:

73357. Municipal court judicial districts in the County of Contra Costa may have no more than four court probation officers for all districts in total. County probation officers shall be appointed by a majority of the judges of the court, or by the presiding judge in a two-judge court, to which the court probation officer is appointed. These positions report directly to the judges of the district to which they are appointed. Within the jurisdiction of the court and under the direction of the judges, court probation officers shall exercise all of the powers and performs all of the duties of a deputy probation officer as prescribed by law.

SEC. 33.6. Section 73358 of the Government Code is amended to read:

73358. The total number of positions authorized for operation of municipal courts in Contra Costa County is as follows:

Class Title	Number of Positions
Deputy clerk-(deep class), including beginning, experienced, senior, and specialist levels	230
Deputy clerk-DEO I or II	26
Deputy clerk-senior DEO	4
Deputy clerk-courtroom clerk	18
Deputy clerk-division supervisor	15
Court operations coordinator A	2
Court operations coordinator B	2
District court manager-A	1
District court manager-B	2
District court manager-C	1
Court probation officer	4
Executive secretary	1
Municipal court training officer	1
Municipal court management analyst	1
Municipal court systems manager	1
Municipal court fiscal officer	1
Assistant county municipal court administrator	1
County municipal court administrator	1

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

73484. There shall be one marshal who shall receive the biweekly salary specified in range 65.80 as set forth in the biweekly salary schedule contained in Section 73486.

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

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

73485. The marshal may appoint:

(a) Three deputy marshals.

(b) One clerk-typist II.

(c) One senior deputy marshal.

SEC. 36. Section 73487 of the Government Code is amended to read:

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

Position	Range
(a) Deputy clerk I	49.10
(b) Deputy clerk II	51.10
(c) Deputy clerk III	52.60
(d) Municipal courtroom clerk	55.60
(e) Clerk/Administrator	61.60
(f) Clerk-typist II	49.10
(g) Deputy marshal	59.30
(h) Deputy clerk-administrator	56.80
(i) Senior deputy marshal	61.60

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

SEC. 37. Section 73489 of the Government Code is amended to read:

73489. Whenever the salary of a related class, or classes, of San Joaquin County employees is adjusted, the salary of the following classes may be adjusted by a percentage not to exceed the percentage of adjustment granted to the class, or classes, deemed by

the board of supervisors to be related:

(a) Deputy clerk I.
(b) Deputy clerk II.
(c) Deputy clerk III.
(d) Municipal courtroom clerk.
(e) Clerk/Administrator.
(f) Clerk-typist II.
(g) Deputy marshal.
(h) Senior deputy marshal.
(i) Deputy clerk administrator.

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

SEC. 38. Section 73562 of the Government Code is amended to read:

73562. There shall be 10 judges of the Monterey County Municipal Court District.

SEC. 39. Section 73565 of the Government Code is amended to read:

73565. The municipal court judges may, by a majority vote, appoint a municipal court administrator who shall be the clerk of the municipal court. The municipal court administrator shall serve at the pleasure of a majority of the judges. He or she shall receive a salary of five thousand two hundred twelve dollars ($5,212), provided, however, that the salary may be adjusted pursuant to Section 73568. He or she shall be the appointing authority for those positions listed in Section 73566.

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

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

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

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

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

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

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

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

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

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

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

SEC. 40. Section 73566 of the Government Code is amended to read:

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

Number	Classification	Monthly Salary
2	Assistant Municipal Court Clerk/ Administrator	$3,762
1	Administrative Services Officer	$2,960–$3,667
2	Municipal Court Division Manager	$2,523–$3,126
2	Municipal Court Calendar Coordinator	$2,227–$2,759
1	Supervising Departmental Data-Processing Coordinator	$2,151–$2,665
2	Accounting Technician	$1,995–$2,472
3	Senior Account Clerk	$1,718–$2,128
6	Account Clerk	$1,501–$1,860
7	Municipal Court Clerk Supervisor	$2,036–$2,522
20	Senior Municipal Court Clerk	$1,692–$2,097
38.5	Municipal Court Clerk II	$1,501–$1,860
13	Courtroom Clerk	$1,937–$2,399
5	Court Interpreter	$1,788–$2,215
2	Senior Secretary (Confidential)	$2,107–$2,611
1	Secretary	$1,753–$2,171
2	Senior Data Entry Operator	$1,667–$2,065

SEC. 41. Section 73567 of the Government Code is amended to read:

73567. Whenever reference to a salary other than that of commissioner is made in any section of this article, the schedule of salaries found in the salary and benefits resolution of the County of Monterey in effect on January 1, 1993, shall apply; provided, however, that adjustments to the salaries may be made pursuant to Section 73568.

SEC. 42. Section 73568 of the Government Code is amended to read:

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

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

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

Table of Positions

Court Classification	County Classification
Municipal Court Clerk/ Administrator	
Assistant Municipal Court Clerk/Administrator	
Administrative Services Officer	Administrative Services Officer
Municipal Court Division Manager	Administrative ServicesAssistant
Municipal Court Calendar Coordinator	Legal Process Clerk, plus 79 ranges
Supervising Departmental Data-Processing Coordinator	Supervising Departmental Data-Processing Coordinator
Accounting Technician	Accounting Technician
Senior Account Clerk	Senior Account Clerk
Account Clerk	Account Clerk
Municipal Court Clerk Supervisor	Legal Process Clerk, plus 61 ranges
Senior Municipal Court Clerk	Legal Process Clerk, plus 24 ranges
Municipal Court Clerk II	Legal Process Clerk
Courtroom Clerk	Courtroom Clerk
Court Interpreter	Legal Process Clerk, plus 35 ranges
Senior Secretary	Senior Secretary

(Confidential)	(Confidential)
Secretary	Secretary
Senior Data Entry Operator	Senior Data Entry Operator

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

Whenever reference is made to a number of salary ranges in any section of this article, that reference shall be to ranges listed in the salary and benefits resolution of the County of Monterey in effect January 1, 1993.

SEC. 43. Section 73601 of the Government Code is amended to read:

73601. (a) There is one court administrator for the municipal court, who shall be appointed by the board of supervisors with the concurrence of a majority of the judges of the municipal court of the county, and who shall hold office at the judges' pleasure. The court administrator shall receive a monthly salary in the range of three thousand four hundred eighty-seven dollars and twenty-seven cents ($3,487.27) to four thousand six hundred seventy-four dollars and eighty cents ($4,674.80).

(b) Notwithstanding subdivision (a) or any other provision of law, the board of supervisors may appoint or remove any other county officer as court administrator pursuant to the terms and conditions of an agreement approved by a majority of the judges of El Dorado County.

SEC. 44. Section 73602 of the Government Code is amended to read:

73602. The court administrator may, in accordance with the El Dorado County Personnel Rules, appoint the following employees, each of whom shall receive a monthly salary in the range specified:

Position	Salary Range
(a) Four supervising municipal court clerks	$1,866.80–$2,268.93
(b) Three senior municipal court clerks	$1,698.67–$2,064.40
(c) Twenty-four municipal court clerks I/II	$1,435.20–$1,925.73
(d) Executive secretary	$1,754.13–$2,133.73
(e) One F.T.E. administrative analyst I/II	$2,374.67–$3,177.20
(f) One-half F.T.E. data entry operator	$1,454.27–$1,768.00

SEC. 45. Section 73682 of the Government Code is amended to read:

73682. There shall be one municipal court administrator to be appointed by the judges of the court who shall be the clerk, administrator, and secretary of the court, and the provisions of

Section 71183 shall not apply. He or she shall hold office at the pleasure of the judges and shall receive a salary within Band "C" of the Fresno County Salary Resolution.

SEC. 46. Section 73683 of the Government Code is amended to read:

73683. (a) The clerk may appoint the following court personnel who shall receive a salary at the range indicated in the Fresno County Salary Resolution:

(1) One Administrative Services Assistant at salary within Band "H."

(2) One Administrative Secretary-Conf. at salary range 960.

(3) One Supervising Court Clerk at salary range 1124.

(4) Two Senior Court Clerks at salary range 1040.

(5) Seventeen Court Clerks II at salary range 943.

(6) Seventeen Court Clerks I at salary range 841.

(7) Two Court Monitors at salary range 841.

(8) Five Supervising Legal Process Clerks at salary range 1124.

(9) Six Senior Legal Process Clerks at salary range 1040.

(10) Ten Legal Process Clerks II at salary range 943.

(11) Ten Legal Process Clerks I at salary range 841.

(12) Thirty-eight Office Assistants III at salary range 652.

(13) Thirty-eight Office Assistants II at salary range 587.

(14) Thirty-eight Office Assistants I at salary range 482.

(15) One Municipal Court Interpreting Services Coordinator at salary range 971.

(16) Two Court Interpreters at salary range 883.

(17) One Secretary to the Municipal Courts III at salary range 823.

(18) One Secretary to the Municipal Courts II at salary range 708.

(19) One Secretary to the Municipal Courts I at salary range 643.

(20) One Assistant Municipal Court Administrator at salary within Band "F."

(21) Three Municipal Court Division Managers at salary within Band "G."

(22) One Research Attorney III at salary range 1808.

(23) One Research Attorney II at salary range 1503.

(24) One Research Attorney I at salary range 1174.

(25) One Systems and Procedures Analyst III at salary range 1403.

(26) One Systems and Procedures Analyst II at salary range 1211.

(27) One Systems and Procedures Analyst I at salary range 979.

(b) Salary ranges indicated in paragraphs (1) to (27), inclusive, of subdivision (a) are effective December 21, 1992.

(c) The clerk may appoint any combination of court clerks, legal process clerks, and office assistants described in paragraphs (3) to (14), inclusive, of subdivision (a) not to exceed a total of 76; may appoint any combination of secretaries described in paragraphs (17) to (19), inclusive, of subdivision (a) not to exceed a total of one; may appoint any combination of research attorneys described in paragraphs (22) to (24), inclusive, of subdivision (a) not to exceed a total of one; and may appoint any combination of systems and

procedures analysts described in paragraphs (25) to (27), inclusive, of subdivision (a) not to exceed a total of one.

(d) The clerk may appoint the following court personnel in the Clovis Branch who shall receive a salary at the range indicated in the Fresno County Salary Resolution:

(1) One Court Clerk II at salary range 943.
(2) One Court Clerk I at salary range 841.
(3) One Supervising Legal Process Clerk at salary range 1124.
(4) Five Legal Process Clerks II at salary range 943.
(5) Five Legal Process Clerks I at salary range 841.
(6) Five Office Assistants III at salary range 652.
(7) Five Office Assistants II at salary range 587.
(8) Five Office Assistants I at salary range 482.

(e) Salary ranges indicated in paragraphs (1) to (8), inclusive, of subdivision (d) are effective December 21, 1992.

The clerk may appoint any combination of Court Clerks described in paragraphs (1) and (2) of subdivision (d) not to exceed a total of one, and may appoint any combination of the specified number of personnel in each of paragraphs (4) to (8), inclusive, of subdivision (d) not to exceed a total of five.

SEC. 47. Section 73684 of the Government Code is amended to read:

73684. The biweekly salaries of the following classes of positions shall be in accordance with the following schedule:

Position	Range	1	2	3	4	5
Municipal Court Administrator	Band C	68825	–	–	–	89903
Assistant Municipal Court Administrator	Band F	39182	–	–	–	56738
Municipal Court Division Manager	Band G	32606	–	–	–	47355
Administrative Services Assistant	Band H	24148	–	–	–	38795
Administrative Secretary-Confidential	960	960	1008	1058	1111	1167
Systems and Procedures Analyst III	1403	1403	1473	1547	1624	1705
Systems and Procedures Analyst II	1211	1211	1272	1336	1403	1473
Systems and Procedures Analyst I	979	979	1028	1079	1133	1190
Research Attorney III	1808	1808	1898	1993	2093	2198
Research Attorney II	1503	1503	1578	1657	1740	1827
Research Attorney I	1174	1174	1233	1295	1360	1428

Municipal Court Interpreting Services Coordinator	971	971	1020	1071	1125	1181
Court Interpreter	883	883	927	973	1022	1073
Secretary to the Municipal Courts III	823	823	864	907	952	1000
Secretary to the Municipal Courts II	708	708	743	780	819	860
Secretary to the Municipal Courts I	643	643	675	709	744	781
Supervising Court Clerk	1124	–	–	–	1301	1366
Senior Court Clerk	1040	–	–	–	1204	1264
Court Clerk II	943	943	990	1040	1092	1147
Court Clerk I	841	841	883	927	973	1022
Court Monitor	841	841	883	927	973	1022
Supervising Legal Process Clerk	1124	–	–	–	1301	1366
Senior Legal Process Clerk	1040	–	–	–	1204	1264
Legal Process Clerk II	943	943	990	1040	1092	1147
Legal Process Clerk I	841	841	883	927	973	1022
Office Assistant III	652	652	685	719	755	793
Office Assistant II	587	587	616	647	679	713
Office Assistant I	482	482	506	531	558	586

Except as specifically provided in this article to the contrary, all benefits, privileges and other provisions affecting the employment of county employees shall apply to all officers and attachés of the municipal court.

SEC. 48. Section 73691 of the Government Code is amended to read:

73691. A majority of the judges may appoint 11 full-time court reporters to serve at the pleasure of the judges and to be paid an annual salary established according to the following salary schedule:

Step 1. $40,903
Step 2. $42,952
Step 3. $45,079
Step 4. $47,333

Reporters shall initially be placed at step 1 of the salary schedule except reporters may be placed at a higher step with the approval of the county administrative officer, and shall be advanced one step annually upon the anniversary date of that employment. If, because of recruitment difficulties, it is necessary to appoint a court reporter at a step of the salary schedule which is above the step at which any court reporters are currently employed, all court reporters below that step will move to the higher step at the discretion of the judges of the court. Each such reporter shall accrue and be entitled to receive sick leave benefits at the rate of 3.6924 hours of sick leave with pay for each pay period or major fraction thereof, served up to

an accumulative total of 156 working days. Each such reporter shall accrue and receive vacation at the same rate as judges of that court not to exceed 21 working days a year which may be accrued not to exceed 42 days to be taken at such time as the judge to which he or she has been assigned consents.

SEC. 48.5. Section 73692 of the Government Code is amended to read:

73692. Pursuant to Section 72194, the judges of the court may appoint as many additional reporters as the business of the court requires, who shall be known as official reporters pro tempore. They shall serve without salary but shall receive the fees provided by Sections 69947 to 69953, inclusive, except that in lieu of the per diem fees provided in the section for reporting testimony and proceedings the official reporters pro tempore shall be paid in accord with the following:

Each pro tempore reporter shall be paid one hundred fifty-seven dollars and thirty-two cents ($157.32) for a full day on duty under order of the court. For purposes of receiving the above compensation, one or more of the following shall apply:

(1) The court has indicated in advance that the pro tempore assignment is for a full day.

(2) The pro tempore reporter was on duty for more than four hours.

Each pro tempore reporter shall be paid ninety-four dollars and thirty-nine cents ($94.39) for one half day of duty under order of the court when (a) the court has indicated in advance that the pro tempore assignment is for a half day and the pro tempore reporter is on duty for four hours or less, generally exclusive of the noon recess; or (b) the court has indicated in advance that the pro tempore assignment is for a full day but the pro tempore reporter is on duty for four hours or less and consents to being released for the balance of the day.

Where a pro tempore reporter has agreed to a one-half day assignment, the courts shall make every practicable effort to assure that the pro tempore reporter shall not be on duty for longer than four hours, unless the pro tempore reporter agrees with the court to work beyond four hours. In the latter case, the full-day pro tempore rate of one hundred fifty-seven dollars and thirty-two cents ($157.32) shall apply.

Nothing herein shall be construed to limit the court's authority to in all instances pay a pro tempore reporter at the rate of one hundred fifty-seven dollars and thirty-two cents ($157.32) when, in the court's judgment, that rate is necessary to obtain pro tempore reporter services for the court.

The above payments shall upon order of the court be a charge against the general fund of the county.

SEC. 49. Section 73703 of the Government Code is repealed.

SEC. 50. Section 73705 of the Government Code is amended to read:

73705. The clerk may appoint:
(a) Two chief deputy clerks who shall be administrative officers.
(b) Thirteen deputy clerks II.
(c) Fourteen deputy clerks I.
(d) Two deputy clerk-administrators.

SEC. 51. Section 73706 of the Government Code is amended to read:

73706. There shall be one marshal who shall receive the biweekly salary specified in range 65.80 as set forth in the biweekly salary schedule contained in Section 73709. Whenever the salary of a related class, or classes, of San Joaquin County employees is adjusted, the salary of the marshal may be adjusted by a percentage not to exceed the percentage of the adjustment applicable to such related class or classes. Any adjustment shall be effective only until January 1 of the second year following the year in which the adjustment is made, unless ratified by the Legislature.

SEC. 52. Section 73710 of the Government Code is amended to read:

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

Position	Range
(a) Deputy clerk I	49.10
(b) Deputy clerk II	51.10
(c) Chief deputy clerk	61.10
(d) Clerk	53.75
(e) Senior deputy marshal	61.60
(f) Deputy marshal	59.30
(g) Deputy clerk administrator	56.80
(h) Specialist clerk	50.10

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

SEC. 53. Section 73713 of the Government Code is amended to read:

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

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

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

SEC. 54. Section 73715 of the Government Code is amended to read:

73715. Whenever any person occupying the position of specialist clerk in the office of the marshal performs the duties of a matron in that office, her salary shall be increased by a sum equivalent to 2½ percent of the salary otherwise payable during the period of the performance of such duties.

SEC. 55. Section 73717 of the Government Code is repealed.

SEC. 56. Section 73773 of the Government Code is repealed.

SEC. 57. Section 73773 is added to the Government Code, 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 officer I.
(3) One administrative services assistant II.
(4) One accountant II.
(5) Four supervising legal clerks.
(6) One judicial support clerk.
(7) Ten courtroom clerks.
(8) Three senior legal clerks.
(9) One senior accounting assistant.
(10) Thirteen legal clerks III.
(11) Twelve legal clerks II.
(12) Three accounting assistants.
(13) Twelve legal clerks I.
(14) One intermediate clerk typist.
(15) Such other employees as the board of supervisors may 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 in 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, 1993, 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; and

Persons employed in any of the authorized positions shall be paid the salary assigned to the following ranges as set forth in the biweekly salary schedule of the County of Marin.

Position	Salary
Assistant Clerk Administrative Officer	2,345
Administrative Services Officer I	1,504–1,819
Administrative Services Assistant II	1,381–1,670
Accountant II	1,302–1,568
Supervising Legal Clerk	1,214–1,458
Judicial Support Clerk	1,192–1,431
Courtroom Clerk	1,173–1,412
Senior Legal Clerk	1,038–1,247
Senior Accounting Assistant	1,002–1,198
Legal Clerk III	956–1,142
Legal Clerk II	861–1,028
Accounting Assistant	861–1,028
Legal Clerk I	792–948
Intermediate Clerk Typist	759–906

SEC. 58. Section 73793 of the Government Code is amended to read:

73793. There shall be one administrative officer of the court known as the municipal court clerk-administrator, who shall be appointed by a majority of the judges of the court. The court clerk-administrator shall receive a biweekly salary on range 68.4.

SEC. 59. Section 73794 of the Government Code is amended to read:

73794. There shall be two traffic trial commissioners who shall be appointed by a majority of the judges of the court, and who shall receive a biweekly salary equal to 75 percent of the salary of a municipal court judge.

For one traffic trial commissioner position, the Legislature declares that it and Merced County have jointly agreed that the difference in salary and benefit costs between a traffic referee position and a traffic trial commissioner position shall be funded by Merced County solely out of county funds.

The difference in salary and benefits costs shall not be counted in the calculation of trial court funding pursuant to Section 77202 and shall not be considered as a part of "court operations" for Merced County for purposes of Section 77003 and 77204.

SEC. 60. Section 73796 of the Government Code is amended to read:

73796. There shall be one marshal of the Merced County

Municipal Court. The marshal shall receive a salary on range 67.1.

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

SEC. 61. Section 73797 of the Government Code is amended to read:

73797. (a) The marshal may appoint:

(1) One assistant marshal on range 64.3.

(2) Two marshal's sergeants on range 61.2.

(3) Fifteen deputy marshals on range 57.9.

(4) Three civil assistants on range 50.7.

(5) One supervising civil assistant on range 53.8.

(b) The initial appointments to the positions of assistant marshal and deputy marshal shall be made from persons who have served as constables in a justice court in Merced County during the year of 1976. Such appointees shall become deputy marshals and receive the salary provided at the fifth step of the range designated for deputy marshal. The assistant marshal initially appointed shall receive the salary provided at the fifth step of the range designated for assistant marshal.

SEC. 62. Section 73798 of the Government Code is amended to read:

73798. The clerk-administrator may appoint:

(a) One assistant municipal court administrator on range 61.6.

(b) Four supervising municipal court clerks I on range 54.8.

(c) Twelve municipal court clerks II on range 50.7.

(d) Twenty-eight municipal court clerks I on range 48.2.

(e) One supervising account clerk I on range 51.8.

(f) Six account clerks I on range 47.2.

(g) Two typist-clerks II on range 45.4.

(h) Two municipal court services officers on range 54.6.

(i) One typist-clerk III on range 48.4.

(j) One secretary III on range 53.3.

SEC. 63. Section 74023 of the Government Code is amended to read:

74023. The municipal court administrator shall appoint, in accordance with Placer County civil service rules, all of the following:

(a) Two supervising municipal court clerks II for the court, who shall perform such duties as may be required by the court or the judges.

(b) Six deputy clerks, who shall be senior municipal court clerks.

(c) Twenty-one full-time and two half-time deputy clerks, who shall be municipal court clerks I or II.

(d) One deputy clerk, who shall be a master calendar clerk.

(e) One supervising municipal court clerk I.

(f) One administrative secretary.

(g) Three court reporters.

SEC. 64. Section 74030 of the Government Code is amended to

read:

74030. (a) The positions enumerated in Sections 74022 to 74026, inclusive, shall receive a biweekly salary at step A of the range set forth below, as provided in Chapter 14 of the Placer County Code.

Step increases may be awarded at 5 percent at the end of the first six months and thereafter 5 percent annually for the next 48 months to a maximum of 20 percent over the amount specified as step A:

Position	Salary Range
Municipal court administrator	49.0
Supervising municipal court clerk I	37.5
Supervising municipal court clerk II	39.5
Deputy clerk, municipal court clerk I	31.5
Deputy clerk, municipal court clerk II	33.5
Deputy clerk, master calendar clerk	36.5
Senior municipal court clerk	35.5
Administrative secretary	36.5
Court reporter	44.5

(b) If the board of supervisors adopts a revised salary schedule for county employees, the new schedule shall apply equally to employees of municipal courts and conversion of the new schedule shall be made for such employees in the same manner on the same date as for such other county employees. Also, employees and officers of the municipal court shall be entitled to all employee benefits as they are now provided and made applicable to positions within county service. All matters affecting the administration of salary and benefits, the selection, appointment, and reclassification of such municipal court officers and employees in those positions which they hold which are not specifically determined by the provisions of state law shall be governed by the personnel provisions of the Placer County Code. Any changes in compensation made pursuant to this subdivision shall be on an interim basis and shall expire January 1, of the second calendar year following such changes unless ratified by the Legislature.

SEC. 65. Section 74134 of the Government Code is amended to read:

74134. In the Western Riverside Judicial District, the salary of the clerk/administrator shall be on range 417 and the clerk/administrator may appoint:

(a) One accounting technician on range 245.
(b) One assistant clerk/administrator on range 358.
(c) One assistant clerk/administrator on range 323.
(d) One administrative services officer on range 342.
(e) Forty-seven judicial office assistants on range 212.
(f) Seven judicial services supervisors on range 272.
(g) Twenty-two judicial courtroom assistants on range 253.
(h) One judicial services information systems administrator on

range 350.

(i) One executive secretary I on range 265.

(j) Five senior accounting clerks on range 215.

(k) One senior accounting technician on range 280.

(*l*) Nine senior judicial office assistants on range 233.

(m) One stock clerk on range 189.

(n) One judicial secretary on range 265.

(o) One municipal court operations manager on range 335.

(p) One senior court reporter on range 366.

(q) One computer operator II on range 231.

(r) Five court reporters at one thousand nine hundred fifty-nine dollars and twenty cents ($1,959.20) biweekly.

(s) One departmental aide on range 129.

(t) One programmer/analyst IV on range 342.

(u) One senior judicial courtroom assistant on range 268.

(v) One staff analyst I on range 277.

SEC. 66. Section 74136 of the Government Code is amended to read:

74136. In the Desert Judicial District, the salary of the clerk/administrator—Desert Judicial District shall be on range 407 and the clerk/administrator may appoint:

(a) One accounting clerk on range 184.

(b) One accounting technician on range 245.

(c) One assistant clerk/administrator—Desert Judicial District on range 358.

(d) Six court reporters at one thousand nine hundred fifty-nine dollars and twenty cents ($1,959.20) biweekly.

(e) Three municipal court branch administrators I on range 288.

(f) Forty-seven judicial office assistants on range 212.

(g) Seven judicial services supervisors on range 272.

(h) Ten judicial courtroom assistants on range 253.

(i) One executive secretary I on range 265.

(j) Two senior accounting clerks on range 215.

(k) Eight senior judicial office assistants on range 233.

(*l*) One administrative services officer on range 342.

SEC. 67. Section 74138 of the Government Code is amended to read:

74138. In the Corona Judicial District, the Riverside clerk/administrator may appoint:

(a) One assistant clerk/administrator on range 323.

(b) Twelve judicial office assistants on range 212.

(c) Three judicial services supervisors on range 272.

(d) Five judicial courtroom assistants on range 253.

(e) One senior accounting clerk on range 215.

(f) Four senior judicial office assistants on range 233.

SEC. 68. Section 74141 of the Government Code is amended to read:

74141. In the Mt. San Jacinto Judicial District the salary of the clerk/administrator—Mt. San Jacinto Judicial District shall be on

range 386, and the clerk/administrator may appoint:

(a) One accounting technician on range 245.

(b) One assistant clerk/administrator—Mt. San Jacinto on range 343.

(c) Two municipal court branch administrators II on range 323.

(d) Twenty-one judicial office assistants on range 212.

(e) Three judicial services supervisors on range 272.

(f) Six judicial courtroom assistants on range 253.

(g) One senior accounting clerk on range 215.

(h) Two senior judicial office assistants on range 233.

(i) One executive secretary I on range 265.

(j) One administrative services officer on range 342.

(k) One judicial secretary on range 265.

(*l*) One municipal court branch administrator I on range 288.

(m) Two programmer/analysts IV on range 342.

(n) Two senior judicial courtroom assistants on range 268.

(o) One senior programmer/analyst on range 358.

SEC. 69. Section 74143 of the Government Code is amended to read:

74143. In the Three Lakes Judicial District, the salary of the clerk/administrator—Three Lakes Judicial District shall be on range 386, and the clerk/administrator may appoint:

(a) Two municipal court branch administrators II on range 323.

(b) Fifteen judicial office assistants on range 212.

(c) Four judicial services supervisors on range 272.

(d) Six judicial courtroom assistants on range 253.

(e) Three senior judicial office assistants on range 233.

(f) One senior judicial courtroom assistant on range 268.

(g) One executive secretary I on range 265.

(h) One judicial secretary on range 265.

SEC. 70. Section 74191.7 of the Government Code is amended to read:

74191.7. The judges of the Sacramento Municipal Court District shall appoint four and one-half commissioners as the business of the court requires. The commissioners shall possess the same qualifications as the law requires of a judge of the court. Such appointment shall be pursuant to Section 72190 and the commissioners shall receive a salary which equals: (a) 85 percent of the annual salary for a municipal court judge during the first year of service with the court; (b) 87 percent of the annual salary for a municipal court judge after one year of service with the court; (c) 89 percent of the annual salary for a municipal court judge after two years of service with the court; (d) 91 percent of the annual salary for a municipal court judge after three years of service with the court; and (e) 93 percent of the annual salary for a municipal court judge after four years of service with the court. Notwithstanding any other provision of law, commissioners shall earn vacation credit at the rate of 6.5 hours for each biweekly pay period of full-time service, except that those commissioners appointed by the court prior to

February 12, 1981, shall be entitled to earn vacation credit for each biweekly pay period of full-time service based on years of service at the rate specified in the following schedule:

Rate	Years of Service
6.8 hours with more than	12 years and less than 13 years of service
7.1 hours with more than	13 years and less than 14 years of service
7.4 hours with more than	14 years and less than 15 years of service
7.7 hours with more than	15 years of service

SEC. 70.3. Section 74191.7 of the Government Code is amended to read:

74191.7. The judges of the Sacramento Municipal Court District shall appoint four and one-half commissioners as the business of the court requires. The commissioners shall possess the same qualifications as the law requires of a judge of the court. These appointments shall be pursuant to Section 72190 and the commissioners shall receive a salary which equals: (a) 85 percent of the annual salary for a municipal court judge during the first year of service with the court; (b) 87 percent of the annual salary for a municipal court judge after one year of service with the court; (c) 89 percent of the annual salary for a municipal court judge after two years of service with the court; (d) 91 percent of the annual salary for a municipal court judge after three years of service with the court; and (e) 93 percent of the annual salary for a municipal court judge after four years of service with the court.

At the direction of the presiding judge of the superior and municipal courts, commissioners shall, in addition to the duties prescribed by Section 72190, exercise the jurisdiction and perform duties of a superior court commissioner and a juvenile court referee appointed pursuant to Section 247 of the Welfare and Institutions Code.

Notwithstanding any other provision of law, commissioners shall earn vacation credit at the rate of 6.5 hours for each biweekly pay period of full-time service, except that those commissioners appointed by the court prior to February 12, 1981, shall be entitled to earn vacation credit for each biweekly pay period of full-time service based on years of service at the rate specified in the following schedule:

Rate	Years of Service
6.8 hours with more than	12 years and less than 13 years of service
7.1 hours with more than	13 years and less than 14 years of service
7.4 hours with more than	14 years and less than 15 years of service
7.7 hours with more than	15 years of service

SEC. 70.5. Section 74192 of the Government Code is amended to read:

74192. (a) There shall be one clerk/administrator who shall be appointed by the judges of the court and who shall be clerk of the court. The clerk/administrator shall receive a biweekly salary at a rate specified in range 3011. The position of clerk/administrator shall not be deemed a civil service position. The clerk/administrator shall be the appointing authority for the positions set forth in this section. Each person appointed shall serve at the pleasure of the clerk/administrator.

(b) There shall be two assistant clerk/administrators. The assistant clerk/administrators for the court shall receive a biweekly salary at a rate specified in range 2602. The positions of assistant clerk/administrator for the court shall not be deemed a civil service position.

(c) There shall be one director of administrative services. The director of administrative services for the court shall receive a biweekly salary at a rate specified in range 2245. The position of director of administrative services shall not be deemed a civil service position.

(d) There shall be one departmental systems manager. The departmental systems manager for the court shall receive a biweekly salary at a rate specified in range 2301. The position of departmental systems manager shall not be deemed a civil service position.

(e) There shall be six court process managers. Each court process manager for the court shall receive a salary at a rate specified in range 1856. The positions of court process manager for the court shall not be deemed civil service positions.

(f) There shall be one system manager coordinator. The system manager coordinator shall receive a biweekly salary at a rate specified in range 2015. The position of system manager coordinator shall not be deemed a civil service position.

(g) There shall be one court interpreter. The court interpreter shall receive a biweekly salary at a rate specified in range 1188. The position of court interpreter shall not be deemed a civil service position.

(h) There shall be one senior court interpreter. The senior court interpreter shall receive a biweekly salary at a rate specified in range

1253. The position of senior court interpreter shall not be deemed a civil service position.

(i) There shall be 14 court process supervisors. The court process supervisors shall receive a biweekly salary at a rate specified in range 1348. The positions of the court process supervisor for the court shall not be deemed civil service positions.

(j) There shall be three administrative service officers II. The administrative service officers II for the court shall receive a biweekly salary at a rate specified in range 1845. The positions of administrative service officers II shall not be deemed civil service positions.

(k) There shall be one administrative services officer I. The administrative services officer I for the court shall receive a biweekly salary at a rate specified in range 1530. The position of administrative services officer I shall not be deemed a civil service position.

(*l*) There shall be one associate administrative analyst II. The associate administrative analyst II shall receive a biweekly salary at a rate specified in range 1845. The position of associate administrative analyst II shall not be deemed a civil service position.

(m) There shall be one accountant IV. The accountant IV shall receive a biweekly salary at a rate specified in range 2087. The position of accountant IV shall not be deemed a civil service position.

(n) There shall be one court process supervisor, confidential. The court process supervisor, confidential, shall receive a biweekly salary at a rate specified in range 1368. The position of court process supervisor, confidential, shall not be deemed a civil service position.

(o) There shall be one accountant II. The accountant II shall receive a biweekly salary at a rate specified in range 1530. The position of accountant II shall not be deemed a civil service position.

(p) There shall be two departmental systems analyst/programmers. The departmental systems analyst/programmers shall receive a biweekly salary at a rate specified in range 2091. The positions of departmental systems analyst/programmer shall not be deemed civil service positions.

(q) There shall be one accounting technician. The accounting technician shall receive a biweekly salary at a rate specified in range 1347. The position of accounting technician shall not be deemed a civil service position.

(r) There shall be one department secretary. The department secretary shall receive a biweekly salary at a rate specified in range 1349. The position of department secretary shall not be deemed a civil service position.

(s) There shall be four supervising municipal courtroom clerks. The supervising municipal courtroom clerks shall receive a biweekly salary at a rate specified in range 1680. The positions of supervising municipal courtroom clerk shall not be deemed civil service positions.

(t) There shall be eight pretrial release interviewers. The pretrial release interviewers shall receive a biweekly salary at a rate specified

in range 1125. The position of pretrial release interviewer shall not be deemed a civil service position.

(u) There shall be one departmental data processing technician III. The departmental data processing technician III shall receive a biweekly salary at a rate specified in range 1378. The position of departmental data processing technician III shall not be deemed a civil service position.

(v) There shall be one municipal court branch manager. The municipal court branch manager shall receive a biweekly salary at a rate specified in range 2245. The position of municipal court branch manager shall not be deemed a civil service position.

SEC. 71. Section 74193 of the Government Code is amended to read:

74193. The administrator shall appoint:

(a) One hundred twenty-six deputy clerks, who shall be associate court process clerks, and who shall each receive a biweekly salary at a rate specified in range 953 for level II and in range 919 for level I.

(b) Thirty deputy clerks, who shall be senior court process clerks and who shall each receive a biweekly salary at a rate specified in range 1070.

(c) Six half-time deputy clerks, who shall be associate court process clerks and who shall receive a biweekly salary at a rate specified in range 953 for level II and in range 919 for level I.

(d) Thirty deputy clerks, who shall be courtroom clerks and who shall each receive a biweekly salary at a rate specified in range 1365 for level II and in range 1216 for level I.

(e) One half-time deputy clerk, who shall be a courtroom clerk and who shall receive a biweekly salary at a rate specified in range 1365 for level II and in range 1216 for level I.

(f) Four deputy clerks who shall be court process specialists and who shall each receive a biweekly salary at a rate specified in range 1128.

(g) Two deputy clerks, who shall be departmental data-processing technicians II and who shall each receive a biweekly salary at a rate specified in range 1212.

(h) Eight deputy clerks, who shall be account clerks II and who shall each receive a biweekly salary at a rate specified in range 1044.

(i) Two deputy clerks, who shall be account clerks III and who shall each receive a biweekly salary at a rate specified in range 1128.

(j) One deputy clerk, who shall be a legal secretary II and who shall receive a biweekly salary at a rate specified in range 1128.

(k) Two deputy clerks, who shall be legal secretaries II, confidential, and who shall receive a biweekly salary at a rate specified in range 1203.

(*l*) One deputy clerk, who shall be a senior personnel clerk and who shall receive a biweekly salary at a rate specified in range 1110.

SEC. 72. Section 74201 of the Government Code is amended to read:

74201. (a) There shall be one pretrial release program manager.

The appointing authority for the position shall be the judges of the Sacramento Municipal Court. The position shall not be deemed to be a civil service position and the incumbent shall serve at the pleasure of the judges of the Sacramento Municipal Court. The salary range for the position shall be 1948.

(b) There shall be one attorney IV civil, range B. The appointing authority for the position shall be the judges of the Sacramento Municipal Court. The position shall not be deemed a civil service position and the incumbent shall serve at the pleasure of the judges of the Sacramento Municipal Court. The salary range for the position shall be 2998.

(c) There shall be one attorney II. The appointing authority for the position shall be the judges of the Sacramento Municipal Court. The position shall not be deemed a civil service position and the incumbent shall serve at the pleasure of the judges of the Sacramento Municipal Court. The salary range for the position shall be 1936.

SEC. 73. Section 74207 of the Government Code is amended to read:

74207. There shall be one clerk/administrator who shall be appointed by the judge of the court and who shall be clerk of the court. The clerk/administrator shall receive a biweekly salary at a rate specified in range 2010. The position of clerk/administrator shall not be deemed to be a civil service position.

SEC. 74. Section 74208 of the Government Code is amended to read:

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

(a) Two court process specialists who shall receive a biweekly salary at a rate specified in range 1128.

(b) One senior court process clerk who shall receive a biweekly salary at a rate specified in range 1024.

(c) Three associate court process clerks II who shall receive a biweekly salary at a rate specified in range 953.

(d) One municipal courtroom clerk II who shall receive a biweekly salary at a rate specified in range 1530.

(e) One senior court process clerk who shall receive a biweekly salary at a rate specified in range 1070.

(f) One accounting technician who shall receive a biweekly salary at a rate specified in range 1250. The position of accounting technician shall not be deemed a civil service position.

SEC. 75. Section 74502 of the Government Code is amended to read:

74502. (a) Notwithstanding any other provision of this code, the municipal court positions specified in this section shall be paid at a minimum the monthly equivalent amount specified.

Notwithstanding any other provision of this code, whenever any vacancy occurs in a position specified in this section, the judges, or a majority of the judges of the court, shall appoint a person to the vacancy, who shall hold office at their pleasure, and who shall receive

the salary specified in this section. The appointing authority, in its discretion, may appoint two part-time appointees to a class number, who shall each receive a salary equal to the pro rata share of the salary specified in this section.

The salary at initial appointment to a class number shall be at step one during the first year of service in that class number, except the appointing authority, in its discretion and excluding positions specified in subdivision (c), when the appointee is qualified may start an appointee at a step level other than step one. After the first year of permanent certification and commencing on the first day of the month following the next anniversary of the appointment, the appointee shall advance to the next step of the class number until the top step in the class is reached.

(b) There shall be one clerk-administrator who shall serve as clerk of the court and secretary to the judges, perform duties specified in the law and those assigned by the judges, and who shall be paid a salary, as clerk class number 0210, of six thousand nine hundred thirty-three dollars ($6,933) for step one, of seven thousand three hundred thirteen dollars ($7,313) for step two, and of seven thousand four hundred eighty-one dollars ($7,481) for step three.

(c) Notwithstanding the provisions of Section 72400, there shall be three court commissioners who shall have the powers and duties specified in Sections 72401, 72402, and 72403, who shall perform such duties as assigned by the presiding judge and who shall be paid a salary, as class number 0250, equal to 50 percent of the salary of a judge of the municipal court during the first year of service; subject to approval of the judges, or a majority of them, a salary equal to 65 percent of the salary of a judge of the municipal court after the first year of permanent certification, commencing on the first day of the month following the first anniversary of appointment; and subject to the approval of the judges, or a majority of them, a maximum salary equal to 80 percent of the salary of a judge of the municipal court after the second year of permanent certification, commencing on the first day of the month following the second anniversary of appointment.

(d) There shall be two chief deputies, one with overall responsibility for the civil small claims and administrative divisions, and one with overall responsibility for the criminal and traffic divisions, each of whom shall also serve as jury commissioner and who shall exercise insofar as applicable to the municipal court, the powers of a jury commissioner of a superior court and who shall be paid a salary, as deputy clerk class number 0220, of five thousand nine hundred thirty-three dollars ($5,933) for step one, of six thousand two hundred fifty-nine dollars ($6,259) for step two, and of six thousand six hundred four dollars ($6,604) for step three.

(e) There shall be one executive assistant to the presiding judge who shall be paid a salary, as deputy clerk class number 0221, of five thousand six hundred twenty-nine dollars ($5,629) for step one, of five thousand nine hundred thirty-three dollars ($5,933) for step two,

and of six thousand two hundred fifty-nine dollars ($6,259) for step three, and who shall perform such duties as assigned by the presiding judge, or as assigned by the clerk-administrator after the approval of the presiding judge. When the executive assistant to the presiding judge is a member of the State Bar, the executive assistant may perform duties for the court in the field of law at the direction of the presiding judge with the concurrence of the administrative committee and be paid in addition to the salary provided by this article, the additional sum of four hundred dollars ($400) monthly.

(f) There shall be one executive secretary to the presiding judge who shall serve as confidential executive secretary to the presiding judge and executive assistant, who shall perform such duties as are assigned by the presiding judge, the executive assistant, or the clerk-administrator after the approval of the presiding judge, and who shall be paid the salary, as deputy class number 0285, of three thousand seven hundred thirty-seven dollars ($3,737) for step one, of three thousand nine hundred fifty-nine dollars ($3,959) for step two, and of four thousand one hundred ninety-eight dollars ($4,198) for step three.

(g) There shall be one small claims legal adviser who shall be paid a salary, as deputy clerk class number 0260, of four thousand six hundred fifty-two dollars ($4,652) for step one, of four thousand eight hundred thirty-three dollars ($4,833) for step two, of five thousand one hundred twenty dollars ($5,120) for step three, of five thousand three hundred sixty-eight dollars ($5,368) for step four, and of five thousand six hundred twenty-eight dollars ($5,628) for step five, and who shall perform such duties pursuant to Section 116.260 of the Code of Civil Procedure.

(h) There shall be one deputy clerk who shall be appointed criminal courts calendar coordinator who shall be paid a salary, as deputy clerk class number 0225, of five thousand seventy-six dollars ($5,076) for step one, of five thousand three hundred fifty-five dollars ($5,355) for step two, and of five thousand six hundred fifty dollars ($5,650) for step three, and perform such duties as are assigned by the judges of the court.

SEC. 76. Section 74503 of the Government Code is amended to read:

74503. (a) Notwithstanding any other provision of this code, the municipal court positions specified in this section shall be paid at a minimum the monthly equivalent amount specified.

Whenever any vacancy occurs in a position specified in this section, the clerk-administrator shall appoint, upon consent of a majority of the judges, or a majority of the judges of the court may appoint a person to the vacancy who shall hold office at the pleasure of the appointing authority, and who shall receive the salary specified in this section. The appointing authority, in its discretion, may appoint two part-time appointees to a class number, who shall each receive a salary equal to the pro rata share of the salary specified in this section.

The salary at initial appointment to a class number shall be at step one during the first year of service in that class number, except the appointing authority, in its discretion and when the appointee is so qualified may start an appointee at a step level other than step one. After the first year of permanent certification and commencing on the first day of the month following the next anniversary of the appointment, the appointee shall advance to the next step of the class number until the top step in the class is reached.

(b) There shall be one court training coordinator who shall be paid a salary, as deputy clerk class number 0222, of five thousand seventy-six dollars ($5,076) for step one, of five thousand three hundred fifty-five dollars ($5,355) for step two, and of five thousand six hundred fifty dollars ($5,650) for step three, and who shall perform such duties as are assigned by the clerk-administrator.

(c) There shall be one deputy clerk who shall be appointed court systems coordinator, who shall be paid a salary, as deputy clerk class number 0222, of five thousand seventy-six dollars ($5,076) for step one, of five thousand three hundred fifty-five dollars ($5,355) for step two, and of five thousand six hundred fifty dollars ($5,650) for step three, and who shall perform such duties as are assigned by the clerk-administrator.

(d) There shall be one deputy clerk who shall be appointed assistant court systems coordinator who shall be paid a salary, as deputy clerk class number 0273, of four thousand three hundred forty-three dollars ($4,343) for step one, of four thousand five hundred eighty-three dollars ($4,583) for step two, and of four thousand eight hundred thirty-five dollars ($4,835) for step three, and who shall perform such duties as are assigned by the clerk-administrator.

(e) There shall be one court fiscal officer who shall be paid a salary, as deputy clerk class number 0223, of five thousand nine hundred thirty-three dollars ($5,933) for step one, of six thousand two hundred fifty-nine dollars ($6,259) for step two, and of six thousand six hundred four dollars ($6,604) for step three and who shall perform such duties as are assigned by the clerk-administrator.

(f) There shall be one court computer system director who shall be paid a salary, as deputy clerk class number 0242, of seven thousand two hundred thirty-seven dollars ($7,237) for step one, of seven thousand five hundred ninety-eight dollars ($7,598) for step two, of seven thousand nine hundred seventy-eight dollars ($7,978) for step three, of eight thousand three hundred seventy-two dollars ($8,372) for step four, and of eight thousand seven hundred ninety-seven dollars ($8,797) for step five, and who shall perform such duties as are assigned by the clerk-administrator.

(g) There shall be one court traffic system programmer who shall be paid a salary, as deputy clerk class number 0243, of five thousand nine hundred fifty-three dollars ($5,953) for step one, of six thousand two hundred fifty-three dollars ($6,253) for step two, of six thousand five hundred sixty-four dollars ($6,564) for step three, of six thousand

eight hundred ninety-two dollars ($6,892) for step four, and of seven thousand two hundred seventy-three dollars ($7,273) for step five, and who shall perform such duties as are assigned by the clerk-administrator.

(h) There shall be one court traffic senior application programmer who shall be paid a salary as deputy clerk class number 0244, of five thousand nine hundred fifty-three dollars ($5,953) for step one, of six thousand two hundred fifty-three dollars ($6,253) for step two, of six thousand five hundred sixty-four dollars ($6,564) for step three, of six thousand eight hundred ninety-two dollars ($6,892) for step four, and of seven thousand two hundred seventy-three dollars ($7,273) for step five, and who shall perform such duties as are assigned by the clerk-administrator.

(i) There shall be one court application programmer who shall be paid a salary as deputy clerk class number 0246, of five thousand one hundred fifty-two dollars ($5,152) for step one, of five thousand four hundred eight dollars ($5,408) for step two, of five thousand six hundred sixty-nine dollars ($5,669) for step three, of five thousand nine hundred fifty-three dollars ($5,953) for step four, and of six thousand two hundred fifty-three dollars ($6,253) for step five, and who shall perform such duties as are assigned by the clerk-administrator.

(j) There shall be one court technical writer who shall be paid a salary as deputy clerk class number 0248, of three thousand six hundred sixty dollars ($3,660) for step one, of three thousand eight hundred forty-three dollars ($3,843) for step two, of four thousand thirty-three dollars ($4,033) for step three, of four thousand two hundred thirty-six dollars ($4,236) for step four, and of four thousand four hundred forty-seven dollars ($4,447) for step five, and who shall perform such duties as are assigned by the clerk-administrator.

(k) There shall be one court technical programmer who shall be paid a salary, as deputy clerk class number 0248, of three thousand six hundred sixty dollars ($3,660) for step one, of three thousand eight hundred forty-three dollars ($3,843) for step two, of four thousand thirty-three dollars ($4,033) for step three, of four thousand two hundred thirty-six dollars ($4,236) for step four, and of four thousand four hundred forty-seven dollars ($4,447) for step five, and who shall perform such duties as are assigned by the clerk-administrator.

(*l*) There shall be one court program analyst manager who shall be paid a salary, as deputy clerk class number 0240, of four thousand six hundred thirty-nine dollars ($4,639) for step one, of four thousand eight hundred seventy-nine dollars ($4,879) for step two, of five thousand one hundred twenty-eight dollars ($5,128) for step three, of five thousand three hundred eighty-three dollars ($5,383) for step four, and of five thousand six hundred fifty-two dollars ($5,652) for step five, and who shall perform such duties as are assigned by the clerk-administrator.

(m) There shall be one deputy clerk who shall be appointed

assistant fiscal officer who shall be paid a salary, as deputy clerk class number 0275, of four thousand three hundred forty-three dollars ($4,343) for step one, of four thousand five hundred eighty-three dollars ($4,583) for step two, and of four thousand eight hundred thirty-five dollars ($4,835) for step three, and who shall perform such duties as are assigned by the clerk-administrator.

(n) There shall be one assistant court program analyst manager who shall be paid a salary, as deputy clerk class number 0278, of three thousand five hundred thirty-nine dollars ($3,539) for step one, of three thousand nine hundred eight dollars ($3,908) for step two, of four thousand one hundred dollars ($4,100) for step three, of four thousand three hundred six dollars ($4,306) for step four, and of four thousand five hundred twenty-five dollars ($4,525) for step five, and who shall perform such duties as are assigned by the clerk-administrator.

(o) There shall be one confidential administrative legal stenographer who shall be paid a salary, as deputy clerk class number 0287, of three thousand seven hundred thirteen dollars ($3,713) for step one, of three thousand nine hundred thirty-five dollars ($3,935) for step two, and of four thousand one hundred seventy-two dollars ($4,172) for step three, and who shall perform such duties as are assigned by the clerk-administrator.

(p) There shall be one personnel-payroll clerk who shall be paid a salary, as deputy clerk class number 0289, of three thousand seven hundred thirteen dollars ($3,713) for step one, of three thousand nine hundred thirty-five dollars ($3,935) for step two, and of four thousand one hundred seventy-two dollars ($4,172) for step three, and who shall perform such duties as are assigned by the clerk-administrator.

(q) There shall be one interpreter coordinator, who shall be paid a salary, as deputy clerk class number 0293, of three thousand two hundred sixteen dollars ($3,216) for step one, of three thousand four hundred ten dollars ($3,410) for step two, and of three thousand six hundred thirteen dollars ($3,613) for step three, and who shall perform such duties as are assigned by the clerk-administrator.

(r) There shall be four information clerks who shall be paid a salary, as deputy clerk class number 0340, of two thousand four hundred sixty-six dollars ($2,466) for step one, of two thousand eight hundred two dollars ($2,802) for step two, of three thousand one hundred forty-seven dollars ($3,147) for step three, and of three thousand two hundred fifty-five dollars ($3,255) for step four, and who shall perform such duties as are assigned by the clerk-administrator.

(s) There shall be one information clerk-supervisor who shall be paid a salary, as deputy clerk class number 0342, of three thousand one hundred forty-seven dollars ($3,147) for step one, of three thousand two hundred fifty-five dollars ($3,255) for step two, of three thousand three hundred sixty-five dollars ($3,365) for step three, and of three thousand four hundred eighty dollars ($3,480) for step four,

and who shall perform such duties as are assigned by the clerk-administrator.

(t) There shall be three legal research attorneys who shall be paid a salary, as deputy clerk class number 0360, of four thousand fifty-two dollars ($4,052) for step one, of four thousand two hundred seventy-five dollars ($4,275) for step two, and of four thousand five hundred eleven dollars ($4,511) for step three, and who shall perform such duties as are assigned by the clerk-administrator.

(u) There shall be one assistant training coordinator, who shall be paid a salary, as deputy clerk class number 0297, of three thousand two hundred sixteen dollars ($3,216) for step one, of three thousand four hundred ten dollars ($3,410) for step two, and of three thousand six hundred thirteen dollars ($3,613) for step three, and who shall perform such duties as are assigned by the clerk-administrator.

SEC. 77. Section 74504 of the Government Code is amended to read:

74504. Notwithstanding any other provision of this code, the municipal court positions specified in this section shall be paid at a minimum the monthly equivalent amount specified.

The salary at initial appointment to a class number shall be at step one during the first year of service in that class number, except when the appointee is qualified by current civil service classification for other than step one. After the first year of permanent certification and commencing on the first day of the month following the next anniversary of the appointment, the appointee shall advance to the next step of the class number until the top step in the class is reached. The appointing authority, in its discretion, may appoint two part-time appointees to a class number, who shall each receive a salary equal to the pro rata share of the salary specified in this section.

The clerk-administrator shall appoint and assign the duties and responsibilities for the following:

(a) Three deputy clerks who shall be the division chiefs in the civil, criminal and traffic divisions of the court who shall be paid a salary, as deputy clerk class number 0230, of five thousand seventy-six dollars ($5,076) for step one, of five thousand three hundred fifty-five dollars ($5,355) for step two, and of five thousand six hundred fifty dollars ($5,650) for step three.

(b) Seven deputy clerks who shall be assistant division chiefs and who shall be paid a salary, as deputy clerk class number 0270, of four thousand three hundred forty-three dollars ($4,343) for step one, of four thousand five hundred eighty-three dollars ($4,583) for step two, and of four thousand eight hundred thirty-five dollars ($4,835) for step three.

(c) Thirty-four deputy clerks who shall be paid a salary, as deputy clerk class number 0280, of three thousand seven hundred thirteen dollars ($3,713) for step one, of three thousand nine hundred thirty-five dollars ($3,935) for step two, and of four thousand one hundred seventy-two dollars ($4,172) for step three, and who shall perform such duties as are assigned by the clerk-administrator.

(d) Twenty-five deputy clerks who shall be paid a salary, as deputy clerk class number 0290, of three thousand two hundred sixteen dollars ($3,216) for step one, of three thousand four hundred ten dollars ($3,410) for step two, and of three thousand six hundred thirteen dollars ($3,613) for step three.

(e) Thirty-eight deputy clerks who shall be paid a salary, as deputy clerk class number 0320, of two thousand six hundred ninety-nine dollars ($2,699) for step one, of two thousand eight hundred sixty-two dollars ($2,862) for step two, and of three thousand thirty dollars ($3,030) for step three.

(f) Eighty-two deputy clerks who shall be paid a salary, as deputy clerk class number 0330, of two thousand two hundred sixty-eight dollars ($2,268) for step one, of two thousand four hundred five dollars ($2,405) for step two, and of two thousand five hundred forty-seven dollars ($2,547) for step three.

(g) Eight half-time deputy clerks who shall be paid a salary, as deputy clerk class number 0331, of one thousand one hundred thirty-four dollars ($1,134) for step one, of one thousand two hundred two dollars ($1,202) for step two, and of one thousand two hundred seventy-three dollars ($1,273) for step three.

(h) Two accountants who shall be paid a salary, as civil service class number 1650, of two thousand five hundred forty-three dollars ($2,543) for step one, of two thousand six hundred sixty-seven dollars ($2,667) for step two, of two thousand seven hundred ninety-five dollars ($2,795) for step three, of two thousand nine hundred thirty-four dollars ($2,934) for step four, and of three thousand seventy-five dollars ($3,075) for step five.

(i) One senior account clerk who shall be paid a salary, as civil service class number 1632, of two thousand four hundred seventy-one dollars ($2,471) for step one, of two thousand five hundred ninety dollars ($2,590) for step two, of two thousand seven hundred seventeen dollars ($2,717) for step three, of two thousand eight hundred forty-nine dollars ($2,849) for step four, and of two thousand nine hundred ninety-one dollars ($2,991) for step five.

(j) Two account clerks who shall be paid a salary, as civil service class number 1630, of two thousand one hundred fifty-one dollars ($2,151) for step one, of two thousand two hundred fifty-five dollars ($2,255) for step two, of two thousand three hundred sixty-six dollars ($2,366) for step three, of two thousand four hundred eighty-two dollars ($2,482) for step four, and of two thousand six hundred three dollars ($2,603) for step five.

(k) Eleven data entry operators who shall be paid a salary, as civil service class number 1720, of one thousand eight hundred ninety-two dollars ($1,892) for step one, of one thousand nine hundred eighty-four dollars ($1,984) for step two, of two thousand seventy-nine dollars ($2,079) for step three, of two thousand two hundred thirty-five dollars ($2,235) for step four, and of two thousand two hundred eighty-eight dollars ($2,288) for step five.

(*l*) One deputy clerk, and while assigned by the

clerk-administrator as assistant personnel-payroll deputy, shall be paid, in addition to the salary provided by this article, the additional sum of one hundred dollars ($100) monthly.

(m) One deputy clerk, and while assigned by the clerk-administrator as budget-purchasing deputy to the court fiscal officer, shall be paid, in addition to the salary provided by this article, the additional sum of fifty dollars ($50) monthly.

(n) Two deputy clerks who shall serve as master calendar clerk, civil, and master calendar clerk, criminal, and while assigned to such position by the clerk-administrator, shall be paid, in addition to the salary provided by this article, the additional sum of one hundred dollars ($100) monthly.

(o) Six deputy clerks and while assigned by the clerk-administrator and where specific duties merit may be paid at the discretion of the appointing authority, in addition to the salary provided by this article, the additional sum of fifty dollars ($50) monthly.

(p) Two deputy clerks who shall serve as master jury calendar clerk, civil, and master jury calendar clerk, criminal, and while assigned to such position by the clerk-administrator shall be paid, in addition to the salary provided by this article, the additional sum of one hundred dollars ($100) monthly.

(q) One deputy clerk, while assigned by the clerk-administrator as principal courtroom clerk serving in the criminal law and motion court, shall be paid, in addition to the salary provided by this article, the additional sum of one hundred dollars ($100) monthly.

(r) Deputy clerks who are required and authorized to work more than 40 hours in a week shall be entitled to overtime pay for that period in excess of the 40 hours at a rate equal to one and one-half times the amount to which they are otherwise entitled.

SEC. 78. Section 74607 of the Government Code is amended to read:

74607. (a) The presiding judge may make appointments to the following authorized positions:

Number	Classification	Salary Range
1	Assistant Court Executive Officer	1971
1	Calendar Coordinator	1222
2	Calendar Coordinator—1/2 time	1222
11	Municipal Court Clerk Trainee, or	0928
	Municipal Court Clerk I, or	1016
	Municipal Court Clerk II	1091
2	Municipal Court Clerk Trainee—1/2 time, or	0928
	Municipal Court Clerk I—1/2 time, or	1016
	Municipal Court Clerk II—1/2 time	1091
2	Municipal Court Account Technician	1057
3	Municipal Court Account Clerk	0827

1	Accountant I, or	1319
	Accountant II, or	1510
	Accountant III	1971
28	Municipal Court Legal Process Clerk, or	0775
	Municipal Court Legal Process Clerk I, or	0928
	Municipal Court Legal Process Clerk II, or	1016
	Municipal Court Legal Process Clerk III	1076
2	Municipal Court Legal Process Clerk III—1/2 time	1076
4	Supervising Municipal Court Clerk	1222
1	Administrative Services Officer I, or	1319
	Administrative Services Officer II	1510
1	Court Data Manager	2121
1	Mail Clerk	0775

(b) At no time shall the number of Municipal Court Clerk II positions set forth in subdivision (a) exceed six.

(c) At no time shall the number of Municipal Court Legal Process Clerk II positions set forth in subdivision (a) exceed 11. At no time shall the number of Municipal Court Legal Process Clerks I and II positions set forth in subdivision (a) exceed 23.

SEC. 79. Section 74642 of the Government Code is amended to read:

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

	Santa Barbara Municipal Court	Salary Range
2	Account Clerk II	364
1	Account Clerk III	391
1	Accountant II	479
1	Accounting Technician I	419
1	Administrative Assistant II—Ct.	465
1	Administrative Secretary	410
1	Assistant Clerk-Admin. Officer (SB)	542
1	Calendar Coordinator, Municipal Court	449
1	Clerk-Administrative Officer (SB)	592
2	Commissioner, Municipal Court	2,956
17	Court Clerk I	359
15	Court Clerk II	386
12	Court Clerk III	413
4	Court Clerk I—D	359
1	Court Clerk III—D	413
1	Court Clerk III—H	413
1	Court Clerk III—I	413
1	Court Clerk Chief	493
1	Court Clerk, Supervising	449
2	Court Interpreter	430
1	Data Entry Operator—Ct.	372

1	Department Automation Specialist Senior—Ct.	488
4	Legal Process Specialist, Supervising	449
1	Official Court Reporter-C	524
1	Official Court Reporter-E	524
1	Official Court Reporter-Municipal Court	524
4	Own Recognizance Officer	472
1	Own Recognizance Supervisor	492

Marshal Santa Barbara Municipal Court		Salary Range
1	Clerk Principal	437
3	Court Clerk I	359
1	Court Clerk II	386
8	Deputy Marshal	484
1	Marshal (SB)	550
2	Marshal's Sergeant	519

SEC. 80. Section 74643 of the Government Code is amended to read:

74643. Within the Santa Maria Judicial District there shall be the following officers, attachés, and employees:

Santa Maria Municipal Court		Salary Range
2	Account Clerk III	391
1	Asst. Clerk-Administrative Officer (SM)	502
1	Automation Specialist	456
1	Clerk Typist II	354
1	Clerk Typist III	381
1	Clerk-Administrative Officer (SM)	552
1	Commissioner, Municipal Court	2,956
9	Court Clerk I	359
6	Court Clerk II	386
4	Court Clerk III	413
1	Court Interpreter	430
3	Data Entry Operator	372
3	Legal Process Specialist, Supervising	449
2	Own Recognizance Officer	472
1	Own Recognizance Supervisor	492
1	Legal Research Assistant	600

Marshal—Santa Maria Municipal Court		Salary Range
1	Account Clerk II	364
1	Account Clerk III	391
1	Assistant Marshal (SM)	527
1	Court Clerk I	359
5	Deputy Marshal	484
1	Deputy Marshal—S/D	494

1	Legal Services Specialist	406
1	Marshal (SM)	540
1	Marshal's Sergeant	519

SEC. 81. Section 74644 of the Government Code is amended to read:

74644. Within the Lompoc Judicial District there shall be the following officers, attachés, and employees:

Municipal Court—Lompoc		Salary Range
1	Asst. Clerk-Admin. Officer (Lompoc)	482
1	Clerk-Administrative Officer (Lompoc)	532
1	Court Clerk I	359
5	Court Clerk II	386
2	Court Clerk III	413

Marshal—Lompoc Municipal Court		Salary Range
1	Administrative Services Clerk	410
1	Deputy Marshal	484
1	Marshal—Lompoc	527

SEC. 81.5. Section 74645 of the Government Code is amended to read:

74645. (a) It is the purpose of this section to provide compensation for municipal court employees and officers which is comparable to that paid to county employees holding equal or comparable positions in the Santa Barbara classified service as that comparability is determined by the Santa Barbara County Board of Supervisors.

(b) Whenever reference to a numbered salary range is made in any section of this article, the schedule and the salary ordinance of the County of Santa Barbara in effect on January 1 of the preceeding year, shall apply.

(c) If the board of supervisors adopts a revised salary schedule for county employees, the new schedule shall apply equally to employees of municipal courts and marshals' offices and conversion to the new schedule shall be made for the employees in the same manner on the same date as for the classified service.

(d) Notwithstanding any of the provisions of this article, the salary and benefits of municipal court employees and officers shall be changed in the same manner and at the same rate as a salary and benefit change is effective for other permanent county classified positions. Employees and officers of the municipal court shall be entitled to all employee benefits as they are provided and made applicable to positions within the classified service pursuant to Santa Barbara County ordinances or resolutions, to the extent that the benefits are not contrary to state law.

(e) All matters affecting the administration of salary and benefits,

the selection, appointment, and reclassification of municipal court officers and employees in those positions which they hold which are not specifically determined by the provision of state law shall be governed by the personnel ordinances and resolutions of the Board of Supervisors of the County of Santa Barbara.

(f) Nothing in this article shall be construed to place marshals' or clerks' offices, their employees and attachés under the civil service system of Santa Barbara County but those employees and attachés may be placed under that civil service system by court rule adopted by the judges of their respective courts.

(g) Any changes in compensation made pursuant to this section shall be on an interim basis and shall expire January 1 of the second calendar year following the changes unless ratified by the Legislature.

SEC. 81.6. Section 74693 of the Government Code is amended to read:

74693. The court administrator-clerk of the municipal court may appoint:

(a) One assistant court administrator-clerk of the municipal court, who shall receive a salary at a rate specified in range MT of the salary schedule.

(b) One supervising deputy court clerk, grade II, who shall receive a salary at the rate specified in range M9 of the salary schedule.

(c) Six supervising deputy court clerks, grade I, who shall receive a salary at the rate specified in range JM of the salary schedule.

(d) Seven senior municipal courtroom clerks who shall receive a salary at the rate specified in range JN of the salary schedule.

(e) Nine municipal courtroom clerks who shall receive a salary at the rate specified in range D6 of the salary schedule.

(f) Twenty-nine clerks, grade II or deputy court clerks. Clerks, grade II shall receive a salary at the rate specified in range 28 of the salary schedule. Deputy court clerks shall receive a salary at the rate specified in range 32 of the salary schedule.

(g) Two clerks, grade II, who shall receive a salary at the rate specified in range 27 of the salary schedule.

(h) Three typist clerks, each of whom shall be either grade I or grade II. Grade I typist clerks shall receive a salary at the rate specified in range J7 of the salary schedule. Grade II typist clerks shall receive a salary at the rate specified in range J8 of the salary schedule.

(i) One secretary, who shall receive a salary at the rate specified in range D4 of the salary schedule.

(j) One departmental systems analyst, who shall receive a salary at the rate specified in range KF of the salary schedule.

(k) One supervising accountant, grade I, who shall receive a salary at the rate specified in range FX of the salary schedule.

(*l*) Two account clerks, grade III, who shall receive a salary at the rate specified in range FH of the salary schedule.

(m) .50 payroll clerk, who shall receive a salary at the rate

specified in range FN of the salary schedule.

(n) 1.50 receptionists, who shall receive a salary at the rate specified in range 27 of the salary schedule.

(o) .70 assistant departmental administrative analyst, who shall receive a salary at the rate specified in range KF of the salary schedule.

(p) One data entry operator, grade II, who shall receive a salary at the rate specified in range D2 of the salary schedule.

(q) Seven court reporters, who shall receive a salary at the rate specified in range 62 of the salary schedule.

(r) One traffic commissioner, who shall receive a salary at the rate specified in range DO of the salary schedule.

(s) Two court interpreters, who shall receive a salary at a rate specified in range WC of the salary schedule.

(t) One judicial administrative assistant, who shall receive a salary at the rate specified in range LH of the salary schedule.

SEC. 81.7. Section 74705 of the Government Code is amended to read:

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

Municipal Court Classification	County Classification
Municipal Court Executive Officer	Municipal Court Executive Officer
Assistant Court Executive Officer	Municipal Court Assistant Executive Officer
Administrative Assistant	Administrative Assistant
Municipal Court Services Manager	Municipal Court Services Manager
Municipal Court Reporter	Municipal Court Reporter
Municipal Court Secretary	Municipal Court Secretary
Executive Secretary	Executive Secretary
Municipal Court Division Supervisor	Municipal Court Division Supervisor
Municipal Courtroom Clerk	Municipal Courtroom Clerk

Municipal Court Clerk III	Municipal Court Clerk III
Account Clerk III	Account Clerk III
Account Clerk II/I	Account Clerk II/I
Municipal Court Clerk II	Municipal Court Clerk II
Municipal Court Clerk I	Municipal Court Clerk I

SEC. 81.8. Section 74708 of the Government Code is amended to read:

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

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

(1) Two court commissioners.

(2) One municipal court executive officer, who will serve as clerk of the court.

(3) Four municipal court reporters.

(4) One municipal court secretary.

(b) The municipal court executive officer may appoint:

(1) One assistant municipal court executive officer.

(2) Two administrative assistants.

(3) One municipal court services manager.

(4) One executive secretary.

(5) Six municipal court division supervisors.

(6) Eight municipal courtroom clerks.

(7) Sixteen municipal court clerks III.

(8) One account clerk III.

(9) Four account clerks II/I.

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

SEC. 82. Section 74803 of the Government Code is amended to read:

74803. The clerk may appoint:

(a) One courtroom calendar coordinator.

(b) Twelve municipal courtroom clerks.

(c) Three deputy clerks III.

(d) Two judicial secretaries.

(e) Eight deputy clerks II.

(f) Forty-one deputy clerks I.

(g) Two directors of court operations.

(h) One secretary.

(i) One accounting technician II.

(j) Two court reporters.

(k) One office systems analyst.

SEC. 83. Section 74805 of the Government Code is amended to read:

74805. The marshal may appoint:

(a) Two senior deputy marshals.

(b) Fourteen deputy marshals.

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

(d) One specialist clerk.

SEC. 84. Section 74807 of the Government Code is amended to read:

74807. Persons employed in any of the positions authorized by this article shall be paid the salary assigned to the following ranges as set forth in the biweekly salary schedule contained in Section 74806, except that if the range shown opposite the title of the position includes a fraction then the person employed in such position shall be paid a salary equal to that shown opposite said fractional range in the salary ordinance of the County of San Joaquin.

Position	Range
(a) Deputy clerk I	49.10
(b) Deputy clerk II	51.10
(c) Deputy clerk III	52.60
(d) Judicial secretary	53.30
(e) Municipal courtroom clerk	55.60
(f) Clerk/Administrator	69.00
(g) Deputy marshal	59.30
(h) Senior deputy marshal	61.60
(i) Courtroom calendar coordinator	57.00
(j) Director of court operations	57.20
(k) Secretary	55.30
(*l*) Accounting technician II	54.80
(m) Specialist clerk	50.10
(n) Court reporter	62.80
(o) Office systems analyst	57.60

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

SEC. 85. Section 74807.6 of the Government Code is repealed.

SEC. 86. Section 74808 of the Government Code is amended to read:

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

(a) Deputy clerk I.
(b) Deputy clerk II.
(c) Deputy clerk III.
(d) Judicial secretary.
(e) Municipal Courtroom Clerks.
(f) Clerk/Administrator.
(g) Courtroom calendar coordinator.

(h) Deputy marshal.
(i) Senior deputy marshal.
(j) Director of court operations.
(k) Secretary.
(*l*) Accounting technician II.
(m) Specialist clerk.
(n) Court reporter.
(o) Office systems analyst.

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

SEC. 87. Section 74809 of the Government Code is amended to read:

74809. Notwithstanding any other provisions of law, the provisions of the county ordinance relating to civil service and the rules of the civil service commission adopted pursuant thereto, shall apply to all employees, except the marshal and the clerk/administrator, in the same manner and to the same extent as applicable generally to officers and employees of the County of San Joaquin.

Such employees shall be entitled to the same vacation, sick leave, leave of absence, and similar benefits, including uniform allowances for the deputy marshals and clerical employees who regularly perform matron duties in the marshal's office, and may be appointed, promoted, demoted, terminated or transferred, or their status otherwise adjusted in the same manner and with the same effect as is or may be provided by the current salary ordinance of San Joaquin County, or the civil service ordinance of the county, for employees of the county.

SEC. 88. Section 74905 of the Government Code is amended to read:

74905. (a) There shall be one clerk of the Ventura County Municipal Court, who shall be known as the court executive officer and who shall be appointed by and serve at the pleasure of a majority of the judges of the court. The court executive officer shall receive the monthly compensation of six thousand three hundred ten dollars ($6,310) to eight thousand fifty-two dollars ($8,052).

(b) There shall be one assistant court executive officer and two deputy executive officers of the Ventura County Municipal Court who shall be appointed by and serve at the pleasure of the court executive officer. The assistant court executive officer shall receive the monthly compensation of four thousand five hundred eleven dollars ($4,511) to five thousand seven hundred fourteen dollars ($5,714). The deputy executive officers shall receive the monthly compensation of three thousand nine hundred eleven dollars ($3,911) to four thousand nine hundred forty-nine dollars ($4,949).

(c) The rate of monthly compensation to be paid to the court

executive officer, assistant court executive officer, and the deputy executive officers, within the compensation ranges set forth in subdivisions (a) and (b), shall be established by joint action and approval of the board of supervisors and a majority of the judges of the court, at an amount equal to that paid county employees with comparable experience and responsibility.

SEC. 89. Section 74907 of the Government Code is amended to read:

74907. The court executive officer may appoint the following positions which shall receive biweekly compensation as specified in Section 74909:

(a) Three managers court divisions.
(b) One office systems coordinator I.
(c) Two financial evaluation officers II.
(d) Nine clerical supervisors III.
(e) One senior accountant.
(f) One program administrator III.
(g) One administrative officer II.
(h) One administrative assistant I-nonexempt.
(i) One administrative aide.
(j) Three collections officers II.
(k) One supervising accountant.
(*l*) One courier II.
(m) Fifty-seven court services assistants II.
(n) Six court services assistants III.
(o) Two fiscal assistants II.
(p) Four fiscal assistants III.
(q) One fiscal assistant IV.
(r) Two fiscal technicians I.
(s) One microfilm technician II.
(t) One inventory management assistant III.
(u) Twenty-three judicial assistants.
(v) Three judicial secretaries.
(w) One management assistant III.
(x) One management assistant IV-confidential.
(y) Two collections officers III.
(z) One fiscal technician II.
(aa) Three data entry operators III.

SEC. 90. Section 74909 of the Government Code is amended to read:

74909. (a) The following biweekly salary schedule, which is consistent with the Salary Ordinance of the County of Ventura, shall apply to the personnel of the Ventura County Municipal Court:

Municipal Court Classification	Biweekly Rate
Manager-Court Divisions	$1,329.00–1,677.00
Program Administrator III	1,494.00–1,887.00
Administrative Officer II	1,642.00–2,076.00
Administrative Assistant I-NE*	1,005.00–1,340.00
Administrative Aide	806.00–1,075.00
Supervising Accountant	1,681.00–2,126.00
Microfilm Technician II	676.00– 901.00
Office Systems Coordinator I	1,101.00–1,473.00
Financial Evaluation Officer II	839.00–1,118.00
Clerical Supervisor III	1,018.00–1,357.00
Collections Officer II	799.00–1,065.00
Collections Officer III	839.00–1,118.00
Courier II	629.00– 837.00
Court Services Assistant II	819.00–1,092.00
Court Services Assistant III	881.00–1,174.00
Fiscal Assistant II	676.00– 900.00
Fiscal Assistant III	762.00–1,015.00
Fiscal Assistant IV	819.00–1,092.00
Fiscal Technician I	902.00–1,203.00
Fiscal Technician II	970.00–1,293.00
Inventory Management Assistant III	726.00– 967.00
Judicial Assistant	924.00–1,232.00
Judicial Secretaries	881.00–1,174.00
Management Assistant III	881.00–1,174.00
Management Assistant IV Confidential	1,030.00–1,295.00
Senior Accountant	1,275.00–1,704.00
Data Entry Operator III	687.00– 914.00

*NE-Nonexempt

Merit increases within the salary range shall be in accordance with the salary merit increment plan.

(b) In the event that the above biweekly salary schedule is not applicable, then Section 74912 shall apply.

SEC. 91. *Section 74912 of the Government Code is amended to read:*

74912. Certain classifications in the Ventura County Municipal Court are deemed to be equivalent in position responsibility and salary level to certain classifications in the service of Ventura County, and whenever the salary of an equivalent classification in the Ventura County service is adjusted by the board of supervisors, the salary of the equivalent classification in the Ventura County Municipal Court and the salary of the personnel in such classifications, shall be adjusted an equivalent amount. The

adjustment shall be effective on the same date as the effective date of the action by the board of supervisors as it applies to classifications in the Ventura County service. Any salary increases granted or reclassifications made pursuant to this article shall be effective only until the effective date of general legislation enacted by the Legislature at its next regular session following the date the salary increases are granted or reclassifications made. Classifications deemed to be equivalent are as follows:

Municipal Court Classification	County Classification
Manager Court Divisions	Manager Court Divisions
Program Administrator III	Program Administrator III
Administrative Officer II	Administrative Officer II
Administrative Assistant I-NE*	Administrative Assistant I-NE*
Administrative Aide	Administrative Aide
Supervising Accountant	Supervising Accountant
Microfilm Technician II	Microfilm Technician II
Office Systems Coordinator I	Office Systems Coordinator I
Financial Evaluation Officer II	Financial Evaluation Officer II
Clerical Supervisor III	Clerical Supervisor III
Collections Officer II	Collections Officer II
Collections Officer III	Collections Officer III
Courier II	Courier II
Court Services Assistant II	Court Services Assistant II
Court Services Assistant III	Court Services Assistant III
Fiscal Assistant II	Fiscal Assistant II
Fiscal Assistant III	Fiscal Assistant III
Fiscal Assistant IV	Fiscal Assistant IV
Fiscal Technician I	Fiscal Technician I
Fiscal Technician II	Fiscal Technician II
Inventory Management Assistant III	Inventory Management Assistant III
Judicial Assistant	Judicial Assistant
Judicial Secretary	Judicial Secretary
Management Assistant III	Management Assistant III
Management Assistant IV-Confidential	Management Assistant IV-Confidential
Senior Accountant	Senior Accountant
Data Entry Operator III	Data Entry Operator III

*NE-Nonexempt

SEC. 91.1. Section 74921.9 of the Government Code is amended to read:

74921.9. There shall be one marshal for the County of Tulare, who shall receive a biweekly salary set at range 235. The marshal shall be the appointing power for those positions listed in Section 74921.10, as being appointed by the marshal, except as provided in Section 74922.5.

SEC. 91.2. Section 74921.10 of the Government Code is amended to read:

74921.10. The number of positions within each job classification which may be filled by appointment by the municipal court administrator and the marshal are, as follows:

(a) Appointed by the municipal court administrator:

Number	Title	Range
3	Deputy Clerk/Administrator II	186
5	Deputy Clerk/Administrator I	171
19	Courtroom Clerk	156
2	Collections Worker II	140
14	Court Clerk II	143
1	Office Assistant III	134
28	Legal Office Assistant II	130
4	Account Clerk	126

(b) Appointed by the marshal, except as provided in Section 74922.5:

Number	Title	Range
1	Chief Marshal's Assistant	220
3	Marshal's Assistant	206
14	Deputy Marshal	175
1	Legal Office Assistant III	140
4	Legal Office Assistant II	130

The marshal shall be management class A-4 and entitled to the benefits in that class as an appointed department head. The chief marshal's assistant and the three marshal's assistants shall be the equivalent of the current management class B and entitled to the general benefits in that class as management personnel.

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

SEC. 91.3. Section 74921.11 of the Government Code is amended to read:

74921.11. Whenever reference is made to a numbered salary range in any section of this article, the salary schedule found in the salary resolution of Tulare County in effect on January 1, 1993, shall apply. The salaries of municipal court officers and attachés may be adjusted upon approval of the board of supervisors. Any adjustments

shall only be effective to January 1 of the second year following the year in which those adjustments are made, unless ratified by the Legislature.

SEC. 91.6. Section 74937 of the Government Code is amended to read:

74937. (a) The presiding judge of the North Butte County Municipal Court may appoint the following positions:

(1) One municipal court administrator.

(2) One assistant municipal court administrator or supervising court clerk.

(3) Three supervising court clerks.

(4) Ten court clerks III, II or office assistant III.

(5) Four court clerks II, I, or office assistant II, I.

(6) One accounting specialist or senior account clerk.

(7) One and one-half court reporters.

(b) The presiding judge of the South Butte County Municipal Court may appoint the following positions:

(1) One municipal court administrator.

(2) One assistant municipal court administrator or supervising court clerk.

(3) Two supervising court clerks, or court clerks III, II or office assistants III.

(4) Four court clerks III, II or office assistants III.

(5) Seven court clerks II, I or office assistants II, I.

(6) One accounting specialist or senior account clerk.

(7) One and one-half court reporters.

SEC. 91.7. Section 74940 of the Government Code is amended to read:

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

(a) Municipal court administrator—range 256.

(b) Assistant municipal court administrator—range 196.

(c) Supervising court clerk—range 148.

(d) Court clerk I—range 88.

(e) Court clerk II—range 108.

(f) Court clerk III—range 128.

(g) Office assistant III—range 77.

(h) Office assistant II—range 57.

(i) Office assistant I—range 37.

(j) Accounting specialist—range 102.

(k) Senior account clerk—range 82.

(*l*) Account clerk—range 62.

(m) Court reporter—range 210.

SEC. 92. Section 74953 of the Government Code is amended to read:

74953. Official reporters of the Municipal Court for the County of Napa shall be appointed pursuant to Section 72194. For their services in reporting testimony and proceedings in court, they shall

receive the same fees provided in Section 70045.7 for reporters of the Superior Court for the County of Napa.

SEC. 93. Section 74954 of the Government Code is amended to read:

74954. (a) Whenever a reference is made to a numbered salary range according to the standard salary schedule in any section of this article, the schedule found in the Napa County Table and Index of Classes in effect on July 4, 1992, shall apply.

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

SEC. 94. Section 74954.5 of the Government Code is amended to read:

74954.5. (a) Whenever a reference is made to a numbered salary range according to the management and nonclassified personnel salary schedule in any section of this article, the schedule found in the Napa County Table and Index of Classes in effect on July 4, 1992, shall apply.

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

SEC. 95. Section 74955 of the Government Code is amended to read:

74955. There shall be one court executive officer (clerk of the court) who shall be appointed by, and who shall serve at the pleasure of, a majority of the judges of the municipal court. The court clerk shall be paid a biweekly salary at the rate specified in salary range No. D-215 in the salary schedule for management and nonclassified personnel. In addition to any other duties imposed by law, the court clerk shall, at the direction of the presiding judge, perform any or all of the following duties:

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

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

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

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

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

SEC. 96. Section 74956 of the Government Code is amended to read:

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

Position Title	Number of Positions	Salary Range
Court executive officer (court clerk)	1	D-215
Assistant court executive officer	1	D-182
Branch manager	1	D-084
Court division supervisor	2	B-119
Municipal court clerk	4	A-179
Legal clerk II	9	A-116
Legal clerk interpreter—B	1	A-140
Legal clerk I	3	A-103
Senior account clerk	1	A-145
Account clerk I	1	A-105
Office assistant II	3	A-102
Data control clerk	1	A-129
Court computer systems coordinator	1	A-221
Court commissioner	1	*

* As specified in Section 74949.1

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

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

SEC. 97. Section 74984 of the Government Code is amended to read:

74984. (a) There shall be one marshal who shall be appointed by the court; provided, that upon the effective date of this section, the incumbent elected marshal shall continue in office as marshal and

may be removed by the court only for cause. When that marshal leaves office, the succeeding marshals shall be appointed by and serve at the pleasure of the court.

(b) The marshal shall receive the salary of four thousand twenty-eight dollars ($4,028) per month as set forth in the standard salary resolution of Shasta County in effect for the 1992–93 fiscal year. The marshal shall be provided the same employment benefits by Shasta County as the county provides to other county employees in an equivalent category in the county's merit personnel system.

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

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

SEC. 98. Section 74985 of the Government Code is amended to read:

74985. (a) The marshal, with the approval of the court, may appoint the following marshal's office employees whose numbers, classifications, and salary ranges in the standard salary resolution of Shasta County in effect on January 1, 1993, are:

Position Title	Number of Positions	Salary Range	
Marshal	1	Flat	$4,028 per mo.
Deputy Marshal	14	39.3	$2,276–2,766 per mo.
		Flat—Probationary	$2,167 per mo.
		Flat—Trainee	$2,064 per mo.
Legal Process Clerk II	4	31.3	$1,540–1,872 per mo.
Legal Process Clerk I		29.3	$1,397–1,698 per mo.
Marshal's Civil Supervisor	1	34.3	$1,783–2,167 per mo.
Marshal's Sergeant	2	41.8	$2,571–3,125 per mo.

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

SEC. 99. Section 74986 of the Government Code is amended to read:

74986. (a) The municipal court may appoint a court executive officer who shall be the chief administrative officer and ex officio clerk of the court. The court executive officer shall serve at the pleasure of the court and shall receive a salary of four thousand nine hundred sixty-four dollars ($4,964) per month as set forth in the standard salary resolution of Shasta County in effect for the 1992–93 fiscal year. The court executive officer shall be provided the same employment benefits by Shasta County as the county provides to other county employees in an equivalent category in the county's merit personnel system.

(b) The municipal court shall prescribe and regulate the duties

and authority of the court executive officer.

SEC. 100. Section 74987 of the Government Code is amended to read:

74987. (a) The court executive officer, with the approval of the court, may appoint the court's support staff personnel. The following employees of the court shall be compensated within the following applicable ranges established by the standard salary resolution of Shasta County in effect on February 22, 1993:

Position Title	Number of Positions	Salary Range	
Court Executive Officer	1	Flat	$4,964 per mo.
Assistant Court Executive Officer	1	Flat	$3,971 per mo.
Court Commissioner	1	Flat	$68,010 per yr.
Court Services Manager	1		$2,460–2,991 per mo.
Court Services Assistant IV	1		$1,809–2,199 per mo.
Court Services Assistant III	4		$1,723–1,904 per mo.
Court Services Assistant II	15		$1,641–1,995 per mo.
Court Services Assistant I	9		$1,489–1,809 per mo.
Judicial Secretary	1		$1,872–2,275 per mo.
Court Services Assistant/Calendar Coordinator	1		$1,995–2,425 per mo.
Court Services Financial Hearing Officer	1		$1,995–2,425 per mo.
Court Services Accountant/Collection Clerk II	1		$1,723–2,094 per mo.
Court Services Supervisor	2		$1,947–2,366 per mo.
Court Services Fiscal Officer	1		$2,713–3,297 per mo.

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

SEC. 101. The Legislature finds that the existing process for review of changes in the number and compensation of municipal court employees relies on determinations by local government, and delivers insufficient information to permit analysis of proposals at the state level. The Judicial Council is directed to review the procedures now governing municipal court staffing legislation and shall report to the Legislature on options for revision on or before January 1, 1994.

SEC. 102. Section 1.3 of this bill incorporates amendments to Section 69893.5 of the Government Code proposed by both this bill

and AB 480. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 69893.5 of the Government Code, and (3) this bill is enacted after AB 480, in which case Section 1 of this bill shall not become operative.

SEC. 103. Section 70.3 of this bill incorporates amendments to Section 74191.7 of the Government Code proposed by both this bill and AB 480. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 74191.7 of the Government Code, and (3) this bill is enacted after AB 480, in which case Section 70 of this bill shall not become operative.

SEC. 104. 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 1092

An act to amend Sections 2982, 2984.3, and 2986.2 of the Civil Code, and to add Section 11709.2 to the Vehicle Code, relating to motor vehicles.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

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

(a) Some retail motor vehicle purchasers and lessees have a misconception that California law provides for a "cooling off" or other cancellation period after the sale or lease of a motor vehicle during which a purchaser or lessee may return the vehicle and cancel the contract without cause or the consent of the seller.

(b) Although California law does provide for a "cooling off" period during which certain types of contracts may be canceled, such as home solicitation contracts or offers, California law does not provide such a remedy for the cancellation of motor vehicle lease and sale contracts. However, the law does provide for numerous other rescission remedies relative to the lease or purchase of motor vehicles, such as rescission for fraud, mistake, duress, failure of consideration, and rescission by mutual consent.

(c) It is the intent of the Legislature in enacting this act to educate

and put prospective motor vehicle purchasers and lessees on notice that California law does not have a "cooling off" or other cancellation period during which a motor vehicle lease or purchase contract may be canceled because the purchaser or lessee later changes his or her mind, decides the vehicle costs too much, or wishes that a different vehicle had been acquired.

(d) The contract notice and sign display provisions of this act are intended to educate prospective motor vehicle purchasers and lessors of contractual obligations under current California law. The notice and sign display provisions are not intended to create, expand, repeal, or in any manner limit current rescission rights or remedies.

SEC. 2. Section 2982 of the Civil Code, as amended by Section 3 of Chapter 101 of the Statutes of 1993, is amended to read:

2982. Every conditional sale contract subject to this chapter shall contain the disclosures required by Regulation Z whether or not Regulation Z applies to the transaction. In addition, to the extent applicable, the contract shall contain the other disclosures and notices required by, and shall satisfy the requirements and limitations of, this section. The disclosures required by subdivision (a) may be itemized or subtotaled to a greater extent than as required by that subdivision and shall be made together and in the sequence set forth in that subdivision. All other disclosures and notices may appear in the contract in any location or sequence and may be combined or interspersed with other provisions of the contract.

(a) The contract shall contain the following disclosures, as applicable, which shall be labeled "itemization of the amount financed":

(1) (A) The cash price, exclusive of document preparation fees, taxes imposed on the sale, pollution control certification fees, and the amount charged for a service contract.

(B) The fee to be retained by the seller for document preparation.

(C) The fee charged by the seller for certifying that the motor vehicle complies with applicable pollution control requirements.

(D) Taxes imposed on the sale.

(E) The amount charged for a service contract.

(F) The total cash price, which is the sum of subparagraphs (A) to (E), inclusive.

(2) An itemization of the amounts to be paid to any public officer for license, certificate of title, motor vehicle smog impact fee, and registration.

(3) The aggregate amount of premiums agreed, upon execution of the contract, to be paid for policies of insurance included in the contract, excluding the amount of any insurance premium included in the finance charge.

(4) The amount of the state fee for issuance of a certificate of compliance, noncompliance, or waiver pursuant to any applicable pollution control statute.

(5) A subtotal representing the sum of the foregoing items.

(6) The amount of the buyer's downpayment itemized to show the following:

(A) The net agreed value of the property being traded in.

(B) The amount of any portion of the downpayment to be deferred until not later than the due date of the second regularly scheduled installment under the contract and which is not subject to a finance charge.

(C) The amount of any manufacturer's rebate applied or to be applied to the downpayment.

(D) The remaining amount paid or to be paid by the buyer as a downpayment.

(7) The amount of any administrative finance charge, labeled "prepaid finance charge."

(8) The difference between item (5) and the sum of items (6) and (7), labeled "amount financed."

(b) No particular terminology is required to disclose the items set forth in subdivision (a) except as expressly provided in that subdivision.

(c) If payment of all or a portion of the downpayment is to be deferred, the deferred payment shall be reflected in the payment schedule disclosed pursuant to Regulation Z.

(d) If the downpayment includes property being traded in, the contract shall contain a brief description of that property.

(e) The contract shall contain the names and addresses of all persons to whom the notice required under Section 2983.2 and permitted under Sections 2983.5 and 2984 is to be sent.

(f) (1) Where the contract includes a finance charge determined on the precomputed basis, the contract shall identify the method of computing the unearned portion of the finance charge in the event of prepayment in full of the buyer's obligation and contain a statement of the amount or method of computation of any charge that may be deducted from the amount of any unearned finance charge in computing the amount that will be credited to the obligation or refunded to the buyer. The method of computing the unearned portion of the finance charge shall be sufficiently identified with a reference to the actuarial method if the computation will be under that method. The method of computing the unearned portion of the finance charge shall be sufficiently identified with a reference to the Rule of 78's, the sum of the digits, or the sum of the periodic time balances method in all other cases, and those references shall be deemed to be equivalent for disclosure purposes.

(2) Where the contract includes a finance charge which is determined on the simple-interest basis but provides for a minimum finance charge in the event of prepayment in full, the contract shall contain a statement of that fact and the amount of the minimum finance charge or its method of calculation.

(g) (1) Where the contract includes a finance charge which is determined on the precomputed basis and provides that the

unearned portion of the finance charge to be refunded upon full prepayment of the contract is to be determined by a method other than actuarial, the contract shall contain a notice, in at least 10-point boldface type if the contract is printed, reading as follows: "Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time and obtain a partial refund of the finance charge if it is $1 or more. Because of the way the amount of this refund will be figured, the time when you prepay could increase the ultimate cost of credit under this agreement. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement."

(2) Where the contract includes a finance charge which is determined on the precomputed basis and provides for the actuarial method for computing the unearned portion of the finance charge upon prepayment in full, the contract shall contain a notice, in at least 10-point boldface type if the contract is printed, reading as follows: "Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time and obtain a partial refund of the finance charge if it is $1 or more. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement."

(3) Where the contract includes a finance charge which is determined on the simple-interest basis, the contract shall contain a notice, in at least 10-point boldface type if the contract is printed, reading as follows: "Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement."

(h) The contract shall contain a notice in at least 8-point boldface type, acknowledged by the buyer, that reads as follows:

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

Complaints concerning unfair or deceptive practices or methods by the seller may be referred to the city attorney, the district attorney, or the Department of Motor Vehicles, Division of Investigations and Occupational Licensing, P.O. Box 93289,

Sacramento, California 94232-3890, or any combination thereof.

After this contract is signed, the seller may not change the financing or payment terms unless you agree in writing to the change. You do not have to agree to any change, and it is an unfair or deceptive practice for the seller to make a unilateral change.

Buyer's Signature"

(i) (1) The contract shall contain an itemization of any insurance included as part of the amount financed disclosed pursuant to paragraph (3) of subdivision (a) and of any insurance included as part of the finance charge. The itemization shall identify the type of insurance coverage and the premium charged therefor, and, if the insurance expires before the date of the last scheduled installment included in the repayment schedule, the term of the insurance shall be stated.

(2) If any charge for insurance (other than for credit life or disability) is included in the contract balance and disbursement of any part thereof is to be made more than one year after the date of the conditional sale contract, any finance charge on the amount to be disbursed after one year shall be computed from the month the disbursement is to be made to the due date of the last installment under the conditional sale contract.

(j) (1) The dollar amount of the disclosed finance charge shall not exceed the greater of:

(A) (i) One and one-half percent on so much of the unpaid balance as does not exceed two hundred twenty-five dollars ($225), 1⅙ percent on so much of the unpaid balance in excess of two hundred twenty-five dollars ($225) as does not exceed nine hundred dollars ($900), ⅚ of 1 percent on so much of the unpaid balance in excess of nine hundred dollars ($900) as does not exceed one thousand six hundred fifty dollars ($1,650), and ¹³⁄₂₄ of 1 percent on that portion of the unpaid balance which exceeds one thousand six hundred fifty dollars ($1,650); or

(ii) One percent of the entire unpaid balance; multiplied in either case by the number of months (computed on the basis of a full month for any fractional month period in excess of 15 days) elapsing between the date of the contract and the due date of the last installment; or

(B) If the finance charge is determined by the precomputed basis, twenty-five dollars ($25); or

(C) If the finance charge or a portion thereof is determined by the simple-interest basis:

(i) Twenty-five dollars ($25) if the unpaid balance does not exceed one thousand dollars ($1,000), (ii) fifty dollars ($50) if the unpaid balance exceeds one thousand dollars ($1,000) but does not exceed two thousand dollars ($2,000), or (iii) seventy-five dollars ($75) if the unpaid balance exceeds two thousand dollars ($2,000).

(2) The holder of the contract shall not charge, collect, or receive a finance charge which exceeds the disclosed finance charge, except to the extent (A) caused by the holder's receipt of one or more payments under a contract which provides for determination of the finance charge or a portion thereof on the 365-day basis at a time or times other than as originally scheduled whether or not the parties enter into an agreement pursuant to Section 2982.3, (B) permitted by paragraph (2), (3), or (4) of subdivision (c) of Section 226.17 of Regulation Z, or (C) permitted by subdivisions (a) and (c) of Section 2982.8.

(3) If the finance charge or a portion thereof is determined by the simple-interest basis and the amount of the unpaid balance exceeds five thousand dollars ($5,000), the holder of the contract may, in lieu of its right to a minimum finance charge under subparagraph (C) of paragraph (1), charge, receive, or collect on the date of the contract an administrative finance charge not to exceed seventy-five dollars ($75), provided that the sum of the administrative finance charge and the portion of the finance charge determined by the simple-interest basis shall not exceed the maximum total finance charge permitted by subparagraph (A) of paragraph (1). Any administrative finance charge which is charged, received, or collected by a holder shall be deemed a finance charge earned on the date of the contract.

(4) When a contract provides for unequal or irregular payments, or payments on other than a monthly basis, the maximum finance charge shall be at the effective rate provided for in paragraph (1), having due regard for the schedule of installments.

(k) The contract may provide that for each installment in default for a period of not less than 10 days the buyer shall pay a delinquency charge in an amount not to exceed in the aggregate 5 percent of the delinquent installment, which amount may be collected only once on any installment regardless of the period during which it remains in default. Payments timely received by the seller under an extension or deferral agreement shall not be subject to a delinquency charge unless the charge is permitted by Section 2982.3. The contract may provide for reasonable collection costs and fees in the event of delinquency.

(*l*) Notwithstanding any provision of a contract to the contrary, the buyer may pay at any time before maturity the entire indebtedness evidenced by the contract without penalty. In the event of prepayment in full:

(1) If the finance charge was determined on the precomputed basis, the amount required to prepay the contract shall be the outstanding contract balance as of that date, provided, however, that the buyer shall be entitled to a refund credit in the amount of the unearned portion of the finance charge, except as provided in paragraphs (3) and (4). The amount of the unearned portion of the finance charge shall be at least as great a proportion of the finance charge, including any additional finance charge imposed pursuant to

Section 2982.8 or other additional charge imposed because the contract has been extended, deferred, or refinanced, as the sum of the periodic monthly time balances payable more than 15 days after the date of prepayment bears to the sum of all the periodic monthly time balances under the schedule of installments in the contract or, if the contract has been extended, deferred, or refinanced, as so extended, deferred, or refinanced. Where the amount of the refund credit is less than one dollar ($1), no refund credit need be made by the holder. Any refund credit may be made in cash or credited to the outstanding obligations of the buyer under the contract.

(2) If the finance charge or a portion thereof was determined on the simple-interest basis, the amount required to prepay the contract shall be the outstanding contract balance as of that date, including any earned finance charges which are unpaid as of that date and, if applicable, the amount provided in paragraph (3), and provided further that in cases where a finance charge is determined on the 360-day basis, the payments theretofore received will be assumed to have been received on their respective due dates regardless of the actual dates on which the payments were received.

(3) Where the minimum finance charge provided by subparagraph (B) or subparagraph (C) of paragraph (1) of subdivision (j), if either is applicable, is greater than the earned finance charge as of the date of prepayment, the holder shall be additionally entitled to the difference.

(4) The provisions of this subdivision shall not impair the right of the seller or the seller's assignee to receive delinquency charges on delinquent installments and reasonable costs and fees as provided in subdivision (k) or extension or deferral agreement charges as provided in Section 2982.3.

(5) Notwithstanding any provision of a contract to the contrary, whenever the indebtedness created by any contract is satisfied prior to its maturity through surrender of the motor vehicle, repossession of the motor vehicle, redemption of the motor vehicle after repossession, or any judgment, the outstanding obligation of the buyer shall be determined as provided in paragraph (1) or (2); provided further that the buyer's outstanding obligation shall be computed by the holder as of the date the holder recovers the value of the motor vehicle through disposition thereof or judgment is entered or, if the holder elects to keep the motor vehicle in satisfaction of the buyer's indebtedness, as of the date the holder takes possession of the motor vehicle.

(m) Notwithstanding any other provision of this chapter to the contrary, any information required to be disclosed in a conditional sale contract under this chapter may be disclosed in any manner, method, or terminology required or permitted under Regulation Z, as in effect at the time that disclosure is made, except that permitted by paragraph (2) of subdivision (c) of Section 226.18 of Regulation Z, provided that all of the requirements and limitations set forth in subdivision (a) of this section are satisfied. Nothing in this chapter

prohibits the disclosure in that contract of additional information required or permitted under Regulation Z, as in effect at the time that disclosure is made.

(n) If the seller imposes a fee for document preparation, the contract shall contain a disclosure that the fee is not a governmental fee.

(o) No seller may impose an application fee for a transaction governed by this chapter.

(p) The seller or holder may charge and collect a fee not to exceed fifteen dollars ($15) for the return by a depository institution of a dishonored check, negotiated order of withdrawal, or share draft issued in connection with the contract, if the contract so provides or if the contract contains a generalized statement that the buyer may be liable for collection costs incurred in connection with the contract.

(q) The contract shall disclose on its face, by printing the word "new" or "used" within a box outlined in red, that is not smaller than one-half inch high and one-half inch wide, whether the vehicle is sold as a new vehicle, as defined in Section 430 of the Vehicle Code, or a used vehicle, as defined in Section 665 of the Vehicle Code.

(r) The contract shall contain a notice with a heading in at least 12-point bold type and the text in at least 10-point bold type, circumscribed by a line, immediately above the contract signature line, that reads as follows:

THERE IS NO COOLING OFF PERIOD

California law does not provide for a "cooling off" or other cancellation period for vehicle sales. Therefore, you cannot later cancel this contract simply because you change your mind, decide the vehicle costs too much, or wish you had acquired a different vehicle. After you sign below, you may only cancel this contract with the agreement of the seller or for legal cause, such as fraud.

SEC. 3. Section 2984.3 of the Civil Code is amended to read:

2984.3. Any acknowledgment by the buyer of delivery of a copy of a conditional sale contract or purchase order and any vehicle purchase proposal and any credit statement which the seller has required or requested the buyer to sign, and which he or she has signed, during the contract negotiations, shall be printed or written in size equal to at least 10-point bold type and, if contained in the contract, shall appear directly above the space reserved for the buyer's signature or adjacent to any other notices required by law to be placed immediately above the signature space. The buyer's written acknowledgment, conforming to the requirements of this

section, of delivery of a completely filled-in copy of the contract, and a copy of the other documents shall be a rebuttable presumption of delivery in any action or proceeding by or against a third party without knowledge to the contrary when he or she acquired his or her interest in the contract. If the third party furnishes the buyer a copy of the documents, or a notice containing items 1 to 9, inclusive, of subdivision (a) of Section 2982, and stating that the buyer shall notify the third party in writing within 30 days if a copy of the documents was not furnished, and that notification is not given, it shall be conclusively presumed in favor of the third party that copies of the documents were furnished as required by this chapter.

SEC. 4. Section 2986.2 of the Civil Code is amended to read:

2986.2. Every lease contract shall contain, in at least eight-point bold type, above the space provided for the lessee's signature and circumscribed by a line, the following warnings which shall be signed or initialed by the lessee:

(a) "Notice to the lessee: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in; (2) You are entitled to a completely filled in copy of this agreement; (3) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement."

"s/s _____."

lessee

(b) "Warning—Unless a charge is included in this agreement for public liability or property damage insurance, payment for such coverage is not provided by this agreement."

"s/s _____."

lessee

(c) "Lessee has the right to return the vehicle, and receive a refund of any payments made if the credit application is not approved, unless nonapproval results from an incomplete application or from incorrect information provided by the lessee."

"s/s _____."

lessee

(d) "California law does not provide for a "cooling-off" or other cancellation period for vehicle leases. Therefore, you cannot later cancel this lease simply because you change your mind, decide the vehicle costs too much, or wish you had acquired a different vehicle. You may only cancel this lease with the agreement of the lessor or for legal cause, such as fraud."

"s/s _____."

lessee

SEC. 5. Section 11709.2 is added to the Vehicle Code, to read:

11709.2. Every dealer shall conspicuously display a notice not less than eight inches high and 10 inches wide, in each sales office and sales cubicle of a dealer's established place of business where written terms of specific sale or lease transactions are discussed with prospective purchasers or lessees, and in each room of a dealer's established place of business where sale and lease contracts are regularly executed, which states the following:

"NO COOLING-OFF PERIOD

California law does not provide for a "cooling-off" or other cancellation period for vehicle lease or purchase contracts. Therefore, you cannot later cancel such a contract simply because you change your mind, decide the vehicle costs too much, or wish you had acquired a different vehicle. After you sign a motor vehicle purchase or lease contract, it may only be canceled with the agreement of the seller or lessor or for legal cause, such as fraud."

SEC. 6. This act shall become operative on July 1, 1994.

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 1093

An act to amend Sections 22651, 22651.7, 40200, 40200.3, 40200.4, 40200.5, 40200.7, 40202, 40206.5, 40215, 40225, and 40230 of, and to repeal Section 40223 of, the Vehicle Code, relating to vehicles.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 22651 of the Vehicle Code is amended to read:

22651. Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code; or any

regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city or a county in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under any of the following circumstances:

(a) When any vehicle is left unattended upon any bridge, viaduct, or causeway or in any tube or tunnel where the vehicle constitutes an obstruction to traffic.

(b) When any vehicle is parked or left standing upon a highway in a position so as to obstruct the normal movement of traffic or in a condition so as to create a hazard to other traffic upon the highway.

(c) When any vehicle is found upon a highway or any public lands and a report has previously been made that the vehicle has been stolen or a complaint has been filed and a warrant thereon issued charging that the vehicle has been embezzled.

(d) When any vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway.

(e) When any vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant and it is impracticable to move the vehicle from in front of the fire hydrant to another point on the highway.

(f) When any vehicle, except any highway maintenance or construction equipment, is stopped, parked, or left standing for more than four hours upon the right-of-way of any freeway which has full control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.

(g) When the person or persons in charge of a vehicle upon a highway or any public lands are, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.

(h) When an officer arrests any person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.

(i) (1) When any vehicle, other than a rented vehicle, is found upon a highway or any public lands, or is removed pursuant to this code, and it is known to have been issued five or more notices of parking violation, to which the owner or person in control of the vehicle has not responded within 21 days of citation issuance or 10 days of a notice of delinquent parking violation to the agency responsible for processing notices of parking violation or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which no certificate has been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section

41500) of Division 17, the vehicle may be impounded until that person furnishes to the impounding law enforcement agency all of the following:

(A) Evidence of his or her identity.

(B) An address within this state at which he or she can be located.

(C) Satisfactory evidence that all parking penalties due for the vehicle and any other vehicle registered to the registered owner of the impounded vehicle, and all traffic violations of the registered owner, have been cleared.

(2) The requirements in subparagraph (C) of paragraph (1) shall be fully enforced by the impounding law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records.

(3) A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking penalties or bail has been deposited, that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded. Evidence of current registration shall be produced after a vehicle has been impounded, or, at the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

(4) A vehicle shall be released to the legal owner, as defined in Section 370, if the legal owner does all of the following:

(A) Pays the cost of towing and storing the vehicle.

(B) Submits evidence of payment of fees as provided in Section 9561.

(C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt thereof, full amount of the parking penalties for all notices of parking violations issued for the vehicle.

(j) When any vehicle is found illegally parked and there are no license plates or other evidence of registration displayed, the vehicle may be impounded until the owner or person in control of the vehicle furnishes the impounding law enforcement agency evidence

of his or her identity and an address within this state at which he or she can be located.

(k) When any vehicle is parked or left standing upon a highway for 72 or more consecutive hours in violation of a local ordinance authorizing removal.

(*l*) When any vehicle is illegally parked on a highway in violation of any local ordinance forbidding standing or parking and the use of a highway, or a portion thereof, is necessary for the cleaning, repair, or construction of the highway, or for the installation of underground utilities, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

(m) Wherever the use of the highway, or any portion thereof, is authorized by local authorities for a purpose other than the normal flow of traffic or for the movement of equipment, articles, or structures of unusual size, and the parking of any vehicle would prohibit or interfere with that use or movement, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

(n) Whenever any vehicle is parked or left standing where local authorities, by resolution or ordinance, have prohibited parking and have authorized the removal of vehicles. No vehicle may be removed unless signs are posted giving notice of the removal.

(o) (1) When any vehicle is found upon a highway, any public lands, or an offstreet parking facility with a registration expiration date in excess of one year before the date it is found on the highway, public lands, or the offstreet parking facility. However, if the vehicle is occupied, only a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove the vehicle. For purposes of this subdivision, the vehicle shall be released to the owner or person in control of the vehicle only after the owner or person furnishes the storing law enforcement agency with proof of current registration and a currently valid driver's license to operate the vehicle.

(2) As used in this subdivision, "offstreet parking facility" means any offstreet facility held open for use by the public for parking vehicles and includes any publicly owned facilities for offstreet parking, and privately owned facilities for offstreet parking where no fee is charged for the privilege to park and which are held open for the common public use of retail customers.

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, or 14601.5 and there is no passenger in the vehicle who has a valid driver's license and authorization to operate the vehicle. Any vehicle so removed from the highway or any public lands shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current

vehicle registration, or upon order of a court.

(q) Whenever any vehicle is parked for more than 24 hours on a portion of highway which is located within the boundaries of a common interest development, as defined in subdivision (c) of Section 1351 of the Civil Code, and signs, as required by Section 22658.2, have been posted on that portion of highway providing notice to drivers that vehicles parked thereon for more than 24 hours will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

(r) When any vehicle is illegally parked and blocks the movement of a legally parked vehicle.

(s) (1) When any vehicle, except highway maintenance or construction equipment, an authorized emergency vehicle, or a vehicle which is properly permitted or otherwise authorized by the Department of Transportation, is stopped, parked, or left standing for more than eight hours within a roadside rest area or viewpoint.

(2) For purposes of this subdivision, a roadside rest area or viewpoint is a publicly maintained vehicle parking area, adjacent to a highway, utilized for the convenient, safe stopping of a vehicle to enable motorists to rest or to view the scenery. If two or more roadside rest areas are located on opposite sides of the highway, or upon the center divider, within seven miles of each other, then that combination of rest areas is considered to be the same rest area.

SEC. 1.5. Section 22651 of the Vehicle Code is amended to read:

22651. Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code; or any regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city or a county in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under any of the following circumstances:

(a) When any vehicle is left unattended upon any bridge, viaduct, or causeway or in any tube or tunnel where the vehicle constitutes an obstruction to traffic.

(b) When any vehicle is parked or left standing upon a highway in a position so as to obstruct the normal movement of traffic or in a condition so as to create a hazard to other traffic upon the highway.

(c) When any vehicle is found upon a highway or any public lands and a report has previously been made that the vehicle has been stolen or a complaint has been filed and a warrant thereon issued charging that the vehicle has been embezzled.

(d) When any vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway.

(e) When any vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant and it is impracticable to move the vehicle from in front of the fire hydrant to another point on the highway.

(f) When any vehicle, except any highway maintenance or construction equipment, is stopped, parked, or left standing for more than four hours upon the right-of-way of any freeway which has full control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.

(g) When the person or persons in charge of a vehicle upon a highway or any public lands are, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.

(h) When an officer arrests any person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.

(i) (1) When any vehicle, other than a rented vehicle, is found upon a highway or any public lands, or is removed pursuant to this code, and it is known to have been issued five or more notices of parking violation, to which the owner or person in control of the vehicle has not responded within 21 days of citation issuance or 10 days of a notice of delinquent parking violation to the agency responsible for processing notices of parking violation or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which no certificate has been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17, the vehicle may be impounded until that person furnishes to the impounding law enforcement agency all of the following:

(A) Evidence of his or her identity.

(B) An address within this state at which he or she can be located.

(C) Satisfactory evidence that all parking penalties due for the vehicle and any other vehicle registered to the registered owner of the impounded vehicle, and all traffic violations of the registered owner, have been cleared.

(2) The requirements in subparagraph (C) of paragraph (1) shall be fully enforced by the impounding law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records.

(3) A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking penalties or bail has been deposited, that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded. Evidence of

current registration shall be produced after a vehicle has been impounded, or, at the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

(4) A vehicle shall be released to the legal owner, as defined in Section 370, if the legal owner does all of the following:

(A) Pays the cost of towing and storing the vehicle.

(B) Submits evidence of payment of fees as provided in Section 9561.

(C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt thereof, full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5.

(5) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4) has a deficiency claim against the registered owner for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5, less the amount received from the sale of the vehicle.

(j) When any vehicle is found illegally parked and there are no license plates or other evidence of registration displayed, the vehicle may be impounded until the owner or person in control of the vehicle furnishes the impounding law enforcement agency evidence of his or her identity and an address within this state at which he or she can be located.

(k) When any vehicle is parked or left standing upon a highway for 72 or more consecutive hours in violation of a local ordinance authorizing removal.

(*l*) When any vehicle is illegally parked on a highway in violation of any local ordinance forbidding standing or parking and the use of a highway, or a portion thereof, is necessary for the cleaning, repair, or construction of the highway, or for the installation of underground utilities, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

(m) Wherever the use of the highway, or any portion thereof, is

authorized by local authorities for a purpose other than the normal flow of traffic or for the movement of equipment, articles, or structures of unusual size, and the parking of any vehicle would prohibit or interfere with that use or movement, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

(n) Whenever any vehicle is parked or left standing where local authorities, by resolution or ordinance, have prohibited parking and have authorized the removal of vehicles. No vehicle may be removed unless signs are posted giving notice of the removal.

(o) (1) When any vehicle is found upon a highway, any public lands, or an offstreet parking facility with a registration expiration date in excess of one year before the date it is found on the highway, public lands, or the offstreet parking facility. However, if the vehicle is occupied, only a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove the vehicle. For purposes of this subdivision, the vehicle shall be released to the owner or person in control of the vehicle only after the owner or person furnishes the storing law enforcement agency with proof of current registration and a currently valid driver's license to operate the vehicle.

(2) As used in this subdivision, "offstreet parking facility" means any offstreet facility held open for use by the public for parking vehicles and includes any publicly owned facilities for offstreet parking, and privately owned facilities for offstreet parking where no fee is charged for the privilege to park and which are held open for the common public use of retail customers.

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, or 14601.5 and there is no passenger in the vehicle who has a valid driver's license and authorization to operate the vehicle. Any vehicle so removed from the highway or any public lands shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(q) Whenever any vehicle is parked for more than 24 hours on a portion of highway which is located within the boundaries of a common interest development, as defined in subdivision (c) of Section 1351 of the Civil Code, and signs, as required by Section 22658.2, have been posted on that portion of highway providing notice to drivers that vehicles parked thereon for more than 24 hours will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

(r) When any vehicle is illegally parked and blocks the movement of a legally parked vehicle.

(s) (1) When any vehicle, except highway maintenance or construction equipment, an authorized emergency vehicle, or a

vehicle which is properly permitted or otherwise authorized by the Department of Transportation, is stopped, parked, or left standing for more than eight hours within a roadside rest area or viewpoint.

(2) For purposes of this subdivision, a roadside rest area or viewpoint is a publicly maintained vehicle parking area, adjacent to a highway, utilized for the convenient, safe stopping of a vehicle to enable motorists to rest or to view the scenery. If two or more roadside rest areas are located on opposite sides of the highway, or upon the center divider, within seven miles of each other, then that combination of rest areas is considered to be the same rest area.

SEC. 2. Section 22651.7 of the Vehicle Code, as amended by Section 6 of Chapter 1244 of the Statutes of 1992, is amended to read:

22651.7. In addition to, or as an alternative to, removal, any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or any regularly employed and salaried employee who is engaged in directing traffic or enforcing parking laws and regulations, of a jurisdiction in which a vehicle is located may immobilize the vehicle with a device designed and manufactured for the immobilization of vehicles, on a highway or any public lands located within the territorial limits in which the officer or employee may act if the vehicle is found upon a highway or any public lands and is known to have been issued five or more notices of parking violation which are delinquent because the owner or person in control of the vehicle has not responded to the agency responsible for processing notices of parking violation within 21 days of citation issuance or 10 days of a notice of delinquent parking violation, or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which no certificate has been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17. The vehicle may be immobilized until that person furnishes to the immobilizing law enforcement agency all of the following:

(a) Evidence of his or her identity.

(b) An address within this state at which he or she can be located.

(c) Satisfactory evidence that the full amount of parking penalties has been deposited for all notices of parking violation issued for the vehicle and any vehicles registered to the registered owner of the immobilized vehicle and that bail has been deposited for all traffic violations of the registered owner that have not been cleared. The requirements in subdivision (c) shall be fully enforced by the immobilizing law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records. A notice of parking violation issued to the vehicle shall be accompanied by a warning that repeated violations may result in the impounding or immobilization of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking

penalties or bail, or both, have been deposited that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is immobilized. Evidence of current registration shall be produced after a vehicle has been immobilized or, at the discretion of the immobilizing law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

SEC. 3. Section 40200 of the Vehicle Code, as amended by Section 7 of Chapter 1244 of the Statutes of 1992, is amended to read:

40200. (a) Any violation of any regulation that is not a misdemeanor governing the standing or parking of a vehicle under this code, under any federal statute or regulation, or under any ordinance enacted by local authorities is subject to a civil penalty. The enforcement of those civil penalties shall be governed by the civil administrative procedures set forth in this article.

(b) Except as provided in Section 40209, the registered owner and driver, rentee, or lessee of a vehicle cited for any violation of any regulation governing the parking of a vehicle under this code, under any federal statute or regulation, or under any ordinance enacted by a local authority shall be jointly liable for parking penalties imposed under this article, unless the owner can show that the vehicle was used without consent of that person, express or implied. An owner who pays any parking penalty, civil judgment, costs, or administrative fees pursuant to this article shall have the right to recover the same from the driver, rentee, or lessee.

(c) The driver of a vehicle who is not the owner thereof but who uses or operates the vehicle with the express or implied permission of the owner shall be considered the agent of the owner to receive notices of parking violations served in accordance with this article and may contest the notice of violation.

SEC. 4. Section 40200.3 of the Vehicle Code, as added by Section 10.2 of Chapter 1244 of the Statutes of 1992, is amended to read:

40200.3. (a) All parking penalties collected by the processing agency, which may be the issuing agency, including all administrative fees, process service fees, and fees and collection costs related to civil debt collection, shall be deposited to the account of the issuing agency, except that those sums attributable to the issuance of a notice of parking violation by a member of the California Highway Patrol, the California State Police, or other state law enforcement agency shall be deposited in the account in the jurisdiction where the violation occurred, and except those sums payable to a county pursuant to Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code and that portion of any parking penalty which is attributable to an increase in the parking bail amount effective between September 16, 1988, to July

1, 1992, inclusive, pursuant to Section 1463.28 of the Penal Code. Those funds attributable to this increase in bail shall be transferred to the county treasurer and deposited in the general fund. Any increase in parking penalties effective after July 1, 1992, shall accrue to the benefit of the issuing agency.

(b) The processing agency shall prepare an audited report at the end of each fiscal year setting forth the number of cases processed, and all sums received and distributed, together with any other information that may be specified by the issuing agency or the Controller. This report is a public record and shall be delivered to each issuing agency. Copies shall be made available, upon request, to the county auditor, the Controller, and the grand jury.

SEC. 5. Section 40200.4 of the Vehicle Code, as amended by Section 11 of Chapter 1244 of the Statutes of 1992, is amended to read:

40200.4. (a) The processing agency shall deposit with the county treasurer all sums due the county as the result of processing a parking violation not later than 45 days after the last day of the month in which the parking penalty was received.

(b) Except as provided in subdivisions (c) and (d), if a court within a county has been processing notices of parking violations and notices of delinquent parking violations for a city, a district, or any other issuing agency, the issuing agency and the county shall provide in an agreement for the orderly transfer of the processing activity as soon as possible but not later than January 1, 1994. The agreement shall permit the court to phase out, and the issuing agency to phase in, or transfer, personnel, equipment, and facilities that may have been acquired or need to be acquired in contemplation of a long-term commitment to processing of notices of parking violations and notices of delinquent parking violations for the issuing agency under this article. The court shall transfer the processing function for parking citations issued by the Department of the California Highway Patrol, the California State Police, or other state law enforcement agency to the processing agency in the city or county where the violation occurred.

(c) If Contra Costa County or San Mateo County, or a court in either county, had a contract in effect on January 1, 1992, to process notices of parking violations and notices of delinquent parking violations for a city, district, or other issuing agency within the particular county or counties, the county may continue to provide those services to the issuing agencies pursuant to the terms of the contract and any amendments thereto, to and including June 30, 1996, after which Section 40200.5 shall govern any contracts entered into for these services.

(d) San Francisco Municipal Court employees engaged in processing notices of parking violations and notices of delinquent parking violations and the positions of those employees shall be transferred to equivalent civil service positions in the City and County of San Francisco.

(e) No court employee shall be terminated or otherwise released

from employment as a result of the transfer of processing notices of parking violations and notices of delinquent parking violations from the courts to the issuing agencies.

(f) As used in this article, "parking penalty" includes, but is not limited to, any late payment penalty, administrative fee, assessment, and costs of collection as provided by law.

SEC. 6. Section 40200.5 of the Vehicle Code, as amended by Section 12 of Chapter 1244 of the Statutes of 1992, is amended to read:

40200.5. (a) Except as provided in subdivision (c) of Section 40200.4, an issuing agency may elect to contract with the county, with a private vendor, or with any other city or county processing agency, other than the Department of the California Highway Patrol, the California State Police, or other state law enforcement agency, within the county, with the consent of that other entity, for the processing of notices of parking violations and notices of delinquent parking violations, prior to filing with the court pursuant to Section 40230.

If an issuing agency contracts with a private vendor for processing services, it shall give special consideration to minority business enterprise participation in providing those services. For purposes of this subdivision, "special consideration" has the same meaning as specified in subdivision (c) of Section 14838 of the Government Code, as it relates to small business preference.

(b) Any contract entered pursuant to subdivision (a) shall provide for monthly distribution of amounts collected between the parties, except those amounts payable to a county pursuant to Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code and amounts payable to the Department of Motor Vehicles pursuant to Section 4763 of this code.

SEC. 7. Section 40200.7 of the Vehicle Code, as added by Section 14 of Chapter 1244 of the Statutes of 1992, is amended to read:

40200.7. For a period of 21 days from the issuance of the notice of parking violation or 10 days from the mailing of the notice of delinquent parking violation, a person may request review by the processing agency, or at the discretion of the processing agency, by the issuing agency, of the issuance of a notice of parking violation or a notice of delinquent parking violation by written request, telephone, or in person. If the person is dissatisfied with the results of the initial review, the person may contest through an administrative review process the notice of parking violation or notice of delinquent parking violation, by depositing with the processing agency by the 15th day following the mailing to that person of the results of the processing agency's administrative investigation, the full amount of the parking penalty and a written explanation of the reason for contesting the parking violation. The processing agency shall provide, through administrative policy, a procedure for contesting notices of parking violations and notices of delinquent parking violations for persons who can provide verifiable and substantial proof of their inability to deposit the full amount of

the parking penalty. If a vehicle has been immobilized or impounded for unpaid parking violations, the processing agency shall, provided that the vehicle remains under the control of the immobilizing or impounding agency, permit the registered owner of the vehicle to contest the parking violations related to the seizure of that vehicle without requiring the deposit of the parking penalties.

SEC. 8. Section 40202 of the Vehicle Code is amended to read:

40202. (a) If a vehicle is attended or 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 procedure for the registered owner or the lessee or rentee to deposit the parking penalty or, pursuant to Section 40215, contest the citation. The notice of parking violation shall also set forth the vehicle license number and registration expiration date if they are visible, 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. The notice of parking violation, or copy thereof, shall be considered a record kept in the ordinary course of business of the issuing agency and the processing agency and shall be prima facie evidence of the facts contained therein.

(b) The notice of parking violation shall be served by attaching it 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 subdivisions (a) and (b), 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, during the issuance of a notice of parking violation, without regard to whether the vehicle was initially attended or unattended, the vehicle is driven away prior to attaching the notice to the vehicle, the issuing officer shall file the notice with the processing agency. The processing agency shall mail, within 15 days of issuance of the notice of parking violation, a copy of the notice of parking violation to the registered owner.

(e) 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 canceled, the issuing agency may recommend, in writing, that the charges be canceled. The recommendation shall cite the reasons for the recommendation and shall be filed with the processing agency.

(f) If the processing agency makes a finding that there are grounds for cancellation, 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.

(g) Under no circumstances shall a personal relationship with any officer, public official, or law enforcement agency be grounds for cancellation.

SEC. 9. Section 40206.5 of the Vehicle Code, as amended by Section 20 of Chapter 1244 of the Statutes of 1992, is amended to read:

40206.5. (a) Within 15 days of a request, by mail or in person, the processing agency shall mail or otherwise provide to any person who has received a notice of delinquent parking violation, or his or her agent, a photostatic copy of the original notice of parking violation or an electronically produced facsimile of the original notice of parking violation. The issuing agency may charge a fee sufficient to recover the actual cost of providing the copy, not to exceed two dollars ($2). Until the issuing agency complies with a request for a copy of the original notice of parking violation, the processing agency may not proceed pursuant to subdivision (i) of Section 22651, Section 22651.7, or Section 40220.

(b) If the description of the vehicle on the notice of parking violation does not substantially match the corresponding information on the registration card for that vehicle and the processing agency is satisfied that the vehicle has not been incorrectly described due to the intentional switching of license plates, the processing agency shall, on written request of the person cancel the notice of parking violation without the necessity of an appearance by that person.

(c) For purposes of this section, a copy of the notice of parking violation may be a photostatic copy or an electronically produced facsimile.

SEC. 10. Section 40215 of the Vehicle Code, as added by Section 26 of Chapter 1244 of the Statutes of 1992, is amended to read:

40215. (a) If a person contests a notice of parking violation or a notice of delinquent parking violation, the processing agency shall do the following:

(1) The processing agency shall either investigate with its own records and staff or request that the issuing agency investigate the circumstances of the citation with respect to the contestant's written explanation of reasons for contesting the parking violation. If, based upon the results of that investigation, the processing agency is satisfied that the violation did not occur or that the registered owner was not responsible for the violation, the processing agency shall cancel the notice of parking violation and make an adequate record of the reasons for canceling the notice. The processing agency shall mail the results of the investigation to the person who contested the

notice of parking violation or the notice of delinquent parking violation.

(2) If the person contesting a notice of parking violation or notice of delinquent parking violation is not satisfied with the results of the investigation provided for in paragraph (1) and wishes to request an administrative review, the person shall, within 15 days of the mailing of the results of the investigation, deposit the amount of the parking penalty and request an administrative review.

(b) Administrative review procedure described in paragraph (2) of subdivision (a) shall consist of the following:

(1) The person requesting an administrative review shall indicate to the processing agency his or her election for a review by mail or personal conference.

(2) If the person requesting a hearing is a minor, that person shall be permitted to appear at a hearing or admit responsibility for a parking violation without the necessity of the appointment of a guardian. The processing agency may proceed against that person in the same manner as if that person were an adult.

(3) The administrative review shall be conducted before an examiner designated to conduct the review by the issuing agency's governing body or chief executive officer.

In addition to any other requirements of employment, an examiner shall demonstrate those qualifications, training, and objectivity prescribed by the issuing agency's governing body or chief executive as are necessary and which are consistent with the duties and responsibilities set forth in this article. The examiner's continued employment, performance evaluation, compensation, and benefits shall not be directly or indirectly linked to the amount of fines collected by the examiner.

(4) The officer or person authorized to issue a notice of parking violation shall not be required to participate in an administrative review. The issuing agency shall not be required to produce any evidence other than the notice of parking violation or copy thereof, and information received from the Department of Motor Vehicles identifying the registered owner of the vehicle. The documentation in proper form shall be considered prima facie evidence of the violation.

(5) The review shall be conducted in accordance with the written procedure established by the posing or processing agency which shall ensure fair and impartial review of contested parking violations. The agency's final decision may be delivered personally to the person by the examiner or to the person by first-class mail.

SEC. 11. Section 40223 of the Vehicle Code is repealed.

SEC. 12. Section 40225 of the Vehicle Code, as amended by Section 30 of Chapter 1244 of the Statutes of 1992, is amended to read:

40225. (a) An equipment violation entered on the notice of parking violation attached to the vehicle under Section 40203 shall be processed in accordance with this article. All of the violations entered on the notice of parking violation shall be noticed in the

notice of delinquent parking violation delivered pursuant to Section 40206, together with the amount of civil penalty.

(b) Whether or not a vehicle is in violation of any regulation governing the standing or parking of a vehicle but is in violation of subdivision (a) of Section 5204, a person authorized to enforce parking laws and regulations shall issue a written notice of parking violation, setting forth the alleged violation. The violation shall be processed pursuant to this section.

(c) The civil penalty for each equipment violation is the amount established for the violation in the Uniform Bail and Penalty Schedule, as adopted by the Judicial Council, except that upon proof of the correction to the processing agency, the penalty shall be reduced to ten dollars ($10). The civil penalty for each violation of Section 5204 is the amount established for the violation in the Uniform Bail and Penalty Schedule, as adopted by the Judicial Council, except that upon proof of the correction to the processing agency, the penalty shall be reduced to ten dollars ($10).

(d) Fifty percent of any penalty collected pursuant to this section for registration or equipment violations by a processing agency shall be paid to the county for remittance to the State Treasurer and the remaining 50 percent shall be retained by the issuing agency and processing agency subject to the terms of the contract described in Section 40200.5.

SEC. 13. Section 40230 of the Vehicle Code, as added by Section 33 of Chapter 1244 of the Statutes of 1992, is amended to read:

40230. (a) Within 20 days after the mailing or personal delivery of the final decision described in subdivision (b) of Section 40215, the contestant may seek review by filing an appeal to be heard by the justice or municipal court, where the same shall be heard de novo, except that the contents of the processing agency's file in the case shall be received in evidence. A copy of the notice of parking violation shall be admitted into evidence as prima facie evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the processing agency by the contestant. For purposes of computing the 20-day period, Section 1013 of the Code of Civil Procedure shall be applicable.

(b) The fee for filing the notice of appeal shall be twenty-five dollars ($25). The court shall request that the processing agency's file on the case be forwarded to the court, to be received within 15 days of the request. The court shall notify the contestant of the appearance date by mail or personal delivery. The court shall retain the twenty-five dollar ($25) fee regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the processing agency. Any deposit of parking penalty shall be refunded by the processing agency in accordance with the judgment of the court.

(c) The conduct of the appeal under this section is a subordinate judicial duty that may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the

presiding judge of the court.

(d) If no notice of appeal of the processing agency's decision is filed within the period set forth in subdivision (a), the decision shall be deemed final.

(e) If the parking penalty has not been deposited and the decision is against the contestant, the processing agency shall, after the decision becomes final, proceed to collect the penalty pursuant to Section 40220.

SEC. 14. Section 1.5 of this bill incorporates amendments to Section 22651 of the Vehicle Code proposed by both this bill and AB 481. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 22651 of the Vehicle Code, and (3) this bill is enacted after AB 481, in which case Section 1 of this bill shall not become operative.

SEC. 15. 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 1094

An act to amend Section 2714 of, and to add Section 2796 to, the Public Resources Code, relating to surface mining.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 2714 of the Public Resources Code is amended to read:

2714. This chapter does not apply to any of the following activities:

(a) Excavations or grading conducted for farming or onsite construction or for the purpose of restoring land following a flood or natural disaster.

(b) Onsite excavation and onsite earthmoving activities which are an integral and necessary part of a construction project that are undertaken to prepare a site for construction of structures, landscaping, or other land improvements, including the related excavation, grading, compaction, or the creation of fills, road cuts, and embankments, whether or not surplus materials are exported from the site, subject to all of the following conditions:

(1) All required permits for the construction, landscaping, or

related land improvements have been approved by a public agency in accordance with applicable provisions of state law and locally adopted plans and ordinances, including, but not limited to, Division 13 (commencing with Section 21000).

(2) The lead agency's approval of the construction project included consideration of the onsite excavation and onsite earthmoving activities pursuant to Division 13 (commencing with Section 21000).

(3) The approved construction project is consistent with the general plan or zoning of the site.

(4) Surplus materials shall not be exported from the site unless and until actual construction work has commenced and shall cease if it is determined that construction activities have terminated, have been indefinitely suspended, or are no longer being actively pursued.

(c) Operation of a plant site used for mineral processing, including associated onsite structures, equipment, machines, tools, or other materials, including the onsite stockpiling and onsite recovery of mined materials, subject to all of the following conditions:

(1) The plant site is located on lands designated for industrial or commercial uses in the applicable county or city general plan.

(2) The plant site is located on lands zoned industrial or commercial, or are contained within a zoning category intended exclusively for industrial activities by the applicable city or county.

(3) None of the minerals being processed are being extracted onsite.

(4) All reclamation work has been completed pursuant to the approved reclamation plan for any mineral extraction activities that occurred onsite after January 1, 1976.

(d) Prospecting for, or the extraction of, minerals for commercial purposes and the removal of overburden in total amounts of less than 1,000 cubic yards in any one location of one acre or less.

(e) Surface mining operations that are required by federal law in order to protect a mining claim, if those operations are conducted solely for that purpose.

(f) Any other surface mining operations that the board determines to be of an infrequent nature and which involve only minor surface disturbances.

(g) The solar evaporation of sea water or bay water for the production of salt and related minerals.

(h) Emergency excavations or grading conducted by the Department of Water Resources or the Reclamation Board for the purpose of averting, alleviating, repairing, or restoring damage to property due to imminent or recent floods, disasters, or other emergencies.

(i) (1) Surface mining operations conducted on lands owned or leased, or upon which easements or rights-of-way have been obtained, by the Department of Water Resources for the purpose of the State Water Resources Development System or flood control,

and surface mining operations on lands owned or leased, or upon which easements or rights-of-way have been obtained, by the Reclamation Board for the purpose of flood control, if the Department of Water Resources adopts, after submission to and consultation with, the Department of Conservation, a reclamation plan for lands affected by these activities, and those lands are reclaimed in conformance with the standards specified in regulations of the board adopted pursuant to this chapter. The Department of Water Resources shall provide an annual report to the Department of Conservation by the date specified by the Department of Conservation on these mining activities.

(2) Nothing in this subdivision shall require the Department of Water Resources or the Reclamation Board to obtain a permit or secure approval of a reclamation plan from any city or county in order to conduct surface mining operations specified in paragraph (1). Nothing in this subdivision shall preclude the bringing of an enforcement action pursuant to Section 2774.1, if it is determined that a surface mine operator, acting under contract with the Department of Water Resources or the Reclamation Board on lands other than those owned or leased, or upon which easements or rights-of-way have been obtained, by the Department of Water Resources or the Reclamation Board, is otherwise not in compliance with this chapter.

SEC. 2. Section 2796 is added to the Public Resources Code, to read:

2796. (a) The Legislature hereby establishes a state abandoned minerals and mineral materials mine reclamation program for the purpose of administering funds received by the state under the Surface Mining Control and Reclamation Act of 1977, or through amendments to the federal general mining laws (30 U.S.C. Secs. 1, 12A, 16, 161, and 162, and 602, et seq.).

(b) There is hereby created in the State Treasury, the Abandoned Mine Reclamation and Minerals Fund. The money in the fund may be expended, upon appropriation by the Legislature, as required by federal legislation amending the federal general mining laws, and for the following purposes:

(1) Development of an inventory of mined lands, water, and facilities eligible for reclamation.

(2) Establishment by the director of the abandoned minerals and mineral materials mine reclamation program pursuant to the pending federal legislation amending the federal general mining laws, if enacted, that provides for all of the following:

(A) (i) Reclamation and restoration of abandoned surface mined areas.

(ii) For purposes of this subparagraph, "abandoned surface mined area" means mined lands that meet all of the following requirements:

(I) Mining operations have ceased for a period of one year or more.

(II) There is no interim management plan in effect that meets the requirements of Section 2770.

(III) There are no approved financial assurances that are adequate to perform reclamation in accordance with this chapter.

(IV) The mined lands are adversely affected by past mineral mining, other than mining for coal, oil, and gas, and mineral material mining.

(B) Reclamation and restoration of abandoned milling and processing areas.

(C) Sealing, filling, and grading abandoned deep mine entries.

(D) Planting of land adversely affected by past mining to prevent erosion and sedimentation.

(E) Prevention, abatement, treatment, and control of water pollution created by abandoned mine drainage.

(F) Control of surface subsidence due to abandoned deep mines.

(G) The expenses necessary to accomplish the purposes of this section.

(3) To the extent those expenditures are allowed by the applicable statutes:

(A) Grants to lead agencies for the purposes of carrying out this chapter.

(B) Implementation of this chapter and Section 2207 by the department, which may include an offsetting reduction in the amount of reporting fees collected from each active and idle mining operation and deposited in the Mine Reclamation Account pursuant to subdivision (d) of the Section 2207, as determined by the director.

(c) The Abandoned Mine Reclamation and Minerals Fund shall be the depository for all moneys from mining activities on federal lands, as follows:

(1) (A) Disbursements made by the United States each fiscal year to this state pursuant to Section 35 of the Mineral Lands Leasing Act (30 U.S.C. Sec. 191), with respect to royalties levied on the production of locatable minerals or mineral concentrates from any mining claim located on federal lands in the state pursuant to the pending federal legislation amending the federal general mining laws, but excluding oil, gas, and geothermal revenues.

(B) The federal funds specified in this paragraph do not include the funds deposited in the Surface Mining and Reclamation Account pursuant to Section 2795, the funds deposited in the Geothermal Resources Development Account pursuant to Section 3820, or the funds deposited in the State School Fund pursuant to Section 12320 of the Education Code.

(2) Grants made by the Secretary of the Interior to this state from the Abandoned Minerals Mine Reclamation Fund pursuant to the pending federal legislation amending the federal general mining laws, for the implementation of an abandoned minerals and mining materials mine reclamation program.

(d) The expenditure of money from the Abandoned Mine Reclamation and Minerals Fund shall reflect the following priorities

and other priorities as specified in federal statute in the following ranking:

(1) The protection of public health and safety and the environment from the adverse effects of past minerals and mineral materials mining practices.

(2) The protection of property that is in extreme danger as a result of past minerals and mineral materials mining practices.

(3) The restoration of land and water resources previously degraded by the adverse effects of past minerals and mineral materials mining practices.

(e) Proposed expenditures from the Abandoned Mine Reclamation and Minerals Fund shall be included in a separate item in the Budget Bill for each fiscal year for consideration by the Legislature. Each appropriation from the fund shall be subject to all the limitations contained in the Budget Act and to all other fiscal procedures prescribed by law with respect to the expenditure of state funds.

SEC. 3. Section 2 of this act shall become operative upon the effective date of any federal legislation which is enacted requiring the payment of a royalty on the production of locatable minerals, produced from any mining claim located or converted on federal lands in this state, excluding royalties paid on oil, gas, and geothermal lease activities, and not already subject to disposition under any of the following:

(1) The Mineral Lands Leasing Act (30 U.S.C. Sec. 191).

(2) The Geothermal Steam Act of 1970 (30 U.S.C. Sec. 100).

(3) The Materials Act of 1947 (30 U.S.C. Sec. 601).

(4) The Mineral Leasing Act for Acquired Lands (30 U.S.C. Sec. 351).

CHAPTER 1095

An act to amend Sections 14035 and 14529.6 of, and to add Section 14038.2 to, the Government Code, and to amend Sections 164.2 and 167 of the Streets and Highways Code, relating to transportation.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 14035 of the Government Code is amended to read:

14035. (a) The department may enter into contracts with the National Railroad Passenger Corporation under Section 403(b) of the Rail Passenger Service Act of 1970 (45 U.S.C. Sec. 563(b)) to provide commuter and intercity passenger rail services. The contracts may include, but are not limited to, the extension of

intercity passenger rail services or the upgrading of commuter rail services.

(b) The department may contract with railroad corporations for the use of tracks and other facilities and the provision of passenger services on terms and conditions as the parties may agree.

(c) The department is the only public agency eligible to receive funds pursuant to Section 1614 of Title 49 of the United States Code.

(d) The department may construct, acquire, or lease, and improve and operate, rail passenger terminals and related facilities which provide intermodal passenger services along the following corridors: the San Diego-Los Angeles-Santa Barbara corridor, the San Francisco-San Jose-Monterey corridor, the Los Angeles-Riverside-San Bernardino-Calexico corridor, the San Jose-Oakland-Sacramento-Reno corridor, the Los Angeles-Bakersfield-Fresno-Stockton-Sacramento-Oakland corridor, and the Los Angeles-Santa Barbara-Oakland-Sacramento-Redding corridor.

(e) The department may enter into a contract with the National Railroad Passenger Corporation to provide additional trains over the San Joaquin route running between Bakersfield and Oakland and to extend the existing route to Sacramento.

SEC. 2. Section 14038.2 is added to the Government Code, to read:

14038.2. (a) The department may acquire by purchase, lease, or eminent domain, any property necessary for the development and implementation of the state's rail passenger program. The power of eminent domain shall be exercised in accordance with Title 7 (commencing with Section 1230.010) of the Code of Civil Procedure.

(b) It is the intent of the Legislature, in enacting this section, to give significance and importance to the state rail passenger program equal to that of the state highway program, and to that end, to provide the department with the appropriate powers.

(c) To the extent that the activities authorized by subdivision (a) exceed the capacity of the department's existing work force, the department may contract with qualified individuals or firms for engineering, surveying, and related technical services in exercising its authority pursuant to subdivision (a).

SEC. 3. Section 14529.6 of the Government Code is amended to read:

14529.6. (a) Funds in the State Highway Account in the State Transportation Fund shall be programmed, budgeted, and expended to maximize the use of federal funds and shall be based on the following sequence of priorities:

(1) Operation, maintenance, and rehabilitation of the state highway system.

(2) Safety improvements where physical changes, other than adding additional lanes, would reduce fatalities and the number and severity of injuries.

(3) Flexible congestion relief, traffic system management

projects, interregional roads, and public mass transit guideways, including intercity rail.

(4) Environmental enhancement and mitigation program.

(5) Compatibility improvements, including landscaping and noise attenuation barriers.

(b) For the state transportation improvement program, the department shall recommend, and the commission shall include, to the extent feasible, projects in all categories specified in subdivision (a).

(c) Subject to Sections 188 and 188.8 of the Streets and Highways Code, projects included in the state transportation improvement program shall be based on objective criteria that are relevant to the project. The objective criteria used shall be stated for each project.

(d) The primary objective of the State Highway System is to facilitate interregional travel and commerce. New facilities shall be programmed consistent with this objective, and the department and the commission shall assign the highest priority to those projects that facilitate interregional travel.

SEC. 4. Section 164.2 of the Streets and Highways Code is amended to read:

164.2. (a) Flexible congestion relief projects are those projects designed to reduce or avoid congestion on existing routes by increasing the capacity of the transportation system, including new facilities.

(b) The department, in cooperation with local transportation officials, shall develop guidelines to implement the Flexible Congestion Relief Program. The guidelines shall identify the types of projects qualifying for funding under the program, which shall be based on the effectiveness of relieving traffic congestion. The guidelines shall determine the criteria to be used in setting the priorities for funding the projects. The criteria shall be based on the most cost-effective system which integrates the movement of people and goods on any route and is coordinated with connector routes and traffic generation sources.

(c) The department shall submit the guidelines to the commission by July 1, 1990. The commission shall adopt the guidelines by September 1, 1990.

(d) Projects qualifying under the program shall be separately identified in any transportation improvement program proposed or adopted by any agency proposing or adopting a transportation improvement program, the department, or the commission.

(e) When selecting among competing projects that serve the same transportation demand, the commission shall base its selection on cost-effectiveness.

(f) Funds appropriated for the program shall be allocated by the commission to projects on city streets, county highways, state highways, intercity rail corridors, and commuter rail and urban rail corridors which qualify under the adopted guidelines and are included in the state transportation improvement program. The

commission shall give priority to funding projects in counties and cities that have an adopted congestion management program and are fully cooperating in the implementation of traffic systems management projects.

SEC. 5. Section 167 of the Streets and Highways Code is amended to read:

167. With respect to the funds in the State Highway Account and in the Passenger Rail Bond Fund, the proposed budget shall be organized on a program basis. The proposed budget shall list the proposed expenditures for the transportation program under the following program elements:

(a) Administration.
(b) Program development.
(c) Maintenance.
(d) Operation.
(e) Traffic systems management.
(f) Flexible congestion relief.
(g) Interregional road system.
(h) Rehabilitation and safety.
(i) Commuter and urban rail.
(j) Intercity rail.
(k) State-local transportation partnership program.
(*l*) Environmental enhancement and mitigation programs.
(m) Soundwalls.
(n) Other highway construction.

The basis for defining major and minor capital outlay projects shall be established by the commission.

The Legislative Analyst shall prepare a brief and concise analysis of the proposed expenditures for each program element as a part of the budget analysis.

CHAPTER 1096

An act to amend Sections 44243 and 44244 of the Health and Safety Code, relating to air pollution, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 44243 of the Health and Safety Code is amended to read:

44243. Fee revenues generated under this chapter in the south coast district shall be subvened to the south coast district by the Department of Motor Vehicles, after deducting its administrative costs pursuant to Section 44229, for expenditure in the following

manner:

(a) Thirty cents ($0.30) of every dollar subvened shall be used by the south coast district for programs to reduce air pollution from motor vehicles and to carry out related planning, monitoring, enforcement, and technical studies which are authorized by, or necessary to implement, the Clean Air Act Amendments of 1990 (P.L. 101-549), the California Clean Air Act of 1988, or the plan prepared pursuant to Article 5 (commencing with Section 40460) of Chapter 5.5 of Part 3.

(b) (1) Forty cents ($0.40) of every dollar subvened shall be distributed by the district to cities and counties located in the south coast district, based upon their prorated share of population, to be used to implement programs to reduce air pollution from motor vehicles which are authorized by, or necessary to implement, the Clean Air Act Amendments of 1990, the California Clean Air Act of 1988, or the plan prepared pursuant to Article 5 (commencing with Section 40460) of Chapter 5.5 of Part 3. No city or county may receive funds pursuant to this subdivision unless, on or before April 1, 1992, or, for a newly incorporated city, within 90 days of the date of incorporation, the city or county has adopted and transmitted to the south coast district an ordinance which does all of the following:

(A) Expresses support for the adoption of motor vehicle registration fees to be used to reduce air pollution from motor vehicles pursuant to the Clean Air Act Amendments of 1990, the California Clean Air Act of 1988, or the plan prepared pursuant to Article 5 (commencing with Section 40460) of Chapter 5.5 of Part 3.

(B) Expressly requires all fee revenues distributed to the city or county pursuant to this subdivision or subdivision (c) to be spent to reduce air pollution from motor vehicles pursuant to the Clean Air Act Amendments of 1990, the California Clean Air Act of 1988, or the plan prepared pursuant to Article 5 (commencing with Section 40460) of Chapter 5.5 of Part 3.

(C) Establishes an air quality improvement trust fund into which all fee revenues distributed to the city or county shall be deposited, and out of which expenditures shall be made to reduce air pollution from motor vehicles pursuant to the Clean Air Act Amendments of 1990, the California Clean Air Act of 1988, or the plan prepared pursuant to Article 5 (commencing with Section 40460) of Chapter 5.5 of Part 3.

(2) If a city or county fails to adopt an ordinance pursuant to this subdivision, the fee revenues which would be distributed to that city or county shall instead be distributed to the other cities and counties within the south coast district which have adopted an ordinance pursuant to this subdivision, based upon their prorated share of registered motor vehicles.

(c) Thirty cents ($0.30) of every dollar subvened shall be deposited by the district in an account to be used, pursuant to Section 44244, to provide grants to fund projects for the exclusive purpose of reducing air pollution from motor vehicles that are authorized by, or

necessary to implement, the Clean Air Act Amendments of 1990, the California Clean Air Act of 1988, or the plan prepared pursuant to Article 5 (commencing with Section 40460) of Chapter 5.5 of Part 3.

SEC. 2. Section 44244 of the Health and Safety Code is amended to read:

44244. (a) There is hereby created a regional Mobile Source Air Pollution Reduction Review Committee. The committee shall be comprised of one representative from each of the following agencies:

(1) The south coast district.

(2) The Southern California Association of Governments.

(3) The San Bernardino Associated Governments.

(4) The Los Angeles County Transportation Commission.

(5) The Orange County Transportation Commission.

(6) The Riverside County Transportation Commission.

(7) The state board.

(8) A regional ridesharing agency selected by the other members of the committee.

(b) Fees allocated pursuant to subdivision (c) of Section 44243 shall be used to provide grants for projects to be funded pursuant to a work program developed and adopted by the committee and approved by the south coast district board in the following manner:

(1) The work program shall be adopted by an affirmative vote of a majority of the committee members.

(2) Upon adoption of the work program, the work program shall be submitted to the south coast district board which, within 60 days, shall approve or disapprove the work program. If the district board fails to approve or disapprove the work program within 60 days of receiving it, the work program shall be deemed approved. The district board may disapprove the work program only upon a three-fourths vote of the full district board. If the district board disapproves the work program, it shall be returned to the committee which shall amend, readopt, and resubmit the work program to the district board for approval or disapproval.

(c) The committee shall establish a technical advisory committee to assist in the development of the work program. The technical advisory committee shall include, but not be limited to, representatives of agencies which make up the committee, a representative of the cities from each county within the district, and a representative of the boards of supervisors of each county within the district. The technical advisory committee shall also include one or more persons who have academic training and professional expertise in air pollution control, and one person who is a mechanical engineer specializing in vehicle engines. The technical advisory committee may also include representatives of other public agencies and other interested parties as the committee may determine to be appropriate.

(d) On or before July 1, 1993, the committee shall prepare, adopt, and make available to the public clear and concise written guidelines and procedures under which projects proposed for funding under

the work program will be reviewed and recommended for funding. The guidelines shall specify that only those projects that include, but are not limited to, the adoption and implementation of transportation control measures, transportation demand management programs, clean fuel and clean vehicle programs, and research and monitoring programs, in compliance with the Clean Air Act Amendments of 1990 (P.L. 101-549), the California Clean Air Act of 1988, or the plan prepared pursuant to Article 5 (commencing with Section 40460) of Chapter 5.5 of Part 3, and that result in direct and tangible reductions in vehicular air pollution shall be funded pursuant to the work program.

(e) The south coast district shall not be eligible for funds allocated pursuant to this section.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. 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 that the public and interested parties are aware of the process under which mobile source air pollution reduction projects will be funded in the South Coast Air Basin, it is necessary that this act take effect immediately.

CHAPTER 1097

An act to amend Section 89048 of, and to add Section 89048.5 to, the Education Code, and to amend Sections 10295 and 12120 of, to add Section 12100.6 to, and to repeal and add Section 12100.5 of, the Public Contract Code, relating to postsecondary education.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 89048 of the Education Code is amended to read:

89048. Notwithstanding Article 1 (commencing with Section 11000) of Chapter 1 of Part 1, Article 2 (commencing with Section 14660) of Chapter 2 of Part 5.5, and Part 11 (commencing with Section 15850), of Division 3 of Title 2 of the Government Code, or

any other provision of law to the contrary, the trustees may perform the following functions, without prior approval of any other state department or agency, when necessary to carry out the purposes of the California State University:

(a) Acquire easements or rights-of-way necessary for the proper utilization of real property of the California State University.

(b) Grant and convey in the name of the California State University easements and rights-of-way across property belonging to the California State University subject to the conditions, limitations, restrictions, and reservations the trustees determine are in the best interests of the California State University.

(c) Quitclaim the right, title, and interest of the California State University in and to easements and rights-of-way owned by the California State University which the trustees determine are no longer needed for California State University purposes.

(d) Sell or exchange any personal property belonging to the California State University if the trustees determine that the sale or exchange is in the best interests of the California State University. Transactions under this subdivision shall be for consideration based on fair market values.

(e) Lease any real property for the use of the California State University.

SEC. 2. Section 89048.5 is added to the Education Code, to read:

89048.5. Notwithstanding any other provision of law, the trustees shall include in the contract of conveyance of any real property sold by the California State University a statement that if it is subsequently determined that the property subject to conveyance contains a Native American burial ground, that fact shall be reported to the Legislature and the property may revert to the state if a statute is enacted requiring that reversion.

SEC. 3. Section 10295 of the Public Contract Code is amended to read:

10295. All contracts entered into by any state agency for (a) the hiring or purchase of equipment, supplies, materials, or elementary school textbooks, (b) services, whether or not the services involve the furnishing or use of equipment, materials or supplies or are performed by an independent contractor, (c) the construction, alteration, improvement, repair or maintenance of property, real or personal, or (d) the performance of work or services by the state agency for or in cooperation with any person, or public body, are void unless and until approved by the department. Every such contract shall be transmitted with all papers, estimates, and recommendations concerning it to the department and, if approved by the department, shall be effective from the date of the approval. This section applies to any state agency that by general or specific statute is expressly or impliedly authorized to enter into transactions referred to herein. This section does not apply to any transaction entered into by the Trustees of the California State University or by a department under the State Contract Act or the California State University Contract

Law, any contract of a type specifically mentioned and authorized to be entered into by the Department of Transportation under Section 14035 or 14035.5 of the Government Code, Sections 99316 to 99319, inclusive, of the Public Utilities Code, or the Streets and Highways Code, any contract entered into by the Department of Transportation that is not funded by money derived by state tax sources but, rather, is funded by money derived from federal or local tax sources, any contract let by the Legislature, or any contract entered into under the authority of Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code.

SEC. 4. Section 12100.5 of the Public Contract Code is repealed.

SEC. 5. Section 12100.5 is added to the Public Contract Code, to read:

12100.5. The Regents of the University of California and the Trustees of the California State University shall not be subject to this chapter except that the trustees shall develop policies and procedures maintained in its state university administrative manual that further the legislative policies for procurement expressed in this chapter but without the involvement of the Director of Finance and the Director of General Services or the Department of Finance and the Department of General Services.

SEC. 6. Section 12100.6 is added to the Public Contract Code, to read:

12100.6. The Trustees of the California State University are subject to Article 1.5 (commencing with Section 10115) of Chapter 1. The contents of any report that the trustees are required to submit to the Governor and the Legislature pursuant to that article shall be organized so that, whenever applicable, each campus is individually featured.

SEC. 7. Section 12120 of the Public Contract Code is amended to read:

12120. The Legislature finds and declares that, with the advent of deregulation in the telecommunications industry, substantial cost savings can be realized by the state through the specialized evaluation and procurement of alternative telecommunications systems. All contracts for the acquisition of telecommunications services and all contracts for the acquisition of telecommunications goods, whether by lease or purchase, shall be made by, or under the supervision of, the Department of General Services. All procurements shall be accomplished in accordance with Chapter 3 (commencing with Section 12100), relating to the acquisition of electronic data-processing goods and services, except to the extent any directive or provision is uniquely applicable to electronic data-processing acquisitions. The Department of General Services shall have responsibility for the establishment of policy and procedures for telecommunications. The Department of General Services shall have responsibility for the establishment of tactical policy and procedures for data-processing acquisitions consistent with statewide strategic policy as established by the Department of

Finance. The Department of Finance shall have review and approval responsibility of data-processing information and telecommunication acquisitions to assure consistency with budgetary objectives. The Trustees of the California State University shall assume the functions of the Department of Finance and the Department of General Services with regard to procurement of telecommunication goods and services by the California State University. The trustees shall grant to the Department of General Services, Division of Telecommunications, an opportunity to bid whenever the university solicits bids for telecommunications goods and services.

SEC. 8. It is the intent of the Legislature that this act shall result in greater efficiency in the operation of the California State University. If the California State University determines that greater efficiency would be served by contracting with the Department of General Services or another department or agency of the state for the performance of any service or function, the Department of General Services or other department or agency shall contract with the California State University to perform the service or function.

CHAPTER 1098

An act to amend Section 6254.4 of the Government Code, to amend Sections 488.5, 557.5, 557.6, and 669.5 of the Insurance Code, and to amend Sections 417, 12028.5, and 13519 of the Penal Code, relating to peace officers.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 6254.4 of the Government Code is amended to read:

6254.4. (a) The home address, telephone number, occupation, precinct number, and prior registration information shown on the voter registration card for the following persons is confidential if the person requests confidentiality of that information at the time of registration or reregistration and shall not be disclosed to any person except pursuant to Section 615 of the Elections Code:

(1) Any active or retired judge, magistrate, or court commissioner.

(2) Any active or retired district attorney, assistant district attorney, or deputy district attorney.

(3) Any active or retired public defender or assistant public defender or public defender investigator.

(4) Any active or retired peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

(5) The spouse or children of any person included in paragraphs (1) to (4), inclusive, who are living with that person.

(b) Confidentiality granted under this section shall apply only to records prepared or generated on or after the date that the voter is granted confidentiality.

(c) A person who requests confidentiality of the information specified in subdivision (a) shall register or reregister to vote by means of a confidential affidavit of registration form which shall be prescribed by the Secretary of State and which shall be attested to under penalty of perjury by the affiant that he or she is a person entitled to confidential treatment pursuant to this section.

(d) For purposes of this section, "home address" means only street address and does not include an individual's city or post office address.

SEC. 2. Section 488.5 of the Insurance Code is amended to read:

488.5. (a) No insurer shall, in issuing or renewing a private automobile insurance policy to a peace officer, member of the California Highway Patrol, or firefighter, with respect to his or her operation of a private motor vehicle, increase the premium on that policy for the reason that the insured or applicant for insurance has been involved in an accident while operating an authorized emergency vehicle, as defined in subdivision (a) or (f) of Section 165 of the Vehicle Code or in paragraph (1) or (2) of subdivision (b) of Section 165 of the Vehicle Code, in the performance of his or her duty during the hours of his or her employment.

(b) No insurer shall, in issuing or renewing a private automobile insurance policy to a federal officer or federal customs agent, with respect to his or her operation of a private motor vehicle, increase the premium on that policy for the reason that the insured or applicant for insurance has been involved in an accident while operating an official government vehicle in the performance of his or her duty during the hours of his or her employment.

(c) As used in this section:

(1) "Peace officer" means every person defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

(2) "Policy" shall have the same meaning as defined in subdivision (a) of Section 660.

SEC. 3. Section 557.5 of the Insurance Code is amended to read:

557.5. No peace officer, member of the California Highway Patrol, or firefighter shall be required to report any accident in which he or she is involved while operating an authorized emergency vehicle, as defined in subdivision (a) or (f) of Section 165 of the Vehicle Code or in paragraph (1) or (2) of subdivision (b) of Section 165 of the Vehicle Code in the performance of his or her duty during the hours of his or her employment, to any person who has issued that peace officer, member of the California Highway Patrol, or firefighter a private automobile insurance policy.

As used in this section:

(a) "Peace officer" means every person defined in Chapter 4.5

(commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

(b) "Policy" shall have the same meaning as defined in subdivision (a) of Section 660.

SEC. 4. Section 557.6 of the Insurance Code is amended to read:

557.6. Any peace officer as defined pursuant to this section who has been involved in an accident shall submit to his or her private automobile insurer within 30 days of the accident his or her written declaration under penalty of perjury stating whether or not at the time of the accident he or she was operating an authorized emergency vehicle, as defined in subdivision (a) or (f) of Section 165 of the Vehicle Code or in paragraph (1) or (2) of subdivision (b) of Section 165 of the Vehicle Code in the performance of his or her duty during the hours of his or her employment. In lieu of a written declaration, the peace officer may submit to the private automobile insurer a copy of the incident report filed by the peace officer with his or her employer.

As used in this section, "peace officer" means every person defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

SEC. 4.5. Section 557.6 of the Insurance Code is amended to read:

557.6. Any peace officer or firefighter as defined pursuant to this section who has been involved in an accident shall submit to his or her private automobile insurer within 30 days of the accident his or her written declaration under penalty of perjury stating whether or not at the time of the accident he or she was operating an authorized emergency vehicle, as defined in subdivision (a) or (f) of Section 165 of the Vehicle Code or in paragraph (1) or (2) of subdivision (b) of Section 165 of the Vehicle Code in the performance of his or her duty during the hours of his or her employment. In lieu of a written declaration, the peace officer or firefighter may submit to the private automobile insurer a copy of the incident report filed by the peace officer or firefighter with his or her employer.

As used in this section, "peace officer" means every person defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, and "firefighter" means every person defined in Section 50925 of the Government Code.

SEC. 5. Section 669.5 of the Insurance Code is amended to read:

669.5. No insurer shall fail to renew any private automobile insurance policy of a peace officer, member of the California Highway Patrol, or firefighter, with respect to his or her operation of a private motor vehicle, for the reason that the insured has been involved in an accident while operating an authorized emergency vehicle, as defined in subdivision (a) of Section 165 of the Vehicle Code or in paragraph (1) or (2) of subdivision (b) or (f) of Section 165 of the Vehicle Code, in the performance of his or her duty during the hours of his or her employment. As used in this section, "peace officer" means every person defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

SEC. 5.5. Section 669.5 of the Insurance Code is amended to read:

669.5. No insurer shall fail to renew any private automobile insurance policy of a peace officer, member of the California Highway Patrol, or firefighter, with respect to his or her operation of a private motor vehicle, for the reason that the insured has been involved in an accident while operating an authorized emergency vehicle, as defined in subdivision (a) of Section 165 of the Vehicle Code or in paragraph (1) or (2) of subdivision (b) or (f) of Section 165 of the Vehicle Code, in the performance of his or her duty during the hours of his or her employment. As used in this section, "peace officer" means every person defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 and Section 830.6 of the Penal Code, and "firefighter" means every person defined in Section 50925 of the Government Code.

In the case of a volunteer firefighter, this section applies to the regular employer of the volunteer firefighter to the extent that the involvement of the volunteer firefighter in the accident shall not be cause for the employer's insurer's decision to renew the employer's insurance policy as it applies to the employee covered by this section.

SEC. 6. Section 417 of the Penal Code is amended to read:

417. (a) (1) Every person who, except in self-defense, in the presence of any other person, draws or exhibits any deadly weapon whatsoever, other than a firearm, in a rude, angry, or threatening manner, or who in any manner, unlawfully uses the same in any fight or quarrel is guilty of a misdemeanor, punishable by imprisonment in a county jail for not less than 30 days.

(2) Every person who, except in self-defense, in the presence of any other person, draws or exhibits any firearm, whether loaded or unloaded, in a rude, angry, or threatening manner, or who in any manner, unlawfully uses the same in any fight or quarrel is guilty of a misdemeanor, punishable by imprisonment in a county jail for not less than three months.

(b) Every person who, except in self-defense, in the presence of any other person, draws or exhibits any loaded firearm in a rude, angry, or threatening manner, or who, in any manner, unlawfully uses any loaded firearm in any fight or quarrel upon the grounds of any day care center, as defined in Section 1596.76 of the Health and Safety Code, or any facility where programs, including day care programs or recreational programs, are being conducted for persons under 18 years of age, including programs conducted by a nonprofit organization, during the hours in which the center or facility is open for use, shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not less than three months, nor more than one year.

(c) Every person who, in the immediate presence of a peace officer, draws or exhibits any firearm, whether loaded or unloaded, in a rude, angry, or threatening manner, and who knows, or reasonably should know, by the officer's uniformed appearance or other action of identification by the officer, that he or she is a peace officer engaged in the performance of his or her duties, and that

peace officer is engaged in the performance of his or her duties is guilty of a felony, punishable by imprisonment in a county jail for not less than nine months and not to exceed one year, or in the state prison.

As used in this section, "peace officers" means any person designated as a peace officer by Section 830.1, 830.2, subdivision (a) of Section 830.3, or Section 830.31, 830.32, 830.33, or 830.5.

SEC. 6.5. Section 417 of the Penal Code is amended to read:

417. (a) (1) Every person who, except in self-defense, in the presence of any other person, draws or exhibits any deadly weapon whatsoever, other than a firearm, in a rude, angry, or threatening manner, or who in any manner, unlawfully uses the same in any fight or quarrel is guilty of a misdemeanor, punishable by imprisonment in a county jail for not less than 30 days. Every person who violates this section when the other person is in the process of cleaning up graffiti or vandalism is guilty of a misdemeanor, punishable by imprisonment in a county jail for not less than three months nor more than one year.

(2) Every person who, except in self-defense, in the presence of any other person, draws or exhibits any firearm, whether loaded or unloaded, in a rude, angry, or threatening manner, or who in any manner, unlawfully uses the same in any fight or quarrel is guilty of a misdemeanor, punishable by imprisonment in a county jail for not less than three months. Every person who violates this section when the other person is in the process of cleaning up graffiti or vandalism is guilty of a misdemeanor, punishable by imprisonment in a county jail for not less than three months nor more than one year.

(b) Every person who, except in self-defense, in the presence of any other person, draws or exhibits any loaded firearm in a rude, angry, or threatening manner, or who, in any manner, unlawfully uses any loaded firearm in any fight or quarrel upon the grounds of any day care center, as defined in Section 1596.76 of the Health and Safety Code, or any facility where programs, including day care programs or recreational programs, are being conducted for persons under 18 years of age, including programs conducted by a nonprofit organization, during the hours in which the center or facility is open for use, shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not less than three months, nor more than one year.

(c) Every person who, in the immediate presence of a peace officer, draws or exhibits any firearm, whether loaded or unloaded, in a rude, angry, or threatening manner, and who knows, or reasonably should know, by the officer's uniformed appearance or other action of identification by the officer, that he or she is a peace officer engaged in the performance of his or her duties, and that peace officer is engaged in the performance of his or her duties is guilty of a felony, punishable by imprisonment in a county jail for not less than nine months and not to exceed one year, or in the state prison.

As used in this section, "peace officers" means any person designated as a peace officer by Section 830.1, 830.2, subdivision (a) of Section 830.3, or Section 830.31, 830.32, 830.33, or 830.5.

SEC. 7. Section 12028.5 of the Penal Code is amended to read:

12028.5. (a) As used in this section, the following definitions shall apply:

(1) "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself, herself, or another.

(2) "Family violence" has the same meaning as domestic violence as defined in subdivision (b) of Section 13700, and also includes any abuse perpetrated against a family or household member.

(3) "Family or household member" means a spouse, former spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any person who regularly resides or who regularly resided in the household.

The presumption applies that the male parent is the father of any child of the female pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).

(4) "Deadly weapon" means any weapon, the possession or concealed carrying of which is prohibited by Section 12020.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a member of the University of California Police Department, as defined in subdivision (c) of Section 830.2, an officer listed in Section 830.6 while acting in the course and scope of his or her employment as a peace officer, a member of a California State University Police Department, as defined in subdivision (d) of Section 830.2, a peace officer of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2, a peace officer, as defined in subdivision (d) of Section 830.31, and a peace officer, as defined in Section 830.5, who is at the scene of a family violence incident involving a threat to human life or a physical assault, may take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered and the date after which the owner or possessor can recover the firearm or other deadly weapon. No firearm or other deadly weapon shall be held less than 48 hours. Except as provided in subdivision (e), if a firearm or other deadly weapon is not retained for use as evidence related to criminal charges brought as a result of the family violence incident or is not retained because it was illegally possessed, the firearm or other deadly weapon shall be made

available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than 72 hours after the seizure. In any civil action or proceeding for the return of firearms or ammunition or other deadly weapon seized by any state or local law enforcement agency and not returned within 72 hours following the initial seizure, except as provided in subdivision (c), the court shall allow reasonable attorney's fees to the prevailing party.

(c) Any firearm or other deadly weapon which has been taken into custody that has been stolen shall be restored to the lawful owner, as soon as its use for evidence has been served, upon his or her identification of the firearm or other deadly weapon and proof of ownership.

(d) Any firearm or other deadly weapon taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, by a peace officer of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2, by a peace officer, as defined in subdivision (d) of Section 830.31, or by a peace officer, as defined in Section 830.5, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028. Firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (i), are not subject to destruction until the court issues a decision, and then only if the court does not order the return of the firearm or other deadly weapon to the owner.

(e) In those cases where a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within 10 days of the seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned.

(f) The law enforcement agency shall inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. For the purposes of this subdivision, the person's last known address shall be presumed to be the address provided to the law enforcement officer by that person at the time of the family violence incident. In the event the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, the agency shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with these notification requirements.

(g) If the person requests a hearing, the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing. Unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party.

(h) If the person does not request a hearing or does not otherwise respond within 30 days of the receipt of the notice, the law enforcement agency may file a petition for an order of default and may dispose of the firearm or other deadly weapon as provided in Section 12028.

(i) If, at the hearing, the court does not order the return of the firearm or other deadly weapon to the owner or person who had lawful possession, that person may petition the court for a second hearing within 12 months from the date of the initial hearing. If the owner or person who had lawful possession does not petition the court within this 12-month period for a second hearing or is unsuccessful at the second hearing in gaining return of the firearm or other deadly weapon, the firearm or other deadly weapon may be disposed of as provided in Section 12028.

(j) The law enforcement agency, or the individual law enforcement officer, shall not be liable for any act in the good faith exercise of this section.

SEC. 8. Section 13519 of the Penal Code is amended to read:

13519. (a) The commission shall implement by January 1, 1986, a course or courses of instruction for the training of law enforcement officers in California in the handling of domestic violence complaints and also shall develop guidelines for law enforcement response to domestic violence. The course or courses of instruction and the guidelines shall stress enforcement of criminal laws in domestic violence situations, availability of civil remedies and community resources, and protection of the victim. Where appropriate, the training presenters shall include domestic violence experts with expertise in the delivery of direct services to victims of domestic violence, including utilizing the staff of shelters for battered women in the presentation of training.

As used in this section, "law enforcement officer" means any officer or employee of a local police department or sheriff's office, any peace officer of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2, any peace officer of the University of California Police Department, as defined in subdivision (c) of Section 830.2, any peace officer of the California State University Police Departments, as defined in subdivision (d) of Section 830.2, or a peace officer, as defined in subdivision (d) of Section 830.31.

(b) The course of basic training for law enforcement officers shall,

no later than January 1, 1986, include adequate instruction in the procedures and techniques described below:

(1) The provisions set forth in Title 5 (commencing with Section 13700) relating to response, enforcement of court orders, and data collection.

(2) The legal duties imposed on police officers to make arrests and offer protection and assistance including guidelines for making felony and misdemeanor arrests.

(3) Techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of the victim.

(4) The nature and extent of domestic violence.

(5) The legal rights of, and remedies available to, victims of domestic violence.

(6) The use of an arrest by a private person in a domestic violence situation.

(7) Documentation, reportwriting, and evidence collection.

(8) Domestic violence diversion as provided in Chapter 2.6 (commencing with Section 1000.6) of Title 6 of Part 2.

(9) Tenancy issues and domestic violence.

(10) The impact on children of law enforcement intervention in domestic violence.

(11) The services and facilities available to victims and batterers.

(12) The use and applications of this code in domestic violence situations.

(13) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.

(14) Verification and enforcement of stay-away orders.

(15) Cite and release policies.

(16) Emergency assistance to victims and how to assist victims in pursuing criminal justice options.

The guidelines developed by the commission shall also incorporate the foregoing factors.

(c) (1) All law enforcement officers who have received their basic training before January 1, 1986, shall participate in supplementary training on domestic violence subjects, as prescribed and certified by the commission.

(2) Except as provided in paragraph (3), the training specified in paragraph (1) shall be completed no later than January 1, 1989.

(3) (A) The training for peace officers of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2, shall be completed no later than January 1, 1992.

(B) The training for peace officers of the University of California Police Department and the California State University Police Departments, as defined in Section 830.2, shall be completed no later than January 1, 1993.

(C) The training for peace officers employed by a housing authority, as defined in subdivision (d) of Section 830.31, shall be completed no later than January 1, 1995.

Local law enforcement agencies are encouraged to include, as part of their advanced officer training program, periodic updates and training on domestic violence. The commission shall assist where possible.

(d) The course of instruction, the learning and performance objectives, the standards for the training, and the guidelines shall be developed by the commission in consultation with appropriate groups and individuals having an interest and expertise in the field of domestic violence. The groups and individuals shall include, but shall not be limited to, the following: one representative each from the California Peace Officers' Association, the Peace Officers' Research Association of California, the State Bar of California, the California Women Lawyers' Association, and the State Commission on the Status of Women; two representatives from the commission; two representatives from the California Alliance Against Domestic Violence; two peace officers, recommended by the commission, who are experienced in the provision of domestic violence training; and two domestic violence experts, recommended by the California Alliance Against Domestic Violence, who are experienced in the provision of direct services to victims of domestic violence. At least one of the persons selected shall be a former victim of domestic violence.

The commission, in consultation with these groups and individuals, shall review existing training programs to determine in what ways domestic violence training might be included as a part of ongoing programs.

(e) Forty thousand dollars ($40,000) is appropriated from the Peace Officers Training Fund in augmentation of Item 8120-001-268 of the Budget Act of 1984, to support the travel, per diem, and associated costs for convening the necessary experts.

SEC. 9. (a) Section 4.5 of this bill incorporates amendments to Section 557.6 of the Insurance Code proposed by both this bill and AB 1518. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 557.6 of the Insurance Code, and (3) this bill is enacted after AB 1518, in which case Section 4 of this bill shall not become operative.

(b) Section 5.5 of this bill incorporates amendments to Section 669.5 of the Insurance Code proposed by both this bill and AB 1518. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 669.5 of the Insurance Code, and (3) this bill is enacted after AB 1518, in which case Section 5 of this bill shall not become operative.

(c) Section 6.5 of this bill incorporates amendments to Section 417 of the Penal Code proposed by both this bill and AB 1179. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 417 of the Penal Code, and (3) this bill is enacted after AB 1179, in which case Section 6 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 1099

An act to amend Sections 714, 1055, 7149.2, and 13005 of the Fish and Game Code, relating to fish and game, and making an appropriation therefor.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 714 of the Fish and Game Code is amended to read:

714. (a) In addition to Section 3031, 7149, or 7149.2, and notwithstanding Section 3037, the department shall issue lifetime sportsman's licenses under this section. A lifetime sportsman's license authorizes the taking of birds, mammals, fish, reptiles, or amphibia anywhere in this state in accordance with law for purposes other than profit for the life of the person to whom issued unless revoked for a violation of this code or regulations adopted under this code. A lifetime sportsman's license is not transferrable. A lifetime sportsman's license does not include any special license tags, license stamps, or fees.

(b) A lifetime sportman's license may be issued to residents of this state, as follows:

(1) To a person over 62 years of age upon payment of a fee of eight hundred thirty dollars ($830) in 1993.

(2) To a person 40 years of age or over and less than 62 years of age upon payment of a fee of one thousand one hundred fifty dollars ($1,150) in 1993.

(3) To a person less than 40 years of age upon payment of a fee of one thousand six hundred seventy dollars ($1,670) in 1993.

(4) The department shall establish the fee for each license authorized under this section in 1994 and subsequent years. The license fee shall not be less than the fee authorized in 1993, and the fee shall not exceed the cost of a license if the license fee was adjusted pursuant to Section 713 with the base year of 1993.

(c) A lifetime sportsman's license is valid for a period ending five years after the licensee is no longer a resident of this state.

(d) Nothing in this section requires a person under the age of 16 to obtain a license to take fish, reptiles, or amphibia for purposes other than profit or to obtain a license to take birds or mammals except as required by law.

(e) Nothing in this section exempts an applicant for a license from meeting other qualifications or requirements otherwise established by law for the privilege of sporthunting or sportfishing.

SEC. 2. Section 1055 of the Fish and Game Code is amended to read:

1055. (a) The department may authorize any person, except a commissioner or an officer or employee of the department, to be a license agent to issue punch cards, licenses, license stamps, and license tags. It may consign punch cards, licenses, license stamps, and license tags to license agents without receiving payment therefor, upon application of the license agent and upon the giving of a bond or assigning a certificate of deposit, payable to the department, as provided in this article. It shall not consign any punch cards, licenses, license stamps, and license tags to any license agent who fails to submit the report required by subdivision (a) of Section 1055.5 within one month and 20 days following the last day of that calendar month or who otherwise fails to fully comply with Section 1055.5.

(b) A license agent authorized under subdivision (a) shall add a handling charge to the fees, which fees are prescribed in this code or in regulations adopted pursuant to this code, for applications, punch cards, licenses, license stamps, and license tags issued by the license agent in an amount that is 5 percent of the face value of the item rounded to the nearest five cents ($0.05).

(c) The handling charge added under subdivision (b) shall be incorporated into the total amount collected for issuing the punch card, license, license stamp, or license tag, but the handling charge shall not be included when determining license fees in accordance with Section 713. License agents may issue any punch card, license, license stamp, or license tag for any amount that is up to 10 percent less than the fee prescribed in this code or in regulations adopted pursuant to this code. The license agent shall remit to the department the full amount of the fees as prescribed in this code or in regulations adopted pursuant to this code for all punch cards, licenses, license stamps, or license tags issued.

(d) The handling charge required by subdivision (b) is the license agent's only compensation for services. No other additional fee or charge shall be made by the license agent for issuing punch cards, licenses, license stamps, or license tags authorized under this section.

(e) In order to facilitate the prompt remittance of fees and more accurate accounting of licenses, license stamps, and license tags provided for issuance to license agents, the department shall provide them in books containing licenses, license stamps, or license tags that do not exceed the total fees for 20 resident sportfishing licenses. This

subdivision does not apply to nonresident licenses and nonresident license tags.

(f) At any single business location, a license agent shall issue all items from a single book before commencing to issue licenses, license stamps, or license tags of the same series from another book.

(g) The department, alternatively, may provide for the issuance of punch cards, licenses, license stamps, and license tags to authorized license agents and shall collect, in cash or cashier's check, at the time the documents are provided an amount equal to the fees for all of the punch cards, licenses, license stamps, and license tags provided. Any license agent who pays the fees for punch cards, licenses, license stamps, and license tags provided is exempt from subdivisions (a) and (e) of Section 1055.5, Section 1056, and Section 1059. Punch cards, licenses, license stamps, and license tags provided pursuant to this subdivision and remaining unissued at the end of the license year may be returned to the department, within 60 days of their expiration date, for refund or credit, or a combination thereof.

(h) All unissued and expired punch cards, licenses, license stamps, and license tags shall be returned to the department. Any license agent who does not return them within one month and 20 days following the last day of the license year shall not be provided additional punch cards, licenses, license stamps, or license tags until the unissued and expired punch cards, licenses, license stamps, and license tags have been returned to the department. In addition, any unissued and expired item that is not returned within 60 days following the last day of the license year shall be billed to the license agent. Items may be returned for credit after the 60 days; however, the license agent shall pay interest and penalties on the returned items as prescribed in subdivision (b) of Section 1059. No credit shall be allowed after six months following the last day of the license year.

SEC. 3. Section 7149.2 of the Fish and Game Code is amended to read:

7149.2. (a) In addition to Sections 714 and 7149, the department shall issue a lifetime sportfishing license under this section. A lifetime sportfishing license authorizes the taking of fish, amphibia, or reptiles anywhere in this state in accordance with the law for purposes other than profit for the life of the person to whom issued unless revoked for a violation of this code or regulations adopted under this code. A lifetime sportfishing license is not transferrable. A lifetime sportfishing license does not include any special license tags, license stamps, or fees.

(b) A lifetime sportfishing license may be issued to residents of this state, as follows:

(1) To a person over 62 years of age upon payment of a fee of four hundred seventy dollars ($470) in 1993.

(2) To a person 40 years of age or over and less than 62 years of age upon payment of a fee of six hundred twenty dollars ($620) in 1993.

(3) To a person less than 40 years of age upon payment of a fee

of eight hundred thirty dollars ($830) in 1993.

(c) A lifetime sportfishing license is valid for a period ending five years after the licensee is no longer a resident of this state.

(d) Nothing in this section requires a person under the age of 16 years to obtain a license to take fish, amphibia, or reptiles for purposes other than profit.

(e) Nothing in this section exempts a license applicant from meeting other qualifications or requirements otherwise established by law for the privilege of sportfishing.

(f) The department shall establish the fee for each license authorized under this section in 1994 and subsequent years. The license fee shall not be less than the fee authorized in 1993, and the fee shall not exceed the cost of a license if the license fee was adjusted pursuant to Section 713 with the base year of 1993.

SEC. 4. Section 13005 of the Fish and Game Code is amended to read:

13005. (a) Notwithstanding Section 13001, the money collected from fees for lifetime sportsman's licenses under Section 714, and lifetime sportfishing licenses under Section 7149.2, are not refundable and shall be deposited, as follows:

(1) Seventy-five dollars ($75) for each lifetime license issued shall be deposited in the Fish and Game Preservation Fund for use in accordance with Section 711.

(2) The balance of the fees shall be deposited in the Lifetime License Trust Account which is hereby created in the Fish and Game Preservation Fund. Except as provided in this section, that principal amount of the money in the account from the fee for a lifetime license shall not be used, except for investment.

(b) The money in the Lifetime License Trust Account may be transferred and invested through the Surplus Money Investment Fund and all interest shall accrue to the account pursuant to subdivision (g) of Section 16475 of the Government Code.

(c) (1) Each year the department shall transfer from the Lifetime License Trust Account to the Fish and Game Preservation Fund an amount equal to the current amount of the resident hunting and sportfishing license fee times the number of lifetime sportsman's licenses in force and effect on July 1 of that year.

(2) Each year the department shall transfer from the Lifetime License Trust Account to the Fish and Game Preservation Fund an amount equal to the current amount of the resident sportfishing license fee times the number of lifetime sportfishing licenses in force and effect on July 1 of that year.

(d) The principal amount of the money deposited in the Lifetime License Trust Account shall be transferred to the Fish and Game Preservation Fund for use in accordance with Section 711 upon attainment of the actuarially determined life expectancy of the licensee.

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 1100

An act to amend Sections 8305, 8308, 8311, 8313, and 8314 of, and to add Section 8388.5 to, the Fish and Game Code, relating to commercial fishing, and making an appropriation therefor.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 8305 of the Fish and Game Code, as amended by Section 5 of Chapter 1216 of the Statutes of 1992, is amended to read:

8305. (a) Notwithstanding Section 8606 or any other provision of law, 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.

(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. Section 8305 of the Fish and Game Code, as amended by Section 6 of Chapter 1216 of the Statutes of 1992, is amended to read:

8305. (a) Notwithstanding Section 8606 or any other provision of law, 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 within one mile of the shores of Anacapa, Santa Barbara, or Santa Cruz Island, or along the mainland coast, except as otherwise specifically authorized by this article.

(d) This section shall become operative on January 1, 1997.

SEC. 3. Section 8308 of the Fish and Game Code, as amended by Section 19 of Chapter 1288 of the Statutes of 1990, 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, 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. 4. Section 8308 of the Fish and Game Code, as added by Section 20 of Chapter 1288 of the Statutes of 1990, is amended 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, 1997.

SEC. 5. Section 8311 of the Fish and Game Code is amended 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 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. 6. Section 8313 of the Fish and Game Code is amended 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, 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. Section 8314 of the Fish and Game Code is amended 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 those funds collected from any previous calendar year shall be available for use for those activities.

(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. 8. Section 8388.5 is added to the Fish and Game Code, to read:

8388.5. (a) A person shall not take, possess, sell, or purchase for commercial purposes any leopard shark less than 36 inches in total length.

(b) Notwithstanding subdivision (a), leopard sharks less than 36 inches in total length possessed by a person for aquarium display on or before January 1, 1994, may be retained by that person if a letter declaring that the shark was legally obtained prior to January 1, 1994, is provided to the Sacramento office of the department on or before January 1, 1995.

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 1101

An act to amend and repeal Sections 4800.10 and 4800.11 of the Civil Code, and to amend Sections 2100, 2101, 2102, 2104, 2105, 2106, 2107, 2122, 2125, and 2127 of, to amend and renumber Section 2109 of, and to add Sections 2109, 2110, 2111, and 2112 to, the Family Code, relating to family law, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 4800.10 of the Civil Code is amended to read:

4800.10. (a) The Legislature finds and declares as follows:

It is the policy of the State of California (1) to marshal, preserve, and protect community and quasi-community assets and liabilities that exist at the date of separation so as to avoid dissipation of the community estate prior to distribution, (2) to ensure fair and sufficient child and spousal support awards, and (3) to achieve a division of community and quasi-community assets and liabilities upon the dissolution or nullity of marriage, or legal separation of the parties, as provided for under California law.

Sound public policy further favors the reduction of the adversarial nature of marital dissolution and the attendant costs by fostering full disclosure and cooperative discovery.

In order to promote this public policy, a full and accurate disclosure of all assets and liabilities in which one or both parties have or may have an interest must be made in the early stages of the dissolution of marriage action, regardless of the characterization as community or separate, together with a disclosure of all income and expenses of the parties. Moreover, each party has a continuing duty to update and augment that disclosure, to the extent there have been any material changes, so that at the time the parties enter into an agreement for the resolution of any of these issues, or at the time of trial on these issues, each party will have as full and complete knowledge of the relevant underlying facts as is reasonably possible under the circumstances of the case.

(b) From the date of separation to the date of the distribution of the community asset or liability in question, each party shall be subject to the standards set forth in Section 5103, as to all activities that affect the property and support rights of the other party, including, but not limited to, the following activities:

(1) The accurate and complete disclosure of all assets and liabilities in which the party has or may have an interest or obligation and all current earnings, accumulations, and expenses.

(2) The accurate and complete written disclosure of any

investment opportunity that presents itself after the date of separation, but which results from any investment of either spouse from the date of marriage to the date of separation, inclusive. The written disclosure shall be made in sufficient time for the other spouse to make an informed decision as to whether he or she desires to participate in the investment opportunity.

In the event of nondisclosure of such an investment opportunity, the division of any gain resulting from that investment opportunity shall be governed by the standard set forth in Section 4353.

(3) The operation or management of a business or an interest in a business in which the community may have an interest.

(c) In order to provide full and accurate disclosure of all assets and liabilities in which one or both parties may have an interest, each party to the dissolution action shall serve upon the other a preliminary declaration of disclosure and a final declaration of disclosure.

(1) (A) Within 60 days of service of the petition for dissolution or nullity of marriage, or legal separation of the parties, each party shall serve upon the other a preliminary declaration of disclosure, executed under penalty of perjury upon a form prescribed by the Judicial Council. The commission of perjury on the preliminary declaration of disclosure may be grounds for setting aside the judgment, or any part or parts thereof, pursuant to Section 4800.11, in addition to any and all other remedies, civil or criminal, that otherwise are available under existing law for the commission of perjury. The preliminary declaration of disclosure shall not be filed with the court, except upon court order. The parties may agree to accelerate or delay the time in which to exchange the preliminary declaration of disclosure by written stipulation or by oral stipulation made in open court.

(B) The preliminary declaration of disclosure shall set forth with sufficient particularity which a person of reasonable and ordinary intelligence can ascertain, the identity of all assets in which the declarant has or may have an interest and all liabilities for which the declarant is or may be liable, regardless of the characterization of the asset or liability as community, quasi-community, or separate. The declarant shall set forth his or her percentage of ownership in each asset and percentage of obligation for each liability where property is not solely owned by one or both of the parties to the dissolution action and may set forth his or her characterization of each asset or liability. Along with the preliminary declaration of disclosure, each party shall provide the other with a completed income and expense declaration unless an income and expense declaration has already been provided and is current and valid. A party shall be permitted to amend his or her preliminary declaration of disclosure without leave of the court.

(2) Prior to, or simultaneously with, the parties entering into an agreement for the resolution of property or support issues other than pendente lite support, or, in the event the case goes to trial, no later

than 45 days before the first assigned trial date, each party shall serve upon the other a final declaration of disclosure and a current income and expense declaration, executed under penalty of perjury upon a form prescribed by the Judicial Council. The commission of perjury on the final declaration of disclosure may be grounds for setting aside the judgment, or any part or parts thereof, pursuant to Section 4800.11, in addition to any and all other remedies, civil or criminal, that otherwise are available under existing law for the commission of perjury. All of the following information shall be included in the final declaration of disclosure:

(A) All material facts and information regarding the characterization of all assets and liabilities.

(B) All material facts and information regarding the valuation of all assets which are contended to be community or in which it is contended the community has an interest.

(C) All material facts and information regarding the amounts of all obligations which are contended to be community obligations or in which it is contended the community has liability.

(D) All material facts and information regarding the earnings, accumulations, and expenses of each party which have been set forth in the income and expense declaration. An updated income and expense declaration shall be served at this time unless a current income and expense declaration is on file.

(d) Absent good cause, no judgment shall be entered with respect to the parties' property rights without each party having executed and served a copy of the final declaration of disclosure and current income and expense declaration. Each party shall execute and file with the court a declaration signed under penalty of perjury stating that service of the final declaration of disclosure and current income and expense declaration was made on the other party.

(e) In the event that one party fails to exchange and serve upon the other party either a preliminary or a final declaration of disclosure pursuant to this section, or fails to provide the information in the respective declaration of disclosure with sufficient particularity, and if the other party has served the respective declaration of disclosure on the noncomplying party, the complying party shall, within a reasonable time, request preparation of the appropriate declaration of disclosure or further particularity. In the event the noncomplying party fails to comply, the complying party may do either or both of the following:

(1) File a motion to compel a further response.

(2) File a motion for an order preventing the noncomplying party from presenting evidence on issues that should have been covered in the declaration of disclosure.

(f) In the event of a party's failure to comply with any provision of this section the court shall, in addition to any other remedy provided by law, order the noncomplying party to pay to the complying party any reasonable attorney's fees, costs incurred, or both, unless it finds that the noncomplying party acted with

substantial justification or that other circumstances make the imposition of the sanction unjust.

(g) At any time during the proceedings, the court has the authority, upon application of a party and upon good cause, to order the liquidation of community or quasi-community assets so as to avoid unreasonable market or investment risks, given the relative nature, scope, and extent of the community estate. However, in no event shall the court grant the application unless, as provided in this section, the appropriate declaration of disclosure has been served by the moving party.

(h) The provisions of this section which require a final declaration of disclosure shall not apply to summary dissolutions, but a preliminary declaration of disclosure shall be required.

(i) In the event of a default judgment, the petitioner may waive the final declaration of disclosure requirements set forth in this section, but a preliminary declaration of disclosure by the petitioner shall be required.

(j) The disclosures required by this section shall not abrogate the attorney work product privilege or impede the power of the court to issue protective orders.

(k) The Judicial Council shall adopt appropriate forms and modify existing forms to effectuate the purposes of this section.

(*l*) For purposes of this section, the following definitions and descriptions shall apply:

(1) "Asset" includes, but is not limited to, any real or personal property of any nature, whether tangible or intangible and whether currently existing or contingent.

(2) "Liability" includes, but is not limited to, any debt or obligation, whether currently existing or contingent.

(3) "Earnings and accumulations" includes income from whatever source derived, as set forth in subdivision (f) of Section 4721.

(4) "Expenses" includes, but is not limited to, all personal living expenses, but shall not include business related expenses.

(5) "Default judgment" does not include a stipulated judgment or any judgment pursuant to a marital settlement agreement.

(m) This section shall be applicable to any proceeding commenced on or after January 1, 1993.

(n) This section shall remain in effect only until January 1, 1994, and on that date shall be repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

SEC. 2. Section 4800.11 of the Civil Code is amended to read:

4800.11. (a) The Legislature finds and declares as follows:

(1) The State of California has a strong policy of ensuring the division of community and quasi-community property in the dissolution of a marriage as set forth in Section 4800, and of providing for fair and sufficient child and spousal support awards. These policy goals can only be implemented with full disclosure of community, quasi-community, and separate assets, liabilities, income and

expenses, as provided for in Section 4800.10, and decisions freely and knowingly made.

(2) It occasionally happens that the division of property or the award of support, whether made as a result of agreement or trial, are inequitable when made due to the nondisclosure or other misconduct of one of the parties.

(3) The public policy of assuring finality of judgments must be balanced against the public interest in ensuring proper division of marital property, in ensuring sufficient support awards, and in deterring misconduct.

(4) The law governing the circumstances under which a judgment can be set aside, after the time for relief under Section 473 of the Code of Civil Procedure has passed, has been the subject of considerable confusion which has led to increased litigation and unpredictable and inconsistent decisions at the trial and appellate levels.

(b) In actions under the Family Law Act, the court may, upon terms that may be just, relieve a spouse from a judgment, or any part or parts thereof, adjudicating support or division of property, after the six-month time limit of Section 473 of the Code of Civil Procedure has run, based upon the grounds, and within the time limits, set forth in this section.

(c) In all proceedings under this section, before granting relief, the court shall find that the facts alleged as the grounds for relief materially affected the original outcome and that the moving party would materially benefit from the granting of the relief.

(d) The grounds and time limits for an action or a motion to set aside a judgment, or any part or parts thereof, shall be governed by this section and shall be one of the following:

(1) Actual fraud, where the defrauded party was kept in ignorance or in some other manner, other than his or her own lack of care or attention, was fraudulently prevented from fully participating in the proceeding. Motions based upon fraud shall be brought within one year of the date on which the complaining party either did discover, or should have discovered, the fraud.

(2) Perjury. Actions or motions based upon perjury in the preliminary or final declaration of disclosure or in the current income and expense statement shall be brought within one year of the date on which the complaining party either did discover, or should have discovered, the perjury.

(3) Duress. Actions or motions based upon duress shall be brought within two years from the date of entry of judgment.

(4) Mental incapacity. Actions or motions based upon mental incapacity shall be brought within two years from the date of entry of judgment.

(5) As to stipulated or uncontested judgments or that part of a judgment stipulated to by the parties, mistake, either mutual or unilateral, whether mistake of law or mistake of fact. Actions or motions based upon mistake shall be brought within one year of the

date of entry of judgment.

(e) Notwithstanding any other provision of this section, or any other law, a judgment may not be set aside simply because the court finds that it was inequitable when made, nor simply because subsequent circumstances caused the division of assets or liabilities to become inequitable, or the support to become inadequate.

(f) The negligence of an attorney shall not be imputed to a client to bar an order setting aside a judgment, unless the court finds that the client knew or should have known, of the attorney's negligence and unreasonably failed to protect himself or herself.

(g) When ruling on an action or motion to set aside a judgment, the court shall set aside only those provisions materially affected by the circumstances leading to the court's decision to grant relief. However, the court shall have the discretion to set aside the entire judgment, if necessary, for equitable considerations.

(h) As to assets or liabilities for which a judgment or part of a judgment is set aside, the date of valuation shall be subject to equitable considerations. The court shall equally divide the asset or liability, unless the court finds upon good cause shown that the interests of justice require an unequal division.

(i) As to actions or motions filed under this section, if a timely request is made, the court shall render a statement of decision where the court has resolved controverted factual evidence.

(j) Nothing in this section prohibits a party from seeking relief under Section 4353.

(k) Nothing in this section changes existing law with respect to contract remedies where the contract has not been merged or incorporated into a judgment.

(*l*) Nothing in this section is intended to restrict a family law court from acting as a court of equity.

(m) Nothing in this section is intended to limit existing law with respect to the modification or enforcement of support orders.

(n) Nothing in this section shall affect the rights of a bona fide lessee, purchaser, or encumbrancer for value of real property.

(o) This section shall be applicable to judgments entered on or after January 1, 1993.

(p) This section shall remain in effect only until January 1, 1994, and on that date shall be repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

SEC. 3. Section 2100 of the Family Code, as added by Section 107 of Chapter 219 of the Statutes of 1993, is amended to read:

2100. The Legislature finds and declares the following:

(a) It is the policy of the State of California (1) to marshal, preserve, and protect community and quasi-community assets and liabilities that exist at the date of separation so as to avoid dissipation of the community estate before distribution, (2) to ensure fair and sufficient child and spousal support awards, and (3) to achieve a division of community and quasi-community assets and liabilities on the dissolution or nullity of marriage or legal separation of the parties

as provided under California law.

(b) Sound public policy further favors the reduction of the adversarial nature of marital dissolution and the attendant costs by fostering full disclosure and cooperative discovery.

(c) In order to promote this public policy, a full and accurate disclosure of all assets and liabilities in which one or both parties have or may have an interest must be made in the early stages of a proceeding for dissolution of marriage or legal separation of the parties, regardless of the characterization as community or separate, together with a disclosure of all income and expenses of the parties. Moreover, each party has a continuing duty to update and augment that disclosure to the extent there have been any material changes so that at the time the parties enter into an agreement for the resolution of any of these issues, or at the time of trial on these issues, each party will have as full and complete knowledge of the relevant underlying facts as is reasonably possible under the circumstances of the case.

SEC. 4. Section 2101 of the Family Code, as added by Section 107 of Chapter 219 of the Statutes of 1993, is amended to read:

2101. Unless the provision or context otherwise requires, the following definitions apply to this chapter:

(a) "Asset" includes, but is not limited to, any real or personal property of any nature, whether tangible or intangible, and whether currently existing or contingent.

(b) "Default judgment" does not include a stipulated judgment or any judgment pursuant to a marital settlement agreement.

(c) "Earnings and accumulations" includes income from whatever source derived, as provided in Section 4058.

(d) "Expenses" includes, but is not limited to, all personal living expenses, but does not include business related expenses.

(e) "Liability" includes, but is not limited to, any debt or obligation, whether currently existing or contingent.

SEC. 5. Section 2102 of the Family Code, as added by Section 107 of Chapter 219 of the Statutes of 1993, is amended to read:

2102. From the date of separation to the date of the distribution of the community asset or liability in question, each party is subject to the standards provided in Section 721, as to all activities that affect the property and support rights of the other party, including, but not limited to, the following activities:

(a) The accurate and complete disclosure of all assets and liabilities in which the party has or may have an interest or obligation and all current earnings, accumulations, and expenses.

(b) The accurate and complete written disclosure of any investment opportunity that presents itself after the date of separation, but that results from any investment of either spouse from the date of marriage to the date of separation, inclusive. The written disclosure shall be made in sufficient time for the other spouse to make an informed decision as to whether he or she desires to participate in the investment opportunity. In the event of

nondisclosure of such an investment opportunity, the division of any gain resulting from that investment opportunity is governed by the standard provided in Section 2556.

(c) The operation or management of a business or an interest in a business in which the community may have an interest.

SEC. 6. Section 2104 of the Family Code, as added by Section 107 of Chapter 219 of the Statutes of 1993, is amended to read:

2104. (a) Within 60 days of service of the petition for dissolution or nullity of marriage or legal separation of the parties, each party shall serve on the other party a preliminary declaration of disclosure, executed under penalty of perjury on a form prescribed by the Judicial Council. The commission of perjury on the preliminary declaration of disclosure may be grounds for setting aside the judgment, or any part or parts thereof, pursuant to Chapter 10 (commencing with Section 2120), in addition to any and all other remedies, civil or criminal, that otherwise are available under law for the commission of perjury. The parties may agree to accelerate or delay the time within which to exchange preliminary declarations of disclosure by written stipulation or by oral stipulation made in open court.

(b) The preliminary declaration of disclosure shall not be filed with the court, except on court order.

(c) The preliminary declaration of disclosure shall set forth with sufficient particularity, which a person of reasonable and ordinary intelligence can ascertain, all of the following:

(1) The identity of all assets in which the declarant has or may have an interest and all liabilities for which the declarant is or may be liable, regardless of the characterization of the asset or liability as community, quasi-community, or separate.

(2) The declarant's percentage of ownership in each asset and percentage of obligation for each liability where property is not solely owned by one or both of the parties. The preliminary declaration may also set forth the declarant's characterization of each asset or liability.

(d) A declarant may amend his or her preliminary declaration of disclosure without leave of the court.

(e) Along with the preliminary declaration of disclosure, each party shall provide the other party with a completed income and expense declaration unless an income and expense declaration has already been provided and is current and valid.

SEC. 7. Section 2105 of the Family Code, as added by Section 107 of Chapter 219 of the Statutes of 1993, is amended to read:

2105. (a) Before or at the time the parties enter into an agreement for the resolution of property or support issues other than pendente lite support, or, in the event the case goes to trial, no later than 45 days before the first assigned trial date, each party shall serve on the other party a final declaration of disclosure and a current income and expense declaration, executed under penalty of perjury on a form prescribed by the Judicial Council. The commission of

perjury on the final declaration of disclosure may be grounds for setting aside the judgment, or any part or parts thereof, pursuant to Chapter 10 (commencing with Section 2120), in addition to any and all other remedies, civil or criminal, that otherwise are available under law for the commission of perjury.

(b) The final declaration of disclosure shall include all of the following information:

(1) All material facts and information regarding the characterization of all assets and liabilities.

(2) All material facts and information regarding the valuation of all assets that are contended to be community or in which it is contended the community has an interest.

(3) All material facts and information regarding the amounts of all obligations that are contended to be community obligations or for which it is contended the community has liability.

(4) All material facts and information regarding the earnings, accumulations, and expenses of each party that have been set forth in the income and expense declaration.

(c) Along with the final declaration of disclosure, each party shall serve an updated income and expense declaration unless a current income and expense declaration is on file.

SEC. 8. Section 2106 of the Family Code, as added by Section 107 of Chapter 219 of the Statutes of 1993, is amended to read:

2106. Absent good cause, no judgment shall be entered with respect to the parties' property rights without each party having executed and served a copy of the final declaration of disclosure and current income and expense declaration. Each party shall execute and file with the court a declaration signed under penalty of perjury stating that service of the final declaration of disclosure and current income and expense declaration was made on the other party.

SEC. 9. Section 2107 of the Family Code, as added by Section 107 of Chapter 219 of the Statutes of 1993, is amended to read:

2107. (a) If one party fails to serve on the other party a preliminary declaration of disclosure under Section 2104 or a final declaration of disclosure under Section 2105, or fails to provide the information required in the respective declarations with sufficient particularity, and if the other party has served the respective declaration of disclosure on the noncomplying party, the complying party may, within a reasonable time, request preparation of the appropriate declaration of disclosure or further particularity.

(b) If the noncomplying party fails to comply with a request under subdivision (a), the complying party may do either or both of the following:

(1) File a motion to compel a further response.

(2) File a motion for an order preventing the noncomplying party from presenting evidence on issues that should have been covered in the declaration of disclosure.

(c) If a party fails to comply with any provision of this chapter, the court shall, in addition to any other remedy provided by law, order

the noncomplying party to pay to the complying party any reasonable attorney's fees, costs incurred, or both, unless the court finds that the noncomplying party acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

SEC. 10. Section 2109 of the Family Code, as added by Section 107 of Chapter 219 of the Statutes of 1993, is amended and renumbered to read:

2113. This chapter applies to any proceeding commenced on or after January 1, 1993.

SEC. 11. Section 2109 is added to the Family Code, to read:

2109. The provisions of this chapter requiring a final declaration of disclosure do not apply to a summary dissolution of marriage, but a preliminary declaration of disclosure is required.

SEC. 12. Section 2110 is added to the Family Code, to read:

2110. In the case of a default judgment, the petitioner may waive the final disclosure requirements provided in this chapter, but a preliminary declaration of disclosure by the petitioner is required.

SEC. 13. Section 2111 is added to the Family Code, to read:

2111. A disclosure required by this chapter does not abrogate the attorney work product privilege or impede the power of the court to issue protective orders.

SEC. 14. Section 2112 is added to the Family Code, to read:

2112. The Judicial Council shall adopt appropriate forms and modify existing forms to effectuate the purposes of this chapter.

SEC. 15. Section 2122 of the Family Code, as added by Section 108 of Chapter 219 of the Statutes of 1993, is amended to read:

2122. The grounds and time limits for a motion to set aside a judgment, or any part or parts thereof, are governed by this section and shall be one of the following:

(a) Actual fraud where the defrauded party was kept in ignorance or in some other manner, other than his or her own lack of care or attention, was fraudulently prevented from fully participating in the proceeding. An action or motion based on fraud shall be brought within one year after the date on which the complaining party either did discover, or should have discovered, the fraud.

(b) Perjury. An action or motion based on perjury in the preliminary or final declaration of disclosure or in the current income and expense statement shall be brought within one year after the date on which the complaining party either did discover, or should have discovered, the perjury.

(c) Duress. An action or motion based upon duress shall be brought within two years after the date of entry of judgment.

(d) Mental incapacity. An action or motion based on mental incapacity shall be brought within two years after the date of entry of judgment.

(e) As to stipulated or uncontested judgments or that part of a judgment stipulated to by the parties, mistake, either mutual or unilateral, whether mistake of law or mistake of fact. An action or

motion based on mistake shall be brought within one year after the date of entry of judgment.

SEC. 16. Section 2125 of the Family Code, as added by Section 108 of Chapter 219 of the Statutes of 1993, is amended to read:

2125. When ruling on an action or motion to set aside a judgment, the court shall set aside only those provisions materially affected by the circumstances leading to the court's decision to grant relief. However, the court has discretion to set aside the entire judgment, if necessary, for equitable considerations.

SEC. 17. Section 2127 of the Family Code, as added by Section 108 of Chapter 219 of the Statutes of 1993, is amended to read:

2127. As to actions or motions filed under this chapter, if a timely request is made, the court shall render a statement of decision where the court has resolved controverted factual evidence.

SEC. 18. Sections 3 to 17, inclusive, of this act shall be operative on January 1, 1994.

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 clarify the procedures to be followed in serving preliminary and final declarations of disclosure, as required by Sections 4800.10 and 4800.11 of the Civil Code, at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1102

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

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Pursuant to Sections 14011 and 14012 of the Water Code, the Department of Water Resources may make grants from the California Safe Drinking Water Fund in accordance with the California Safe Drinking Water Bond Law of 1988 (Chapter 16 (commencing with Section 14000) of Division 7 of the Water Code), to the following agencies for the purposes of financing proposed projects and investigations to identify alternatives for system improvements:

(a) Garden Farms County Water District in San Luis Obispo County.

(b) Montecito Water District in Santa Barbara County.

SEC. 2. The Department of Water Resources shall determine the eligibility for, and the amount of, any grant authorized in Section 1

of this act, in accordance with the California Safe Drinking Water Bond Law of 1988 (Chapter 16 (commencing with Section 14000) of Division 7 of the Water Code) and may make those grants in accordance with the bond law.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public 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 remedy critical water quality and supply problems, thereby protecting the public health and safety, it is necessary that this act take effect immediately.

CHAPTER 1103

An act to add Section 19603 to the Business and Professions Code, relating to horseracing.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 19603 is added to the Business and Professions Code, to read:

19603. Notwithstanding any other provision of law, any racing association in this state may, with the approval of the board, accept out-of-state wagers on a race or races conducted by that association and may transmit live audiovisual signals of the race or races to locations out of state, except that any wagers made pursuant to this section are subject to applicable federal laws. The amounts deducted from wagers made pursuant to this section shall be distributed pursuant to Article 9.5 (commencing with Section 19610) by the association or fair at which the race is conducted.

CHAPTER 1104

An act to amend, repeal, and add Section 8842 of the Fish and Game Code, relating to shrimp, and making an appropriation therefor.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 8842 of the Fish and Game Code is amended to read:

8842. (a) Trawl nets of a design prescribed by the commission may be used or possessed to take shrimps or prawns under a revocable permit issued by the department under regulations that the commission shall prescribe.

Sections 8831, 8833, 8835, and 8836 do not apply to trawl nets used or possessed under a permit issued pursuant to this section.

(b) When fishing for pink shrimp (Pandalus jordani) under a permit issued pursuant to this section, it is unlawful to possess in excess of 1,500 pounds of incidentally taken fish per calendar day of a fishing trip, except Pacific whiting, shortbelly rockfish, and arrowtooth flounder, which may be taken in any amount. Not more than 150 pounds of California halibut or Pacific halibut shall be possessed or landed when fishing under a permit issued pursuant to this section. When fishing for ridgeback prawn and spotted prawn under a permit issued pursuant to this section, it is unlawful to possess in excess of 1,000 pounds of incidentally taken fish per trip, except for sea cucumbers which may be taken in any amount.

(c) Permits to take and land pink shrimp shall be issued only to those persons who possessed, during any previous permit year, a permit issued under this section and any regulations adopted pursuant to this section.

(d) The fee for the permit to take pink shrimp shall be two hundred eighty-five dollars ($285).

(e) 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. Section 8842 is added to the Fish and Game Code, to read:

8842. (a) Trawl nets of a design prescribed by the commission may be used or possessed to take shrimps or prawns under a revocable permit issued by the department under regulations that the commission shall prescribe.

Sections 8831, 8833, 8835, and 8836 do not apply to trawl nets used or possessed under a permit issued pursuant to this section.

(b) When fishing for pink shrimp (Pandalus jordani) under a permit issued pursuant to this section, it is unlawful to possess in excess of 1,500 pounds of incidentally taken fish per calendar day of a fishing trip, except Pacific whiting, shortbelly rockfish, and arrowtooth flounder, which may be taken in any amount. Not more than 150 pounds of California halibut or Pacific halibut shall be possessed or landed when fishing under a permit issued pursuant to this section. When fishing for ridgeback prawn and spotted prawn under a permit issued pursuant to this section, it is unlawful to possess in excess of 1,000 pounds of incidentally taken fish per trip, except for sea cucumbers which may be taken in any amount.

(c) This section shall become operative on January 1, 1997.

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 1105

An act to amend Sections 50660.5, 50661.5, 50662.7, 50671.5, and 51320 of, and to add Sections 50671.6, 51321, 51321.3, and 51321.6 to, the Health and Safety Code, to amend Section 2 of Chapter 1355 of the Statutes of 1987, and to amend and supplement the Budget Act of 1993 (Chapter 55 of the Statutes of 1993) by adding Item 3790-304-786 to Section 2.00 thereof, relating to housing, and making an appropriation therefor.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 50660.5 of the Health and Safety Code is amended to read:

50660.5. (a) It is the intent of the Legislature to encourage local governments to assist residents to repair and rebuild housing in a cost-efficient and expeditious manner following a disaster. To this end, the Legislature recognizes that local governments may enact ordinances following disasters to expedite the permit process. These ordinances may include, but not be limited to, ordinances waiving fees and streamlining requirements affecting disaster-related repairs.

(b) The Legislature finds and declares that homeowners and owners of rental housing who apply for assistance pursuant to Section 50662.7, 50671.5, and 50671.6 may be unable to utilize expedited procedures or liberalized standards because loan approval and repair may occur after the expiration of the local ordinance. It is, therefore, the intent of the Legislature to encourage local governments to extend the application of these local ordinances to homeowners and owners of rental housing who are utilizing disaster assistance programs, including the respective loan programs authorized by Sections 50662.7, 50671.5, and 50671.6, so that housing can be repaired or rebuilt in a cost-efficient and expeditious manner.

SEC. 2. Section 50661.5 of the Health and Safety Code is amended to read:

50661.5. (a) There is hereby created in the State Treasury the California Disaster Housing Repair Fund, into which shall be paid all moneys appropriated by the Legislature pursuant to subdivision (b)

or transferred pursuant to subdivision (c) for housing repair loans pursuant to Sections 50662.7, 50671.5, and 50671.6. All interest or other increments resulting from the investment of moneys in the California Disaster Housing Repair Fund shall be deposited in the fund, notwithstanding Section 16305.7 of the Government Code. Notwithstanding Section 13340 of the Government Code, all money in that fund is continuously appropriated to the department for the following purposes:

(1) For making deferred-payment loans and predevelopment loans pursuant to Sections 50662.7, 50671.5, and 50671.6.

(2) For related administrative expenses of the department.

(3) For related administrative expenses of any entity contracting with the department, pursuant to Sections 50662.7, 50671.5, and 50671.6 in an amount, if any, as determined by the department, to enable the entities to implement a program pursuant to those sections.

(4) For providing loan guarantees for disaster-related loans made by private institutional lending sources.

(b) There shall be paid into the fund the following:

(1) Any moneys appropriated and made available by the Legislature for purposes of the fund.

(2) Any moneys transferred from the Special Fund for Economic Uncertainties, pursuant to subdivision (c).

(3) Any other moneys which may be made available to the department for the purposes of this section from any other source or sources.

(4) The director may authorize the sale of the beneficiary interest of loans made pursuant to Section 50662.7. The proceeds from that sale shall be deposited into the California Disaster Housing Repair Fund.

(c) (1) To the extent that funds are not available, the Department of Housing and Community Development shall submit to the Department of Finance, within 90 days after a disaster, a deficiency request based on a minimum funding level based on a damage survey completed by the Office of Emergency Services and the Federal Emergency Management Agency. The request shall distinguish between owner-occupied housing of one to four units and rental housing of five or more units.

(2) Upon receipt of the deficiency request from the Department of Housing and Community Development pursuant to paragraph (1), the Department of Finance shall make a funding determination and notify the Legislature of the approval or disapproval of the deficiency amount. Any deficiency amount approved shall distinguish between owner-occupied housing of one to four units and rental housing of five or more units.

(3) Any payments made pursuant to this subdivision from funds made available under Section 50671.5 shall be matched by a corresponding and equal payment from funds made available under Section 50671.6, except that, upon the determination of the Director

of Finance that one of the two rental repair programs has excess funds, moneys from that fund may be used for either of the other two disaster repair programs.

(d) In the event of a natural disaster, as defined in Section 8680.3 of the Government Code, the Director of Finance may transfer moneys from the Special Fund for Economic Uncertainties established by Section 16418 of the Government Code to the California Disaster Housing Repair Fund, provided the transfer is not made sooner than 30 days after notification in writing of the necessity therefor is provided to the Joint Legislative Budget Committee.

(e) Payments of principal and interest on loans issued pursuant to Sections 50662.7, 50671.5, and 50671.6 shall be deposited in the General Fund.

(f) In making funds available to disaster victims pursuant to Sections 50662.7, 50671.5, and 50671.6, the department shall impose a one-year deadline for submission of applications.

(g) Any changes made on or after January 1, 1994, to any program funded by the California Disaster Housing Repair Fund shall not apply to applications submitted on or before December 31, 1993. The department may administer the program in accordance with guidelines until regulations are adopted.

SEC. 3. Section 50662.7 of the Health and Safety Code is amended to read:

50662.7. For the purpose of providing disaster relief to those owners of owner-occupied dwellings that were damaged or destroyed as a result of a natural disaster defined by Section 8680.3 of the Government Code, resulting in a state of emergency proclaimed by the Governor pursuant to Section 8625 of the Government Code, financial assistance may be provided to disaster victims as prescribed in this chapter under the following special conditions, which shall prevail over conflicting provisions of this chapter and administrative regulations:

(a) (1) The loans shall be provided in any city, county, or city and county proclaimed by the Governor to be in a state of disaster: (A) to persons who do not qualify for loan assistance from an agency of the United States for repair of the damage caused by a natural disaster, (B) to the extent that federally provided or assisted financing may be insufficient to accomplish the necessary repair, and (C) to the extent required to enable the recipient to obtain and afford loan assistance from an agency of the United States to finance the necessary repair.

(2) The loans shall be made only to households that are victims of a natural disaster and only to the extent that other federal and state resources, private insurance proceeds, or private institutional lending sources, are not available or do not provide the assistance or coverage needed to rehabilitate or reconstruct their homes.

(3) This subdivision shall not be construed to prevent the processing of a loan application once a person or household has received loan approval from a federal, state, or private institutional

lending source, nor shall this subdivision be construed to prevent the funding of short-term loans until other federal, state, or private loan proceeds become available.

(b) (1) The loans shall be for the purpose of repairing, including reconstructing, dwellings that are owner-occupied or would be owner-occupied but for the damage caused by the natural disaster and for rental dwelling units of one to four units. Loan funds shall be used to fund work necessary to repair damaged dwellings and to correct serious, life-threatening violations of the state or local building code or housing standards that are required to be corrected prior to occupancy, including ensuring compliance with applicable seismic safety standards and related property improvements or to finance the reconstruction of dwellings destroyed as a result of the natural disaster up to a maximum of fifty thousand dollars ($50,000) per unit. The department shall limit the square footage of units repaired or reconstructed using funds provided pursuant to this section to the predisaster size of the unit.

(2) In the case of manufactured housing or mobilehomes, loan funds shall be used to bring the manufactured home or mobilehome into compliance with the standards set forth in Chapter 4 (commencing with Section 18025) of Part 2 of Division 13.

(3) For the purposes of this section:

(A) "Owner-occupied dwellings" include single-family units, attached owner-occupied units, condominiums, townhouses, cooperatives, and manufactured homes, including mobilehomes.

(B) "Rental dwelling of one to four units" includes single-family units, condominiums, townhouses, cooperatives, duplexes, and manufactured homes, including mobilehomes.

(c) The loan, together with any existing indebtedness encumbering the secured property, shall not exceed the after-repair value of the property, except that the department may waive this limitation in individual cases to ensure, when necessary, correction of serious, life-threatening violations of the state or local building code or housing standards, seismic safety standards, and general property improvements relating to these standards pursuant to subdivision (b).

(d) The department shall not consider either individual or family income in determining eligibility for a loan under this section.

(e) (1) The outstanding balance of a loan provided under this section, including principal and accrued interest thereon, shall be due and payable, after 30 years or when either of the following occurs: (A) the borrower transfers ownership of the rehabilitated property, or (B) fails to occupy the rehabilitated property as his or her principal place of residence, whichever comes first. For rental dwellings, the term of the loan shall be 20 years.

(2) After the initial recordation of the deed of trust securing the department's loan, the department shall not subordinate its deed of trust to additional or other financing except in cases of extreme hardship necessary to protect the health or safety of the occupants

or to the extent that the total principal of loans senior to the department's loan is unchanged or decreased and the department's security interest is not jeopardized, as determined by the department.

(f) The department may make loans directly to borrowers, or contract for the administration under this section of loans with one or more entities that it determines to have the necessary experience to successfully administer the loan program, including, but not limited to, local public agencies and private organizations. The department may authorize, under that contract, the payment of expenses incurred by the entities in administering the loan program and may prescribe the conditions pursuant to which the entities shall administer the loans.

(g) Sections 50663 and 50668 do not apply to loans made pursuant to this section.

(h) The department may set aside or use funds that are made available for the purposes of this section for the purpose of curing or averting an owner's default on the terms of any loan or other obligation where that default would jeopardize the department's security in the owner-occupied housing assisted pursuant to this section. The payment or advance of funds by the department pursuant to this subdivision shall be exclusively within the department's discretion, and no person shall be deemed to have any entitlement to the payment or advance of those funds. The amount of any funds expended by the department 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.

(i) Any rule, policy, or standard of general application employed by the Department of Housing and Community Development in implementing this section 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.

(j) Fund allocations made pursuant to this section shall not be subject to review or approval by the Loan Committee of the Department of Housing and Community Development operating pursuant to Subchapter 1 (commencing with Section 6900) of Chapter 6.5 of Title 25 of the California Code of Regulations.

(k) (1) In order to be eligible for one or more loans pursuant to this section, the borrower shall agree to all of the following conditions:

(A) All buildings shall be connected to their foundation systems as necessary to meet the seismic requirements of the 1973 Edition of the Uniform Building Code of the International Conference of Building Officials in a manner approved by the department, which may include seismic strengthening of foundation cripple walls and affixing or bolting sill plates to the foundation.

(B) All water heaters shall be braced, anchored, or strapped to resist falling or horizontal displacement due to earthquake motion.

(C) Hazard insurance shall be obtained and maintained as

required by the department.

(2) As a condition of receipt of assistance under this section, owners of rental dwellings shall agree, in writing, to all of the restrictions set forth in this subdivision.

(3) The loan shall include an amount sufficient to meet the requirements of subparagraphs (A) and (B) of paragraph (1).

(*l*) Initial rents for rental housing rehabilitated under this section shall not exceed the rent charged immediately prior to the natural disaster. The department may allow for adjustments to the predisaster rents due to cost-of-living increases or increases necessary for debt service.

(m) The department shall adopt regulations establishing terms and conditions upon which repair loans may be made. These regulations shall be made available to the public by the department. The department may set interest rates for individual loans for each disaster at a rate that shall not exceed the rate for veterans' home loans established pursuant to Section 987.87 of the Military and Veterans Code on the date the Governor declares a state of emergency for that disaster, plus up to one-half percent for administrative costs not included in the interest rate. The Department of Housing and Community Development shall prepare an annual audit of administrative costs for the Department of Finance. All loans for each disaster shall bear the same interest rate. The department may also require periodic payments of interest, or principal and interest, or provide incentives for earlier repayment of principal and interest on owner-occupied dwellings. Incentives may include reduction of interest rates to a minimum of 3 percent for repayment that occurs within three years of the closing of the loan.

(n) Prior to full loan approval, the department may make loans not exceeding five thousand dollars ($5,000) per loan to pay for the costs of predevelopment activity which must be undertaken prior to making eligible repairs if, in the opinion of the department, the borrower is unable to pay for these costs in advance of full loan approval. These loans shall bear interest at the rate of 6 percent simple interest per annum and shall be evidenced by a promissory note secured by a deed of trust. At the time of full loan approval, the predevelopment loan shall be canceled, and the principal amount of the loan and all accrued interest shall be included in the amount of the full loan and shall be subject to the same interest rate and terms and conditions as the full loan. For purposes of computing the maximum loan amount, the amount of any predevelopment loan shall be included.

SEC. 4. Section 50671.5 of the Health and Safety Code is amended to read:

50671.5. For the purpose of providing disaster relief to owners of rental housing and the tenants residing in rental housing that was damaged or destroyed as a result of a natural disaster as defined by Section 8680.3 of the Government Code, resulting in a state of emergency proclaimed by the Governor pursuant to Section 8625 of

the Government Code, financial assistance may be provided to disaster victims as prescribed in this chapter under the following special conditions, which shall prevail over conflicting provisions of this chapter and administrative regulations:

(a) (1) Funds may be used to make loans for (A) repair or (B) refinancing in conjunction with repair, of rental housing developments that were damaged or destroyed as a result of the natural disaster. For purposes of this section, "repair" includes reconstruction.

(2) The loans shall only be made in a city, county, or city and county proclaimed by the Governor to be in a state of disaster to assist rental housing developments that are damaged or destroyed by a natural disaster and only to the extent that other federal and state resources, private insurance proceeds, or private institutional lending sources, are not available or do not provide the assistance or coverage needed to rehabilitate or reconstruct that housing.

(3) The loans may be provided (A) to persons who do not qualify for loan assistance from an agency of the United States for repair of the damage caused by a natural disaster, or, (B) to the extent that federally provided or assisted financing may be insufficient to accomplish the necessary repair or would require rent increases above the rent charged for the units prior to the disaster.

(4) As to damaged rental housing, the loan funds shall be used to correct serious, life-threatening violations of the state or local building code or housing standards which are required to be corrected prior to occupancy, and to bring the property into compliance with seismic safety standards. If reconstruction is precluded on the original project site due to documented soil, geological, or other conditions which cannot be mitigated at a reasonable cost or the cost of the repair or reconstruction would exceed 110 percent of the value after reconstruction, the department may approve reconstruction on a comparable site in the immediate neighborhood. However, loan funds shall not be used for acquisition of real property.

(b) (1) Rental housing developments, for this purpose, shall include, but not be limited to, multifamily rental dwellings, apartments, residential hotels, rental mobilehomes, mobilehome parks, group homes for senior citizens or the disabled, buildings of mixed residential rental and commercial use, and buildings of mixed owner-occupant and rental use, that are made available for permanent residency of tenants. Rental housing developments shall contain five or more units. For buildings of mixed residential rental and commercial use, funds may be used for the repair of commercial as well as residential space.

(2) To be eligible for funds under this section, the owner of any rental housing development set forth above, shall have been the owner of record at the time of the natural disaster.

(c) In addition to the other requirements of this chapter, the department may require terms and conditions as it determines

necessary to meet the needs of the disaster area and its victims, to ensure the fiscal integrity of the rental housing development, and to protect the interests of the state. The department shall require that priority in occupancy in any unit assisted pursuant to this section shall be given first to occupants of rental units assisted pursuant to this section who were displaced by the natural disaster or the resulting repair of the assisted rental units. Second priority shall be given to other persons who were displaced from housing as a result of the natural disaster.

(d) In allocating funds, the department shall consider the availability of other resources to assist rental housing and the occupants of that rental housing and shall give priority to those applicants in jurisdictions with the greatest housing need resulting from the disaster and the fewest resources to address those needs. In allocating funds, the department shall also consider the availability of program funds and may give first priority to a loan request for repair only, and second priority to a loan request for refinancing and repair.

(e) (1) The department may waive the maximum loan amounts and per-unit loan amounts established by regulation as it determines necessary to serve the disaster victims. Loans made pursuant to this section for repair shall have a term of up to 20 years. Upon the request of the borrower, the department may permit repayment of the principal amount of any loan provided under this section, or of any interest on that loan, before the end of the loan term. This section shall not be construed to authorize any deferrals on the payment of principal or interest, unless the department determines that temporary deferral is necessary for fiscal integrity or to prevent foreclosure. The deferral period may be extended for an additional 12 months if the extension is authorized by the director.

(2) The department may set interest rates as specified in subdivision (m) of Section 50662.7.

(f) A loan shall not exceed the combined costs of refinancing existing indebtedness and repair. However, the total secured debt in a superior position to the department's loan, plus the department's loan, shall not exceed 100 percent of the after-repair value of the property, except that the department may waive this limitation in individual cases when necessary to ensure correction of serious, life-threatening violations of the state or local building code or housing standards which are required to be corrected prior to occupancy, seismic safety standards, and general property improvements relating to these standards, pursuant to subdivision (a).

(g) Prior to full loan approval, the department may make loans not exceeding five thousand dollars ($5,000) per loan to pay for the costs of predevelopment activity which must be undertaken prior to making eligible repairs if, in the opinion of the department, the borrower is unable to pay for these costs in advance of full loan approval. These loans shall bear interest at the rate of 6 percent

simple interest per annum and shall be evidenced by a promissory note secured by a deed of trust. At the time of full loan approval, the predevelopment loan shall be canceled, and the principal amount of the loan and all accrued interest shall be included in the amount of the full loan and shall be subject to the same interest rate and terms and conditions as the full loan. For purposes of computing the maximum loan amount, the amount of the predevelopment loan shall be included.

(h) Tenants of rental housing developments repaired with assistance provided under this section who are displaced as a result of either the natural disaster or the repair work, or both the natural disaster and the subsequent repair work, shall be entitled to relocation benefits pursuant to, and subject to, the requirements of Section 7265.3 of the Government Code. Sponsors of assisted rental housing developments shall be responsible for providing the benefits and assistance. The costs of the benefits and the assistance provided to tenants shall be eligible for funding by a loan provided pursuant to this section. Benefits and assistance provided hereunder shall not duplicate benefits or assistance for temporary housing received by tenants from any other public source or from insurance proceeds.

(i) The department may make loans directly to owners of rental housing, or contract for the administration of loans under this section with entities that it determines to have the necessary experience to successfully administer the loan program, including, but not limited to, local public agencies and private organizations. The department may authorize, under that contract, the payment of expenses incurred by the entities in administering the loan program and may prescribe the conditions pursuant to which the entities shall administer the loans.

(j) To the extent that any housing unit or other structure that was damaged or destroyed is reconstructed pursuant to this section with substantially the same number of units, it shall be deemed to be "existing housing" for purposes of subdivision (d) of Section 37001.5.

(k) The department may set aside or use funds that are made available for the purposes of this section for the purpose of curing or averting a housing sponsor's default on the terms of any loan or other obligation where that default would jeopardize the financial integrity of a rental housing development or the department's security in the rental housing development assisted pursuant to this section. The payment or advance of funds by the department pursuant to this subdivision shall be exclusively within the department's discretion, and no person shall be deemed to have any entitlement to the payment or advance of those funds. The amount of any funds expended by the department 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.

(*l*) Any rule, policy, or standard of general application employed by the Department of Housing and Community Development in implementing the provisions of this section 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.

(m) The department shall adopt regulations establishing terms and conditions upon which repair loans may be made. These regulations shall be made available to the public by the department.

(n) Fund allocations made pursuant to this section shall not be subject to review or approval by the Local Assistance Loan and Grant Committee of the Department of Housing and Community Development operating pursuant to Subchapter 1 (commencing with Section 6900) of Chapter 6.5 of Title 25 of the California Code of Regulations.

(o) (1) In order to be eligible for one or more loans pursuant to this section, the borrower shall agree to all of the following:

(A) All buildings shall be connected to the foundation systems except those of unreinforced masonry wall construction as necessary to meet the seismic requirements of the 1973 Edition of the Uniform Building Code of the International Conference of Building Officials in a manner approved by the department, which may include seismic strengthening of foundation cripple walls, and affixing or bolting sill plates to the foundation.

(B) For all buildings of unreinforced masonry wall construction, all repairs and seismic retrofits shall comply with earthquake hazard mitigation programs established pursuant to Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2 of the Government Code.

(C) All water heaters shall be braced, anchored, or strapped to resist falling or horizontal displacement due to earthquake motion.

(2) The loans shall include an amount sufficient to meet the requirements of paragraph (1).

SEC. 5. Section 50671.6 is added to the Health and Safety Code, to read:

50671.6. For the purpose of preserving or expanding the supply of rental housing affordable to low- and very low-income tenants in cities or counties affected by a natural disaster as defined by Section 8680.3 of the Government Code, resulting in a state of emergency proclaimed by the Governor pursuant to Section 8625 of the Government Code, financial assistance may be provided as prescribed in this chapter under the following special conditions, which shall prevail over conflicting provisions of this chapter and administrative regulations:

(a) Funds may be used for the purpose of repair or refinancing in conjunction with rehabilitation of rental housing developments. For purposes of this section, rehabilitation may include reconstruction. The loans shall only be made in a city, county, or city and county proclaimed by the Governor to be in a state of disaster and only when the Director of the Department of Housing and Community Development has determined that the disaster has decreased the supply of low-income rental housing. The loan funds may be used to repair disaster related damage, bring the housing into compliance

with applicable health and safety and seismic safety standards, and to make property improvements that are related to that compliance. If reconstruction is precluded on the original project site due to documented soil, geological, or other conditions that cannot be mitigated at a reasonable cost, or the cost of the rehabilitation or reconstruction would exceed 110 percent of the value after reconstruction, the department may approve reconstruction on a comparable site in the immediate neighborhood.

(b) (1) Rental housing developments, for this purpose, shall include, but not be limited to, multifamily rental dwellings, apartments, residential hotels, mobilehome parks, group homes for senior citizens or the disabled, buildings of mixed residential rental and commercial use, and buildings of mixed owner-occupant and rental use that are made available for permanent residency of tenants. Rental housing developments must contain five or more units. For buildings of mixed residential rental and commercial use, funds may be used for costs directly attributable to the residential space or the conversion of commercial space to residential space or a pro-rata share, based on gross floor area mix at the time of the disaster, if costs cannot be directly attributable to either commercial or residential space.

(2) Eligible cost shall include those costs relating to all of the following:

(A) Refinancing of existing debt to the extent necessary to reduce debt service to a level consistent with the provision of affordable rents and the fiscal integrity of the project.

(B) Rehabilitation or reconstruction.

(C) General property improvements that are necessary to correct unsafe, unhealthy, or unsanitary conditions, including renovations and remodeling, including, but not limited to, remodeling of kitchens and bathrooms, installation of new appliances, landscaping, and purchase or installation of central air conditioning.

(D) Necessary and related onsite improvements.

(E) Reasonable administrative expenses in connection with the planning and execution of the project, as determined by the department.

(F) Reasonable consulting costs.

(G) Rent-up costs.

(H) Seismic rehabilitation improvements.

(I) Any other costs of rehabilitation authorized by the department.

(3) (A) "Rent-up costs," as used in this section, means costs incurred while a unit is on the housing market but not rented to its first tenant.

(B) "Seismic rehabilitation improvements," as used in this section, means improvements that are designed to increase seismic structural safety in accordance with a plan developed by a civil engineer, a structural engineer, or an architect for a particular building that has been identified as hazardous by the city or county

in which the building is located in accordance with the criteria established by the Seismic Safety Commission pursuant to Section 8875.1 of the Government Code or in accordance with a previously adopted city or county seismic safety ordinance adopted pursuant to Section 19163.

(4) Eligible activities, not fundable under the program, shall include those costs relating to both of the following:

(A) Acquisition of property.

(B) Conversion of nonresidential structures to residential use.

(c) The loans need not be made in support of the programs specified in Section 50663.

(d) As a condition of assistance under this section, sponsors of rental housing developments shall agree to the restrictions set forth in this subdivision with respect to assisted units. The proportion of assisted units shall at least be equal to the proportion of project costs financed pursuant to this section to the total after-rehabilitation value of the rental housing development.

(1) For any loan under this section for the rehabilitation of units, the borrower must maintain affordable rent levels for low-income households, as defined by Section 50079.5, for assisted units for the term of the loan.

(2) "Maintain affordable rent levels," as used in this section, means rents may be automatically increased by the sponsor on an annual basis pursuant to increases in the median income of the county in which the rental housing development is located. 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.

(3) (A) Upon prior written approval by the department, a sponsor may set income limits for incoming tenants 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. If a tenant's income exceeds the income limit for a household specified in Section 50079.5, the tenant shall be required to vacate the assisted unit within six months from the date of income recertification or notice to the sponsor of an increase in income over the permissible income level. That period may be extended by the sponsor for an additional six-month period in high cost rental areas with low vacancy rates as determined by the department. Any vacant units shall be rented to eligible households until the required residency by eligible households is attained.

(B) In the case of limited equity housing cooperatives, the provisions of this paragraph 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.

(4) Any rental housing development assisted pursuant to this section shall be governed by a regulatory agreement between the sponsor and the department. The agreement shall, at a minimum, contain all of the restrictions set forth in this subdivision. The regulatory agreement shall be recorded, or referenced in a document recorded, in the office of the county recorder for the county in which the rental housing development is located. The regulatory agreement 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.

(5) If any unit undergoing rehabilitation or reconstruction pursuant to funding under this section is subject to a currently applicable regulatory agreement between the department and a housing sponsor, that agreement shall prevail over this subdivision.

(6) In addition to the other requirements of this chapter, the department may require terms and conditions as it determines necessary to meet the needs of the disaster area and its victims, to ensure the fiscal integrity of the rental housing development, and to protect the interests of the state. The department shall require that priority in occupancy in any unit assisted pursuant to this section shall be given first to those occupants who were displaced by the natural disaster or the resulting rehabilitation of the assisted rental units. Second priority shall be given to other persons who were displaced from housing as a result of the natural disaster.

(e) (1) When the requirements of subdivision (a) have been met, the department shall announce the availability of funds and accept applications for fund commitments until any deadline established pursuant to subdivision (e) of 50661.5 has expired. Fund commitments shall be based on a ranking of applications, which shall occur at least once for each new disaster. In making this ranking for rental housing developments, priority shall be given to those projects that: (A) serve the greater number of eligible households, as defined in Section 50105, with the lowest incomes; (B) suffered substantial damage as a result of the natural disaster; (C) are located in areas where the housing need is great as determined by the department, taking into consideration, among other factors, low vacancy rates, high market rents, long waiting lists for subsidized housing, the stock of substandard housing, and the potential loss of subsidized rental housing to market-rate housing through demolition, foreclosure, or subsidy termination; (D) complement the implementation of an

existing housing program; (E) maximize private local and other funding sources; and (F) maximize long-term benefits for eligible households, as defined in Sections 50079.5 and 50105.

(2) The department shall also evaluate the capability of the sponsor to rehabilitate, own, and manage the rental housing development.

(f) (1) The department may waive the maximum loan amounts and per-unit loan amounts established by regulation as it determines necessary to serve the disaster victims. Loans made pursuant to this section for rehabilitation, shall have a term of up to 20 years. Loans made pursuant to this section for rehabilitation, or refinancing and rehabilitation shall have a term of up to 30 years.

(2) Upon request of the sponsor, the department may permit repayment of a sponsor's loan on the basis of net cash-flow. The department shall develop a prepayment plan in conjunction with the sponsor that shall ensure the maintenance of affordable rents and the fiscal integrity of the rental housing development. As an incentive to encourage the prepayment of loans, the department may permit the sponsor to retain one-half of the net cash-flow. The department shall determine the method for calculating net cash-flow, which may include a factor for excess debt service coverage or a return on cash investment to the sponsor.

(3) Principal and accumulated interest is due and payable upon completion of the term of the loan. The loan shall bear interest at the rate of three percent per annum on the unpaid principal balance. However, the department shall reduce or eliminate interest payments on a loan for any year or, alternatively, defer interest until the deferred payment loan is repaid, if necessary to provide affordable rents to households of very low-income and low-income. The ability to pay all or part of the three percent simple annual interest shall not be considered in determining the fiscal integrity of the rental housing development at the time of the rating and ranking of an application.

(g) When a loan will be used in conjunction with federal or other state housing assistance or tax credits, and a conflict exists between the other state or federal program requirements and this chapter with regard to determining maximum allowable rents, the requirements of this chapter may be waived only to the extent necessary to permit the federal or other state financial participation or eligibility for tax credits.

(h) Tenants of rental housing developments rehabilitated with assistance provided under this section who are displaced as a result of either the rehabilitation work, or both the natural disaster and the subsequent rehabilitation work, shall be entitled to relocation benefits pursuant to, and subject to, the requirements of Section 7265.3 of the Government Code. The costs of the benefits and the assistance provided to tenants shall be eligible for funding by a loan provided pursuant to this section. Benefits and assistance provided hereunder shall not duplicate benefits or assistance for temporary

housing received by tenants from any other public source or from insurance proceeds.

(i) The department may make loans directly to owners of rental housing, or contract for the administration of loans under this section with entities that it determines to have the necessary experience to successfully administer the loan program, including, but not limited to, local public agencies and private organizations. The department may authorize, under that contract, the payment of expenses incurred by the entities in administering the loan program and may prescribe the conditions pursuant to which the entities shall administer the loans.

(j) To the extent that any housing unit or other structure that was damaged or destroyed is reconstructed pursuant to this section with substantially the same number of units, it shall be deemed to be "existing housing" for purposes of subdivision (d) of Section 37001.5.

(k) Any rule, policy, or standard of general application employed by the Department of Housing and Community Development in implementing this section 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.

(*l*) The department shall adopt regulations establishing terms and conditions upon which repair loans may be made. These regulations shall be made available to the public by the department.

(m) Fund allocations made pursuant to this section shall not be subject to review or approval by the Local Assistance Loan and Grant Committee of the Department of Housing and Community Development operating pursuant to Subchapter 1 (commencing with Section 6900) of Chapter 6.5 of Title 25 of the California Code of Regulations.

(n) (1) In order to be eligible for one or more loans pursuant to this section, the borrower shall agree to all of the following:

(A) All buildings shall be connected to the foundation systems, except those of unreinforced masonry wall construction, as necessary to meet the seismic requirements of the 1973 Edition of the Uniform Building Code of the International Conference of Building Officials in a manner approved by the department, that may include seismic strengthening of foundation cripple walls, and affixing or bolting sill plates to the foundation.

(B) For all buildings of unreinforced masonry wall construction, all repairs and seismic retrofits shall comply with earthquake hazard mitigation programs established pursuant to Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2 of the Government Code.

(C) All water heaters shall be braced, anchored, or strapped to resist falling or horizontal displacement due to an earthquake motion.

(2) The loans shall include an amount sufficient to meet the requirements of paragraph (1).

SEC. 6. Section 51320 of the Health and Safety Code is amended

to read:

51320. The agency may make or purchase loans for the following purposes:

(a) To finance the acquisition, construction, or development of mobilehome parks that meet either of the following criteria:

(1) Are cooperatively owned by persons and families of low and moderate income.

(2) Consist of lots that will be purchased or rented primarily by persons and families of low and moderate income. However, if subsidies are available, the costs of renting spaces and making mortgage payments on manufactured housing shall be affordable to those persons of low income residing within the park. In the event of a mobilehome park owned by a nonprofit corporation which will own the lots and the mobilehomes, the loans may include financing of park acquisition, construction, or development and manufactured housing acquisition.

(b) To finance the purchase of manufactured housing to be placed in a mobilehome park which is financed pursuant to subdivision (a).

(c) For the purposes of this chapter, "loan" shall include lease-purchase financing.

SEC. 7. Section 51321 is added to the Health and Safety Code, to read:

51321. Subject to the limitations of this chapter, the agency may, in addition to any other power conferred by this part, issue revenue bonds as provided in Chapter 7 (commencing with Section 51350) to finance the making or purchase of loans made for the purposes described in Section 51320.

SEC. 8. Section 51321.3 is added to the Health and Safety Code, to read:

51321.3. For the purposes of this chapter, the agency shall have the power to issue its bonds to defray, in whole or in part, the costs of studies and surveys, insurance premiums, underwriting fees, legal, accounting, and marketing services incurred in connection with the issuance and sale of bonds, including bond and mortgage reserve accounts, trustee, custodian, and rating agency fees, and other costs reasonably related to the foregoing.

SEC. 9. Section 51321.6 is added to the Health and Safety Code, to read:

51321.6. Subject to the provisions of this part, the agency may insure or guarantee loans made for the purposes described in Section 51320.

SEC. 10. Section 2 of Chapter 1355 of the Statutes of 1987, as amended by the Section 4 of Chapter 259 of the Statutes of 1991, is amended to read:

Sec. 2. (a) The sum of five hundred thousand dollars ($500,000) is hereby appropriated from the Homeownership Assistance Fund to the Department of Housing and Community Development for disbursement to the nonprofit corporation established pursuant to Part 6.2 (commencing with Section 52535) of Division 31 of the

Health and Safety Code, pursuant to a contract between the department and the nonprofit corporation limiting use of these moneys to the startup and initial operating costs of the corporation.

(b) The moneys appropriated by this section shall be deemed an advance to be fully repaid by the provision of in-kind services providing assistance to the state or other governmental entities in California in housing element law compliance pursuant to Article 10.6 (commencing with Section 65590) of Chapter 3 of Division 1 of Title 7 of the Government Code, or by the provision of affordable housing, as determined or approved by the Director of Housing and Community Development. The nonprofit corporation established pursuant to Part 6.2 (commencing with Section 52535) of Division 31 of the Health and Safety Code shall provide the Director of Housing and Community Development with any and all information or reports reasonably necessary or required to verify that appropriate in-kind services were in fact provided by the nonprofit corporation.

(c) The Director of Housing and Community Development is authorized, in his or her sole discretion, to credit the nonprofit corporation for the in-kind services already provided by the nonprofit corporation to the state or to other governmental entities in California.

SEC. 11. Item 3790-304-786 is added to Section 2.00 of the Budget Act of 1993 (Chapter 55 of the Statutes of 1993), to read:

CALIFORNIA WILDLIFE, COASTAL, AND PARK LAND CONSERVATION PROGRAM

3790-304-786—For capital outlay, Department of Parks and Recreation, payable from the California Wildlife, Coastal, and Park Land Conservation Fund of 1988 100,000

Schedule:

(1) Marconi Conference Center SHP: Seismic Stabilization/ Restoration of Historic Buildings listed on the National Register.

Provisions:

1. Funds appropriated in category (1) of this item will be used on Historic Buildings on the National Register and shall be matched with by at least 50 percent of private or nonstate funds.

CHAPTER 1106

An act to amend Sections 10290, 12100, 12101, and 12102 of, and to add Sections 10290.1, 12100.7, 12101.2, and 12101.5 to, the Public Contract Code, relating to state contracts.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 10290 of the Public Contract Code is amended to read:

10290. As used in this chapter:

(a) "Department" means the Department of General Services.

(b) "Director" means the Director of General Services.

(c) "Centralized purchasing" means the purchase for state agencies of materials, supplies, and equipment by the Office of Procurement.

(d) "Office" means the Office of Procurement in the Department of General Services.

(e) "Price schedule" means an agreement between the Office of Procurement and a vendor under which the vendor agrees to accept orders from the office or a state agency for a commodity or commodities at set prices for a specified period of time but which does not obligate the office or state agencies to purchase the commodity or commodities from the vendor.

(f) "Regional commodities contract" means a commodities contract of the same type as a statewide commodities contract but applicable only to purchases in a particular area or region of the state.

(g) "Statewide commodities contract" means a contract awarded by the Office of Procurement to a vendor or vendors for the purchase of a commodity or commodities for a period of time, at a price, and in an amount set forth in the contract.

(h) "Multiple award" means a contract of indefinite quantity for one or more similar goods to more than one vendor.

(i) "Multiple award schedule" (MAS) is an agreement established between the General Services Administration of the United States and certain vendors to do business under specific prices, terms, and conditions for specified goods and services.

SEC. 1.3. Section 10290.1 is added to the Public Contract Code, to read:

10290.1. Notwithstanding any other provision of law, in exercising their delegation of procurement authority from the Department of General Services, state agencies may place purchase orders, in an amount not to exceed twenty thousand dollars ($20,000) per transaction, with vendors who have multiple award schedules with the General Services Administration of the United States if the vendor is willing to extend those terms, conditions, and prices. The

department may also develop multiple award agreements for use by state agencies in the same manner.

SEC. 1.5. Section 12100 of the Public Contract Code is amended to read:

12100. The Legislature finds that the unique aspects of electronic data processing systems and telecommunications systems and the importance of those systems to state programs warrant a separate acquisition authority for electronic data processing and telecommunications goods and services. The Legislature further finds that this separate authority should enable the timely acquisition of goods and services in order to meet the state's needs in the most value-effective manner.

All contracts for the acquisition of electronic data processing or telecommunications services and all contracts for the acquisition of electronic data processing or telecommunications goods, whether by lease or purchase, shall be made by or under the supervision of the Department of General Services.

SEC. 2. Section 12100.7 is added to the Public Contract Code, to read:

12100.7. For purposes of this chapter, "value-effective acquisition" may be defined to include, but not be limited to, the following:

(a) The operational cost that the state would incur if the bid or proposal is accepted.

(b) Quality of the product or service, or its technical competency.

(c) Reliability of delivery and implementation schedules.

(d) The maximum facilitation of data exchange and systems integration.

(e) Warranties, guarantees, and return policy.

(f) Vendor financial stability.

(g) Consistency of the proposed solution with the state's planning documents and announced strategic program direction.

(h) Quality and effectiveness of business solution and approach.

(i) Industry and program experience.

(j) Prior record of vendor performance.

(k) Vendor expertise with engagements of similar scope and complexity.

(*l*) Extent and quality of the proposed participation and acceptance by all user groups.

(m) Proven development methodologies and tools.

(n) Innovative use of current technologies and quality results.

SEC. 3. Section 12101 of the Public Contract Code is amended to read:

12101. It is the intent of the Legislature that policies developed by the Department of Finance and procedures developed by the Department of General Services in accordance with Section 12102 provide for:

(a) The expeditious and value-effective acquisition of electronic data processing and telecommunications goods and services to satisfy

state requirements.

(b) The acquisition of electronic data processing and telecommunications goods and services within a competitive framework.

(c) The delegation of authority by the Department of General Services to each state agency that has demonstrated to the department's satisfaction the ability to conduct value-effective electronic data processing and telecommunications goods and services acquisitions.

(d) The exclusion from state bid processes, at the state's option, of any vendor having failed to meet prior contractual requirements related to electronic data processing or telecommunications goods and services.

(e) The review and resolution of protests submitted by a vendor or vendors with respect to any electronic data processing or telecommunications goods and services acquisitions.

SEC. 4. Section 12101.2 is added to the Public Contract Code, to read:

12101.2. Commencing on January 1, 1994, the department shall prenegotiate the repetitively used terms and conditions in the state's model contract with each interested vendor who bids or proposes on electronic data processing or telecommunications procurements. The contract language shall be kept on file, as a matter of public record, and shall remain operational until either the state or the vendor provides 30 days' notice to the other party that new negotiations are deemed appropriate.

If, for a particular procurement, the state seeks to make any further changes to either the negotiated or the standard contract language, or both, it shall identify those changes to each bidder or proposer prior to the due date for the bid or proposal. If for a particular procurement, a bidder or proposer seeks to propose a negotiated change or standard contract language change, it shall make this identification within the timeframe identified in the solicitation document.

SEC. 5. Section 12101.5 is added to the Public Contract Code, to read:

12101.5. (a) It is the intent of the Legislature that agencies of the State of California utilize an acquisition method that is compatible with their short- and long-term fiscal needs in contracts relating to commodities and electronic data processing and telecommunications goods and services. State agencies should be able to specify their anticipated life cycle requirements that would become one of the criteria for procurement selection. These agencies should be given the choice of vendors to meet statewide standardization needs, unique service requirements, application requirements, and long-term satisfaction criteria. There is a need for the State of California to enter into long-term contracts with annual cancellation and fund out clauses, as required, to protect the state's interests as well as provide the option for multiyear renewals to

encourage vendors to develop higher levels of service and support throughout the contracts.

(b) The state may utilize multiple awards including federal General Service Administration Multiple Awards Schedules in procurements for commodities and electronic data processing and telecommunications goods; master services agreements for electronic data processing personal services; master agreements for equipment; and master equipment services agreements. For purposes of this subdivision, a multiple award is an award of an indefinite quantity contract for one or more similar goods to more than one vendor. Except for possible multiple awards as permitted by this subdivision, all the requirements of this chapter pertaining to other types of electronic data processing and telecommunications procurements shall be followed. The Department of General Services shall ensure that multiple award schedules are in compliance with all other applicable statutes.

Notwithstanding any other provision of law, state agencies, in exercising their delegation of procurement authority from the Department of General Services, may make awards to vendors, in an amount not to exceed two hundred fifty thousand dollars ($250,000) per transaction, who have multiple award schedules with the General Services Administration of the United States on the same terms, conditions, and prices if the vendor is willing to do so. The department may also develop multiple award agreements for use by state agencies in the same manner.

SEC. 6. Section 12102 of the Public Contract Code is amended to read:

12102. The Department of Finance and the Department of General Services shall maintain, in the State Administrative Manual, policies and procedures governing the acquisition and disposal of electronic data processing and telecommunications goods and services.

(a) Acquisition of electronic data processing and telecommunications goods and services shall be conducted through competitive means, except when the Director of General Services determines that (1) the goods and services proposed for acquisition are the only goods and services which can meet the state'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. The acquisition mode to be used and the procedure to be followed shall be approved by the Director of General Services. The Department of General Services shall maintain, in the State Administrative Manual, appropriate criteria and procedures to ensure compliance with the intent of this chapter. These criteria and procedures shall include acquisition and contracting guidelines to be followed by state agencies with respect to the acquisition of electronic data processing and telecommunications goods and services. These guidelines may be in the form of standard formats or model formats.

(b) Contract awards for all large-scale systems integration projects shall be based on the proposal that provides the most value-effective solution to the state's requirements, as determined by the evaluation criteria contained in the solicitation document. Evaluation criteria for procurement of electronic data processing and telecommunications services, including systems integration, shall provide for the selection of a vendor on an objective basis not limited to cost alone.

(1) The Department of General Services shall invite active participation, review, advice, comment, and assistance from the private sector and state agencies in developing procedures to streamline and to make the acquisition process more efficient, including but not limited to consideration of comprehensive statements in the request for proposals of the business needs and governmental functions, access to studies, planning documents, feasibility study reports and draft requests for proposals applicable to procurements, minimizing the time and cost of the proposal submittal and selection process, and development of a procedure for submission and evaluation of a single rather than multiple proposals.

(2) Solicitations for acquisitions based on evaluation criteria other than cost alone shall provide that sealed cost proposals shall be submitted and that they shall be opened at a time and place designated in the solicitation for bids and proposals. Evaluation of all criteria, other than cost, shall be completed prior to the time designated for public opening of cost proposals, and the results of the completed evaluation shall be published immediately before the opening of cost proposals. The state's contact person for administration of the procurement shall be identified in the solicitation for bids and proposals, and that person shall execute a certificate under penalty of perjury, which shall be made a permanent part of the official procurement file, that all cost proposals received by the state have been maintained sealed and under lock and key until the time cost proposals are opened.

(c) The acquisition of hardware purchased independently of a system integration project may be made on the basis of lowest cost meeting all other specifications.

(d) Whenever an acquisition is based upon cost alone, so that the award of a contract, purchase order, or delegated purchase order is made to the lowest responsible bidder meeting the specifications, the 5 percent small business preference provided for in Chapter 6.5 (commencing with Section 14835) of Part 5.5 of Division 3 of Title 2 of the Government Code and the regulations implementing that chapter shall be accorded to all qualifying small businesses.

(e) For all transactions formally advertised, evaluation of bidders' proposals for the purpose of determining contract award for electronic data processing and telecommunications goods shall provide for consideration of a bidder's best financing alternatives, including lease or purchase alternatives, if any bidder so requests, not less than 30 days prior to the date of final bid submission, unless the

acquiring agency can prove to the satisfaction of the Department of General Services that a particular financing alternative should not be so considered.

(f) Acquisition authority may be delegated by the Director of General Services to any state agency which has been determined by the Department of General Services to be capable of effective use of that authority. This authority may be limited by the Department of General Services. Acquisitions conducted under delegated authority shall be reviewed by the Department of General Services on a selective basis.

(g) To the extent practical, the solicitation documents shall provide for a contract to be written to enable acquisition of additional items to avoid essentially redundant acquisition processes when it can be determined that it is economical to do so.

Further, it is the intent of the Legislature that, if a state electronic data-processing advisory committee or a state telecommunications advisory committee is established by the Governor, the Director of Finance, or the Director of General Services, the policies and procedures developed by the Director of Finance and the Director of General Services in accordance with this chapter shall be submitted to that committee, including vendor representatives, for review and comment, and that the comment be considered by both departments prior to the adoption of any policy or procedure. It is also the intent of the Legislature that this section shall apply to the Department of General Services Information Technology Customer Council.

(h) Protest procedures shall be developed to provide bidders an opportunity to protest formally with respect to any acquisition conducted in accordance with this chapter. The procedures shall provide that protests must be filed no later than five working days after the issuance of an intent to award. Authority to protest may be limited to participating bidders. The Director of General Services, or a person designated by the director, may consider and decide on initial protests. A decision regarding an initial protest shall be final. If prior to the last day to protest, any vendor who has submitted an offer files a protest with the department against the awarding of the contract or purchase order on the ground that his or her bid or proposal should have been selected in accordance with the selection criteria in the solicitation document, the contract or purchase order shall not be awarded until either the protest has been withdrawn or the State Board of Control has made a final decision as to the action to be taken relating to the protest. Within 10 calendar days after filing a protest, the protesting vendor shall file with the State Board of Control a full and complete written statement specifying in detail the grounds of the protest and the facts in support thereof.

(i) Electronic data processing and telecommunications goods which have been determined to be surplus to state needs shall be disposed of in a manner which will best serve the interests of the state. Procedures governing the disposal of surplus goods may

include auction or transfer to local governmental entities.

(j) A vendor may be excluded from bid processes if the vendor's performance with respect to a previously awarded contract has been unsatisfactory, as determined by the state in accordance with established procedures which shall be maintained in the State Administrative Manual. This exclusion may not exceed 360 calendar days for any one determination of unsatisfactory performance. Any vendor excluded in accordance with this section shall be reinstated as a qualified vendor at any time during this 360-day period, upon demonstrating to the department's satisfaction that the problems which resulted in the vendor's exclusion have been corrected.

CHAPTER 1107

An act to amend Section 12657 of, and to add Sections 12670.2, 12670.3, and 12670.4 to, the Water Code, relating to water.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 12657 of the Water Code is amended to read:

12657. (a) Except as otherwise provided in Chapter 1 (commencing with Section 12570) and this chapter, the Reclamation Board shall give assurances satisfactory to the Secretary of the Army that the local cooperation, required by Section 3 of the act of Congress approved December 22, 1944 (Public Law 534, 78th Congress, Second Session), Section 2 of the act of Congress approved August 18, 1941 (Public Law 228, 78th Congress, First Session), and Section 103 of the act of Congress approved November 17, 1986 (Public Law 99-662, 99th Congress, Second Session) will be furnished by the state in connection with the flood control projects authorized and adopted in Sections 12648, 12648.1, 12648.2, 12648.3, 12648.4, 12648.5, 12648.6, 12648.7, 12649.1, 12650, 12651, 12652, 12654, 12656.5, 12666, 12667, and 12670.2, and on any flood control projects on any stream flowing into or in the Sacramento Valley or the San Joaquin Valley heretofore or hereafter approved and authorized by Congress.

(b) Assurances provided pursuant to subdivision (a) shall not be made until the local agency has, by binding agreement with the Reclamation Board, agreed to assume all obligations under Sections 12585 to 12585.5, inclusive.

SEC. 2. Section 12670.2 is added to the Water Code, to read:

12670.2. (a) The project for flood protection on the Sacramento River for the City of West Sacramento is adopted and authorized substantially in accordance with the recommendations of the Chief

of Engineers, in the report "Sacramento Metro Area, California" dated June 29, 1992, and as adopted and authorized by the act of Congress approved October 31, 1992 (Public Law 102-580), at an estimated cost to the state of the sum that may be appropriated by the Legislature for state participation, upon the recommendation and advice of the department or the Reclamation Board.

(b) The department or the Reclamation Board may pay 50 percent of the nonfederal capital costs of the recreation and fish and wildlife enhancement features of the project.

SEC. 3. Section 12670.3 is added to the Water Code, to read:

12670.3. The City of West Sacramento, or a joint power authority formed by the City of West Sacramento and Reclamation Districts 537 and 900, may, in lieu of the Reclamation Board, give assurances satisfactory to the Secretary of the Army that the local cooperation required by the Water Resources Development Act of 1992 (Public Law 102-580) will be furnished in connection with the project for flood control adopted and authorized in Section 12670.2.

SEC. 4. Section 12670.4 is added to the Water Code, to read:

12670.4. The City of West Sacramento, or joint power authority formed by the City of West Sacramento and Reclamation Districts 537 and 900, in conjunction with the Department of the Army, may, in lieu of the Reclamation Board, carry out the plans and project referred to in Section 12670.2 and may make modification and amendments to the plans as may be necessary to carry out the plans for the purposes of Chapter 1 (commencing with Section 12570) and this chapter.

CHAPTER 1108

An act to amend Sections 25520, 25523, 25540.6, and 25541 of, and to add Section 25523.5 to, the Public Resources Code, relating to energy resources.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 25520 of the Public Resources Code is amended to read:

25520. The application shall contain all of the following information and any other information that the commission by regulation may require:

(a) A detailed description of the design, construction, and operation of the proposed facility.

(b) Safety and reliability information, including, in addition to documentation previously provided pursuant to Section 25511, planned provisions for emergency operations and shutdowns.

(c) Available site information, including maps and descriptions of present and proposed development and, as appropriate, geological, aesthetic, ecological, seismic, water supply, population, and load center data, and justification for the particular site proposed.

(d) Any other information relating to the design, operation, and siting of the facility that the commission may specify.

(e) A statement of need providing information showing compatibility of the proposed facility with the most recent electricity report issued by the commission pursuant to Sections 25305 to 25308, inclusive, or, where applicable, information pertinent to Section 25523.5 regarding the conformity of a competitive solicitation for new generation resources with the integrated assessment of need for new resource additions determined pursuant to subdivisions (a) to (f), inclusive, of Section 25305 and adopted pursuant to Section 25308, and in effect at the time that the competitive solicitation for new generation resources, as described in subdivision (f) of Section 25523, was developed.

(f) A description of the facility, the cost of the facility, the fuel to be used, the source of fuel, fuel cost, plant service life and capacity factor, and generating cost per kilowatt hour.

(g) A description of any electric transmission lines, including the estimated cost of the proposed electric transmission line; a map in suitable scale of the proposed routing showing details of the rights-of-way in the vicinity of settled areas, parks, recreational areas, and scenic areas, and existing transmission lines within one mile of the proposed route; justification for the route, and a preliminary description of the effect of the proposed electric transmission line on the environment, ecology, and scenic, historic, and recreational values.

SEC. 2. Section 25523 of the Public Resources Code is amended to read:

25523. The commission shall prepare a written decision after the public hearing on an application, which includes all of the following:

(a) Specific provisions relating to the manner in which the proposed facility is to be designed, sited, and operated in order to protect environmental quality and assure public health and safety.

(b) In the case of a site to be located in the coastal zone, specific provisions to meet the objectives of Division 20 (commencing with Section 30000) as may be specified in the report submitted by the California Coastal Commission pursuant to subdivision (d) of Section 30413, unless the commission specifically finds that the adoption of the provisions specified in the report would result in greater adverse effect on the environment or that the provisions proposed in the report would not be feasible.

(c) In the case of a site to be located in the Suisun Marsh or in the jurisdiction of the San Francisco Bay Conservation and Development Commission, specific provisions to meet the requirements of Division 19 (commencing with Section 29000) of this code or Title 7.2 (commencing with Section 66600) of the Government Code as

may be specified in the report submitted by the San Francisco Bay Conservation and Development Commission pursuant to subdivision (d) of Section 66645 of the Government Code, unless the commission specifically finds that the adoption of the provisions specified in the report would result in greater adverse effect on the environment or the provisions proposed in the report would not be feasible.

(d) (1) Findings regarding the conformity of the proposed site and related facilities with standards adopted by the commission pursuant to Section 25216.3 and subdivision (d) of Section 25402, with public safety standards and the applicable air and water quality standards, and with other relevant local, regional, state, and federal standards, ordinances, or laws. If the commission finds that there is noncompliance with any state, local, or regional ordinance or regulation in the application, it shall consult and meet with the state, local, or regional governmental agency concerned to attempt to correct or eliminate the noncompliance. If the noncompliance cannot be corrected or eliminated, the commission shall inform the state, local, or regional governmental agency if it makes the findings required by Section 25525.

(2) The commission shall not find that the proposed facility conforms with applicable air quality standards pursuant to paragraph (1) unless the applicable air pollution control district or air quality management district certifies that complete emissions offsets for the proposed facility have been identified and will be obtained by the applicant prior to the commission's licensing of the project, to the extent that the proposed facility requires emission offsets to comply with local, regional, state, or federal air quality standards.

(e) Provision for restoring the site as necessary to protect the environment, if the commission denies approval of the application.

(f) Findings regarding the conformity of the proposed facility with the integrated assessment of need for new resource additions determined pursuant to subdivisions (a) to (f), inclusive, of Section 25305 and adopted pursuant to Section 25308 or, where applicable, findings pursuant to Section 25523.5 regarding the conformity of a competitive solicitation for new generation resources with the integrated assessment of need for new resource additions determined pursuant to subdivisions (a) to (f), inclusive, of Section 25305 and adopted pursuant to Section 25308 that was in effect at the time that the solicitation was developed.

(g) In the case of a geothermal site and related facility, findings on whether there are sufficient commercial quantities of geothermal resources available to operate the proposed facility for its planned life.

(h) In the case of a site and related facility using resource recovery (waste-to-energy) technology, specific conditions requiring that the facility be monitored to ensure compliance with paragraphs (1), (2), (3), and (6) of subdivision (a) of Section 42315 of the Health and Safety Code.

(i) In the case of a facility, other than a resource recovery facility

subject to subdivision (h), specific conditions requiring the facility to be monitored to ensure compliance with toxic air contaminant control measures adopted by an air pollution control district or air quality management district pursuant to subdivision (d) of Section 39666 or Section 41700 of the Health and Safety Code, whether the measures were adopted before or after issuance of a determination of compliance by the district.

SEC. 3. Section 25523.5 is added to the Public Resources Code, to read:

25523.5. The commission shall make an affirmative finding pursuant to subdivision (f) of Section 25523 if the proposed facility is either of the following:

(a) The result of the Public Utilities Commission's Final Standard Offer No. 4 auction on the Request for Bids issued in August 1993.

(b) The result of a utility's competitive solicitation for new generation resources which limits the amount of new generation to an amount of capacity or energy at or below the amount of capacity or energy determined to be needed for the utility through the integrated assessment of need for new resource additions determined pursuant to subdivisions (a) to (f), inclusive, of Section 25305 and adopted pursuant to Section 25308, and in effect at the time that the solicitation was developed, provided that the application for certification for the proposed facility is filed within 18 months after contracts have been executed from the utility's competitive solicitation.

SEC. 4. Section 25540.6 of the Public Resources Code is amended to read:

25540.6. (a) Notwithstanding any other provision of law, no notice of intention is required, and the commission shall issue its final decision on the application, as specified in Section 25523, within 12 months after the filing of the application for certification of the powerplant and related facility or facilities, or at any later time as is mutually agreed by the commission and the applicant, for any of the following:

(1) A thermal powerplant which will employ cogeneration technology, a thermal powerplant which is the result of a competitive solicitation or negotiation for new generation resources and will employ natural gas-fired technology, or a solar thermal powerplant.

(2) A modification of an existing facility.

(3) A thermal powerplant which it is only technologically or economically feasible to site at or near the energy source.

(4) A thermal powerplant with a generating capacity of up to 100 megawatts.

(5) A thermal powerplant designed to develop or demonstrate technologies which have not previously been built or operated on a commercial scale. Such a research, development, or commercial demonstration project may include, but is not limited to, the use of renewable or alternative fuels, improvements in energy conversion

efficiency, or the use of advanced pollution control systems. Such a facility may not exceed 300 megawatts unless the commission, by regulation, authorizes a greater capacity. Section 25524 does not apply to such a powerplant and related facility or facilities.

(b) Projects exempted from the notice of intention requirement pursuant to paragraph (1), (4), or (5) of subdivision (a) shall include, in the application for certification, a discussion of the applicant's site selection criteria, any alternative sites that the applicant considered for the project, and the reasons why the applicant chose the proposed site. That discussion shall not be required for cogeneration projects at existing industrial sites. The commission may also accept an application for a noncogeneration project at an existing industrial site without requiring a discussion of site alternatives if the commission finds that the project has a strong relationship to the existing industrial site and that it is therefore reasonable not to analyze alternative sites for the project.

SEC. 5. Section 25541 of the Public Resources Code is amended to read:

25541. The commission may exempt from this chapter thermal powerplants with a generating capacity of up to 100 megawatts and modifications to existing generating facilities which do not add capacity in excess of 100 megawatts, if the commission finds both of the following:

(a) No substantial adverse impact on the environment or energy resources will result from the construction or operation of the proposed facility or from the modifications.

(b) Generating capacity will not be added which is substantially in excess of the integrated assessment of need for new resource additions determined pursuant to subdivisions (a) to (f), inclusive, of Section 25305 and adopted pursuant to Section 25308 which would be applicable to the project pursuant to subdivision (f) of Section 25523.

CHAPTER 1109

An act to amend Sections 6073, 6285, 6452, and 6593 of, and to add Sections 6071.1, 6487.2, and 6592.5 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 6071.1 is added to the Revenue and Taxation Code, to read:

6071.1. (a) A permitholder who fails to surrender a seller's permit upon transfer of a business shall be liable for any tax, interest,

and penalty incurred by the transferee if the permitholder has actual or constructive knowledge that the transferee is using the permit in any manner. The predecessor's liability shall be limited to the quarter in which the business is transferred, and the three subsequent quarters.

(b) The limitation on liability provided for in subdivision (a) shall not apply in cases where, after the transfer, 80 percent or more of the real or ultimate ownership of the business transferred is held by the predecessor.

(c) For purposes of this section, stockholders, bondholders, partners, or other persons holding an ownership interest in a corporation or other entity shall be regarded as having the "real or ultimate ownership" of the property of the corporation or other entity.

SEC. 2. Section 6073 of the Revenue and Taxation Code is amended to read:

6073. (a) (1) When the board determines it is necessary for the efficient administration of this part, the board may require the operator of a swap meet, flea market, or special event as a prerequisite to renting or leasing space on the premises owned or controlled by that operator to a person desiring to engage in or conduct business as a seller, to obtain written evidence that the seller is the holder of a valid seller's permit issued pursuant to Section 6067, or a written statement from the seller that he or she is not offering for sale any item that is taxable under this part or is otherwise not required to hold a valid seller's permit.

(2) In providing the board with documentation required by the board pursuant to paragraph (1), an operator of a swap meet, flea market, or special event may require each person desiring to engage in or conduct business as a seller at that swap meet, flea market, or special event to provide his or her driver's license number to the operator on a form authorized by the board or under Section 6073.1.

(b) At any time as the board may specify in a written notice, but in no case more than three times in a calendar year, the board may require an operator to submit to the board a list of vendors conducting business on their premises as a seller. Each listing shall be provided to the board within 30 days after the date of the board's notice. The list shall contain the name and seller's permit number for permitholders and the name, address, and driver's license number for vendors who do not have seller's permits. Records shall be retained as provided in Section 7053.

(c) "Swap meet, flea market, or special event," as used in this section, means an activity involving a series of sales sufficient in number, scope and character to constitute a regular course of business, or any event at which two or more persons offer tangible personal property for sale or exchange and at which a fee is charged for the privilege of displaying the property for sale or exchange or at which a fee is charged to prospective buyers for admission to the area where the property is offered or displayed for sale or exchange.

(d) Any operator of a swap meet, flea market, or special event who fails or refuses to comply with this section is subject to a penalty not exceeding one thousand dollars ($1,000) for each offense.

SEC. 3. Section 6285 of the Revenue and Taxation Code is amended to read:

6285. There are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this state of a mobilehome or commercial coach required to be registered annually under the Health and Safety Code, or of a vehicle required to be registered under the Vehicle Code, or of a vehicle subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, or of a vessel or an aircraft, when either of the following occurs:

(a) The person selling the property is either the parent, grandparent, child, grandchild, or spouse, or the brother or sister if the sale between that brother or sister is between two minors related by blood or adoption, of the purchaser, and the person selling is not engaged in the business of selling the type of property for which the exemption is claimed.

(b) The sale is to a revocable trust in which all of the following occur:

(1) The seller has an unrestricted power to revoke the trust.

(2) The sale does not result in any change in the beneficial ownership of the property.

(3) The trust provides that upon revocation the property will revert wholly to the seller.

(4) The only consideration for the sale is the assumption by the trust of an existing loan for which the tangible personal property being transferred is the sole collateral for the assumed loan.

SEC. 4. Section 6452 of the Revenue and Taxation Code is amended to read:

6452. (a) On or before the last day of the month following each quarterly period of three months, a return for the preceding quarterly period shall be filed with the board in the form as the board may prescribe.

(b) (1) For purposes of the sales tax, a return shall be filed by every seller and also by every person who is liable for the sales tax under this part. For purposes of the use tax, a return shall be filed by every retailer engaged in business in this state and by every person purchasing tangible personal property, the storage, use, or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax. Returns shall be signed by the person required to file the return or by his or her duly authorized agent but need not be verified by oath. If a return is prepared by a paid preparer, that preparer shall enter his or her name, social security number, and business name and address in the space provided on the return. Any paid preparer who fails to provide the information specified by the preceding sentence shall be subject to a fifty dollar ($50) fine for each failure to provide that information.

(2) For purposes of paragraph (1), "paid preparer" means any person who for compensation prepares, or employs one or more persons to prepare, any sales and use tax return required to be filed under this part. For purposes of this paragraph, the preparation of a substantial portion of any sales and use tax return required to be filed under this part shall be considered the equivalent of preparing that return in its entirety. A person is not a "paid preparer" as defined in this paragraph solely by reason of doing any of the following:

(A) Furnishing typing, reproduction, or other mechanical assistance.

(B) Preparing in a fiduciary capacity a return for any other person.

(c) Any retailer or other person who fails or refuses to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the board, is guilty of a misdemeanor punishable as provided in Section 7153.

SEC. 5. Section 6487.2 is added to the Revenue and Taxation Code, to read:

6487.2. (a) A notice of determination issued pursuant to Section 6486, 6515, or 6536 to an individual who was a general partner, as shown on the board's records, and who, prior to the period covered by the determination, withdrew from the partnership, causing a change in ownership, and failed to notify the board, shall be mailed within four years after the last day of the calendar month following the quarterly period in which the change of ownership occurred.

(b) An individual who was a general partner, as shown on the board's records, who withdraws from a partnership without notifying the board of the change in ownership, shall not be liable for any unpaid, self-assessed liability of the partnership that becomes due at least three years after the last day of the calendar month following the quarterly period in which the change in ownership occurred.

(c) Subdivisions (a) and (b) shall not apply to either of the following:

(1) Cases of fraud or intent to evade this part or other administrative or interpretive regulations.

(2) Any partners who retain an ownership interest in a corporation that is a successor to the partnership.

(d) For purposes of this part, change in ownership means that a new "person," as defined in Section 6005, is created by the action of the former owner by means of a sale, an incorporation, an addition or elimination of one or more partners, or the termination of a spouse's ownership or community property interest due to legal separation or divorce.

(e) For purposes of this section, "individual" includes only natural persons.

SEC. 6. Section 6592.5 is added to the Revenue and Taxation Code, to read:

6592.5. Any person who is granted relief from the penalty

imposed by Section 6476 or 6477 shall pay, in addition to any prepayment, interest at the "modified adjusted rate per month, or fraction thereof" established pursuant to subdivision (b) of Section 6591.5, from the date on which the prepayment would have been due until the date of payment.

SEC. 7. Section 6593 of the Revenue and Taxation Code is amended to read:

6593. If the board finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 6459, 6480.4, 6480.8, 6513, 6591, and 6592.5.

Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 8. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

CHAPTER 1110

An act to amend Section 19605.6 of the Business and Professions Code, relating to horseracing, and making an appropriation therefor.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 19605.6 of the Business and Professions Code is amended to read:

19605.6. (a) In addition to satellite wagering facilities authorized pursuant to Sections 19605, 19605.1, and 19605.2, the board, with the approval of the Department of Food and Agriculture, may authorize any county fair, district agricultural association fair, or citrus fruit fair in the County of Kern or Santa Barbara, eligible for an allocation of racing days pursuant to Section 19549, to operate a satellite wagering facility at its fairgrounds even though the fair is not licensed to conduct a racing meeting, and the fair may operate the facilities except for those functions to be performed by an organization described in Section 19608.2. Except as otherwise provided in this section, Sections 19605, 19605.3, 19605.4, 19605.7, 19605.71, 19605.8, 19606, 19606.1, 19606.3, and 19606.4 apply to satellite wagering facilities authorized pursuant to this section. A satellite wagering facility in the County of Fresno, Kern, Santa Barbara, Tulare, or Ventura may receive the audiovisual signal from the northern, central, or southern zone, or from more than one of these zones at

the same time.

(b) It is the intent of the Legislature that the board provide, when feasible, for periods of at least 10 minutes between post times at the satellite wagering facilities operating under this section.

CHAPTER 1111

An act to amend Section 703.140 of the Code of Civil Procedure, relating to bankruptcy, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 703.140 of the Code of Civil Procedure is amended to read:

703.140. (a) In a case under Title 11 of the United States Code, all of the exemptions provided by this chapter including the homestead exemption, other than the provisions of subdivision (b) are applicable regardless of whether there is a money judgment against the debtor or whether a money judgment is being enforced by execution sale or any other procedure, but the exemptions provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter, as follows:

(1) If a husband and wife are joined in the petition, they jointly may elect to utilize the applicable exemption provisions of this chapter other than the provisions of subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(2) If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(3) If the petition is filed for an unmarried person, that person may elect to utilize the applicable exemption provisions of this chapter other than subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(b) The following exemptions may be elected as provided in subdivision (a):

(1) The debtor's aggregate interest, not to exceed seven thousand five hundred dollars ($7,500) in value, in real property or personal

property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed one thousand two hundred dollars ($1,200) in value, in one motor vehicle.

(3) The debtor's interest, not to exceed two hundred dollars ($200) in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed five hundred dollars ($500) in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed in value four hundred dollars ($400) plus any unused amount of the exemption provided under paragraph (1), in any property.

(6) The debtor's aggregate interest, not to exceed seven hundred fifty dollars ($750) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value four thousand dollars ($4,000) in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive any of the following:

(A) A social security benefit, unemployment compensation, or a local public assistance benefit.

(B) A veterans' benefit.

(C) A disability, illness, or unemployment benefit.

(D) Alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(E) A payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless all of the following apply:

(i) That plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose.

(ii) The payment is on account of age or length of service.

(iii) That plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1954.

(11) The debtor's right to receive, or property that is traceable to, any of the following:

(A) An award under a crime victim's reparation law.

(B) A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(C) A payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(D) A payment, not to exceed seven thousand five hundred dollars ($7,500), on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.

(E) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

SEC. 2. The Legislature finds and declares that the amendment of Section 703.140 of the Code of Civil Procedure by Section 1 of this act pertaining to exemptions in bankruptcy is not a change in, but is declaratory of, existing law. The Legislature further finds and declares that the decision in In re Pladson, 154 B.R. 305 (N.D. Cal. 1993), holding that the homestead exemption is not available in bankruptcy, is not a correct interpretation of California law. The Enforcement of Judgments Law provides exemptions for various forms of property, including homesteads, and contains a number of special procedural protections for special forms of property. It is not, and never has been, the intention of the Legislature to restrict any of the exemptions in bankruptcy because of technical language concerning the procedures for claiming exemptions in state money judgment enforcement proceedings under the Enforcement of Judgments Law. See, e.g., Tentative Recommendation Proposing the Enforcement of Judgments Law, 15 Cal. L. Revision Comm'n Reports 2001, 2095-96 (1980); 1982 Creditors' Remedies Legislation, 16 Cal. L. Revision Comm'n Reports 1001, 1098-99 (1982).

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 proper implementation of the homestead exemption without delay, it is necessary that this act go into immediate effect.

CHAPTER 1112

An act to amend Sections 61802, 62062, and 62708.5 of, and to add and repeal Chapter 3.5 (commencing with Section 62750) of Part 3 of Division 21 of, the Food and Agricultural Code, relating to food.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 61802 of the Food and Agricultural Code is amended to read:

61802. The Legislature hereby declares all of the following:

(a) Market milk is a necessary article of food for human consumption.

(b) The production and maintenance of an adequate supply of healthful market milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare, and the production, transportation, processing, and storage of market milk in this state is an industry affecting the public health.

(c) Because of the perishable quality of milk, the nature of milk production, the varying seasonal production and demand factors, and other economic factors affecting the milk industry, the potential exists for economic disruption, in the absence of regulation, in the production, marketing, and sale of market milk which may constitute a menace to the health and welfare of the inhabitants of this state and may tend to undermine sanitary regulations and standards of content and purity, however effectually the sanitary regulations may be enforced.

(d) Health regulations alone are insufficient to prevent economic disturbances in the production of milk which may disrupt the future supply of market milk and to safeguard the consuming public from future inadequacy of a supply of this necessary commodity.

(e) It is the policy of this state to promote, foster, and encourage the intelligent production and orderly marketing of commodities necessary to its citizens, including market milk, and to eliminate economic waste, destructive trade practices, and improper accounting for market milk purchased from producers.

(f) It is recognized by the Legislature that the economic factors concerning the production, marketing, and sale of market milk in California may be affected by the national market for milk for manufacturing purposes.

(g) It is recognized by the Legislature that in recent years the supply of manufacturing milk in California, as defined in Section 32509, has consistently declined and continues to decline, and that market milk has virtually supplanted manufacturing milk for manufacturing purposes in this state, and that it is therefore necessary to conform the pricing standards governing minimum

producer prices for market milk established under this chapter to current economic conditions.

(h) It is recognized by the Legislature that the levels of retail prices of milk and milk products paid by consumers are affected by a large number of economic and other factors apart from minimum producer prices for market milk established under this chapter, many of which factors are not within the power of the director to regulate or control, particularly since the Legislature repealed provisions concerning establishment of minimum wholesale and retail prices. It is further recognized by the Legislature that, in order to accomplish the purposes of this chapter and to promote the public health and welfare, it is essential to establish minimum producer prices at fair and reasonable levels so as to generate reasonable producer incomes that will promote the intelligent and orderly marketing of market milk in the various classes, and that minimum producer prices established under this chapter should not be unreasonably depressed because other factors have affected the levels of retail prices paid by consumers.

SEC. 2. Section 62062 of the Food and Agricultural Code is amended to read:

62062. Each stabilization and marketing plan shall contain provisions whereby the director establishes minimum prices to be paid by handlers to producers for market milk in the various classes. The director shall establish the prices by designating them in the plan, or by adopting methods or formulas in the plan whereby the prices can be determined, or any combination of the foregoing. If the director directly designates prices in the plan, the prices shall be in reasonable and sound economic relationship with the national value of manufactured milk products. If the director adopts methods or formulas in the plan for designation of prices, the methods or formulas shall be reasonably calculated to result in prices that are in a reasonable and sound economic relationship with the national value of manufactured milk products.

In establishing the prices, the director shall take into consideration any relevant economic factors, including, but not limited to, the following:

(a) The reasonableness and economic soundness of market milk prices for all classes, giving consideration to the combined income from those class prices, in relation to the cost of producing and marketing market milk for all purposes, including manufacturing purposes. In determining the costs, the director shall consider the cost of management and a reasonable return on necessary capital investment.

(b) That prices established pursuant to this section shall insure an adequate and continuous supply, in relation to demand, of pure, fresh, wholesome market milk for all purposes, including manufacturing purposes, at prices to consumers which, when considered with relevant economic criteria, are fair and reasonable.

(c) That prices, including the prices of components of milk,

established by the director for the various classes of market milk bear a reasonable and sound economic relationship to each other.

In establishing the prices, the director shall also take into consideration all the purposes, policies, and standards contained in Sections 61801, 61802, 61805, 61806, 61807, 62076, and 62077.

SEC. 3. Section 62708.5 of the Food and Agricultural Code is amended to read:

62708.5. (a) A producer-handler, for purposes of this chapter, shall also include, as a separate and distinct category of producer-handlers, any producer and any handler who purchases or handles fluid milk or fluid cream produced by this producer if all of the ownership of the handler and all of the ownership of the producer is owned by the same person or persons and their ownership in the producer or handler is at least 95 percent identical for each person with their ownership in the handler or producer. This ownership shall not exceed 10 individual persons or owners of equitable interest in a partnership, corporation, or other legally constituted business association.

(b) The ownership required by this section may be through a partnership, corporation, or other legally constituted business association if the entities are owned by the same person or persons, and there is at least 95 percent identity of ownership for each person with their ownership in the handler or producer. For purposes of this section a "person" or "persons" includes the spouse, or other persons of lineal consanguinity of the first or second degree or collateral consanguinity to the fourth degree, and their spouses, and includes an adopted child the same as a natural child and kindred of the half blood equally with those of the whole blood of the owner and ownerships by persons so related shall be considered single ownership by one person. For purposes of this section, property pledged or hypothecated in any manner to others shall be considered "owned" if equitable ownership with management and control remain with the producer-handler.

(c) Ownership as provided in this section shall have existed at the time of the base period selected by the producer under Section 62707 and at all other times thereafter.

(d) Any such producer-distributor may, until August 6, 1969, do either of the following:

(1) Join and operate wholly within the pool.

(2) Have its entire original production base and pool quota determined during the base period it selected as a producer pursuant to Section 62707, established as a part of the pooling plan, and, nevertheless elect to operate entirely outside of the pool to the extent authorized by this section.

(e) Any producer-handler who qualifies under this section and elects to operate outside the pool, to the extent of the authority granted, may deduct from its own class 1 sales, excluding sales to a handler, whether in bulk or packaged, its original quota and any quota subsequently purchased, plus a daily deduction of 150 pounds

of milk fat and 375 pounds of solids not fat before being required to account to the pool.

(f) The deductions from class 1 sales authorized pursuant to this section may be made irrespective of the fact that the average class 1 usage in the pool for that month may be less than 100 percent of the pool quota in that pool.

(g) Any production subject to this section from the producer-handler selecting this option shall not have the right to participate in the quota pool, irrespective of the fact that the producer-handler did not sell all of the quota as class 1, and will participate in either the base pool or the overbase pool depending upon whether the total production base of the producer is sufficient to cover the milk delivered in excess of the class 1 usage exempted hereunder, otherwise the production in excess of the exempt producer-handler's own class 1 sales, as defined in this section, shall be accounted for as overbase milk.

(h) The fact that a producer-handler qualifies as to one of its milk production operations under this section does not prevent it from operating on an entirely separate nonqualifying basis (and therefore subject to pooling) at other milk production facilities, and with other nonqualifying persons at these other milk production facilities. A producer-handler can neither buy nor sell pool quota and transfer therewith the option granted under this division but this shall not prevent him or her from purchasing or selling pool quota or production base as otherwise provided in this chapter.

(i) If at any time ownership, as defined in this section, ceases, the producer-handler shall no longer be eligible for the options in this section, shall account to the pool as a separate handler, and shall be entitled to reentry into producer participation in the pool on the same basis as a producer-handler may under the last paragraph of Section 62708.

SEC. 4. Chapter 3.5 (commencing with Section 62750) is added to Part 3 of Division 21 of the Food and Agricultural Code, to read:

CHAPTER 3.5. MILK POOLING

62750. Notwithstanding any provision of Chapter 3 (commencing with Section 62700) or any pooling plan for market milk in effect under that chapter, effective January 1, 1994, each producer shall be paid the amounts determined in accordance with this section for his or her pool quota production and for all production in excess of his or her pool quota.

(a) For all milk fat, whether or not equal to his or her pool quota, an amount determined by dividing the value of all milk fat in the pool by the amount of milk fat produced.

(b) Transportation allowances that are provided for in the pooling plan shall not be deducted from the quota milk of any region, but shall be deducted from the total solids not fat pool revenue before any price is determined for quota and nonquota solids not fat.

(c) Regional quota adjusters shall continue to be subtracted from the quota price in the established areas as specified in the pooling plan for market milk. However, the hundredweight price specified shall be converted to a solids not fat equivalent value, and the adjustments for the effect of those regional quota adjusters shall be applied to the solids not fat revenue.

(d) After taking into consideration the effect of the regional quota adjusters, the solids not fat announced quota price for those areas in which there is no regional quota adjuster shall be nineteen and one-half cents ($0.195) per pound greater than the announced solids not fat price for all milk produced in excess of pool quota.

62751. 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 1113

An act to amend Sections 7401, 7486, 7487, 7855, 30141, 30142, 30144, 30207, 30315, 30461, 30474, 32102, 32103, 32272, 32292, 32387, 40155, 41123.5, 43202, 43444.2, 45202, 45605, 46406, 50113.1, 50136, 55062, and 55381 of, and to add Section 43152.11 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 7401 of the Revenue and Taxation Code is amended to read:

7401. (a) The provisions of this part requiring the payment of license taxes do not apply to any of the following:

(1) Natural gasoline distributed to a duly licensed distributor under any regulations as the board may prescribe.

(2) Motor vehicle fuel exported from this state by the distributor or delivered by the distributor to any vessel clearing from a port of this state for a port outside of this state and actually exported from this state in the vessel.

(3) Motor vehicle fuel distributed, or delivered on the order of the owner, to a distributor who has furnished bond as prescribed by Sections 7486 and 7487 of not less than fifty thousand dollars ($50,000), nor more than one million dollars ($1,000,000), and who has established to the satisfaction of the board that this bond, together with property to which the lien imposed by Section 7872 attaches, is sufficient security to assure payment of all license taxes as they may become due to the state from him or her under this part.

(4) Motor vehicle fuel sold to the United States armed forces for use in ships or aircraft, or for use outside this state.

(5) Motor vehicle fuel distributed to any licensed distributor, or to any licensed broker who has furnished bond in the form and amount required of distributors under Article 2.1 (commencing with Section 7486) of Chapter 4, for sale to the United States armed forces for use in ships or aircraft or use outside this state. Notwithstanding any other provisions of this part, the receiving of motor vehicle fuel in this state from a licensed distributor and the sale and delivery of the fuel to the United States armed forces pursuant to this subdivision shall not cause a broker to be a distributor under this part.

(6) Motor vehicle fuel sold by credit card certified by the United States Department of State to any consulate officer or consulate employee of a foreign government who is not engaged in any private occupation for gain within this state, who uses the motor vehicle fuel in a vehicle that is registered with the United States Department of State, and whose government has done either of the following:

(A) Entered into a treaty with the United States providing for the exemption of its representatives from national, state, and municipal taxes.

(B) Granted a similar exemption to representatives of the United States.

(b) Every distributor claiming an exemption shall report the exports, sales or distributions to the board in the detail as the board may require; otherwise the exemption granted in this section shall be null and void and all the fuel shall be considered distributed in this state subject fully to the provisions of this part.

SEC. 2. Section 7486 of the Revenue and Taxation Code is amended to read:

7486. Before granting a license authorizing a person to engage in business as a distributor or broker, the board may require the person to file with the board, in the form as it prescribes. Any security in the form of cash or insured deposits in banks or savings and loan institutions or a bond or bonds duly executed by an admitted surety insurer, payable to the state shall be held by the board in trust to be used solely in the manner provided by this section, conditioned upon faithful performance of all the requirements of this part. Security is expressly provided for the payment of all license taxes, penalties, and other obligations of the person arising out of this part.

SEC. 3. Section 7487 of the Revenue and Taxation Code is amended to read:

7487. Subject to the limitations provided in this section, the board shall fix the total amount of the security required of any distributor or broker and may increase or reduce the amount at any time. The total amount of the security required of any distributor or broker shall never be more than three times the estimated average monthly tax liability of the distributor or broker but not in excess of one million dollars ($1,000,000).

SEC. 4. Section 7855 of the Revenue and Taxation Code is amended to read:

7855. (a) The Controller may, by notice of levy served

personally or by first-class mail, require all persons having in their possession, or under their control, any credits or personal property belonging to a distributor or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any tax, interest, or penalties due from the distributor or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the Controller at the time it may designate.

(b) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

(c) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

SEC. 5. Section 30141 of the Revenue and Taxation Code is amended to read:

30141. Every applicant for a license as a distributor shall file with the board, security in the amount and form as the board prescribes. Any security in the form of cash, insured deposits in banks or savings and loan institutions, or a bond or bonds duly executed by an admitted surety insurer, payable to the state, conditioned upon faithful performance of all the requirements of this part and expressly providing for the payment of all taxes, penalties, and other obligations of the person arising out of this part shall be held by the board in trust to be used solely in the manner provided in this section.

SEC. 6. Section 30142 of the Revenue and Taxation Code is amended to read:

30142. The board shall fix the amount of the security required of any distributor and may increase or reduce the amount at any time. A minimum security in the amount of one thousand dollars ($1,000) shall be furnished by every distributor required to be licensed. If a distributor desires to defer payments for stamps or meter register settings, as provided in Article 2 (commencing with Section 30161) of Chapter 3.5, the board shall require a security equal to not less than 70 percent of the amount and no more than twice the amount, as fixed by the board, of the distributor's purchases of stamps and meter register settings for which payment may be deferred.

SEC. 7. Section 30144 of the Revenue and Taxation Code is amended to read:

30144. The license of any distributor may be suspended without prior notice upon cancellation of his or her bond, or if the bond becomes void or unenforceable for any reason, or if the distributor fails to pay any amounts due under this part. The license shall be reinstated if the distributor files a valid bond, provides other security

as defined in Section 30141 or pays the delinquent amounts, as the case may be. Upon the petition of any distributor whose license has been suspended under this section, a hearing shall be afforded him or her after five days' notice of the time and place of hearing.

SEC. 8. Section 30207 of the Revenue and Taxation Code is amended to read:

30207. Except in the case of fraud, intent to evade the tax, or failure to make a report or return, every notice of a deficiency determination shall be given within three years after the 25th day of the month following the month for which the amount should have been paid or the report or return was due, or within three years after the report or return was filed, whichever period expires later. In the case of failure to make a report or return, the notice of determination shall be mailed within eight years after the date the report or return was due.

SEC. 9. Section 30315 of the Revenue and Taxation Code is amended to read:

30315. (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any credits or other personal property belonging to a distributor, dealer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any tax, interest, or penalties due from the distributor, dealer or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate.

(b) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

(c) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

SEC. 10. Section 30461 of the Revenue and Taxation Code is amended to read:

30461. (a) All amounts required to be paid to the state under this part shall be paid to the board in the form of remittances payable to the State Board of Equalization. Except as provided in subdivision (b), the board shall transmit the payments to the Treasurer to be deposited in the State Treasury to the credit of the Cigarette Tax Fund, which fund is hereby created.

(b) The board shall transmit amounts received from the penalty assessed pursuant to Section 30474 to the Treasurer for deposit in the General Fund.

SEC. 11. Section 30474 of the Revenue and Taxation Code is amended to read:

30474. Any person who knowingly possesses, or keeps, stores, or retains for the purpose of sale, or sells or offers to sell, any package of cigarettes to which there is not affixed the stamp or meter impression required to be affixed under this part, when those cigarettes have been obtained from any source whatever, is guilty of a misdemeanor and shall for each offense be fined not more than one thousand dollars ($1,000), or be imprisoned for not exceeding one year in a county jail, or be subject to both fine and imprisonment, in the discretion of the court. In addition to the fine or sentence, or both, each person convicted under this section shall pay one hundred dollars ($100) for each carton of 200 cigarettes, or portion thereof, knowingly possessed, or kept, stored, or retained for the purpose of sale, or sold or offered for sale in violation of this section, as determined by the court. The court shall direct that 50 percent of the penalty assessed be transmitted to the local prosecuting jurisdiction, to be allocated for costs of prosecution, and 50 percent of the penalty assessed be transmitted to the State Board of Equalization.

SEC. 12. Section 32102 of the Revenue and Taxation Code is amended to read:

32102. Every taxpayer shall file with the board, in the form and amount as the board prescribes, any security in the form of cash, insured deposits in banks and savings and loan institutions, or a bond or bonds duly executed by an admitted surety insurer, payable to the state, conditioned upon faithful performance of all the requirements of this part, and expressly providing for the payment of all license taxes, penalties, and other obligations of the person arising out of this part, shall be held in trust to be used solely in the manner provided by this section.

SEC. 13. Section 32103 of the Revenue and Taxation Code is amended to read:

32103. Subject to the limitations provided in this article, the board shall fix the total amount of the security required of any taxpayer and may increase or reduce the amount at any time. In fixing the total amount, the board may set an amount which is not less than five hundred dollars ($500) and not more than twice the taxpayer's estimated monthly tax for taxpayers reporting monthly, or not more than twice the taxpayer's estimated tax for the tax reporting period for taxpayers reporting for periods longer than one month ascertained in any manner as the board may deem proper.

SEC. 14. Section 32272 of the Revenue and Taxation Code is amended to read:

32272. Except in the case of a fraud, intent to evade this part or authorized rules and regulations, or failure to make a return, every notice of a determination of an additional amount due shall be given within three years after the date when the amount should have been paid or the return was due, or within three years after the return was filed, whichever period expires later. In the case of failure to make a return, the notice of determination shall be mailed within eight years after the date the return was due.

SEC. 15. Section 32292 of the Revenue and Taxation Code is amended to read:

32292. Except as provided in Section 32253, a penalty of fifty dollars ($50) shall be imposed on any taxpayer who fails to file a tax return within the time prescribed for the filing of the return, but this penalty shall not be in addition to the 10 percent penalty provided under Section 32252 for the late payment of tax if the 10 percent penalty exceeds fifty dollars ($50).

SEC. 16. Section 32387 of the Revenue and Taxation Code is amended to read:

32387. (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any credits or other personal property belonging to a taxpayer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any tax, interest, or penalties due from the taxpayer or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate.

(b) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

(c) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

SEC. 17. Section 40155 of the Revenue and Taxation Code is amended to read:

40155. (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any credits or other personal property belonging to a consumer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any surcharge, interest, or penalties due from the consumer or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate.

(b) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

(c) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever

occurs first.

SEC. 18. Section 41123.5 of the Revenue and Taxation Code is amended to read:

41123.5. (a) The board may, by notice of levy served personally or by first-class mail, require all persons, other than a service supplier, having in their possession, or under their control, any credits or other personal property belonging to a service user or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any surcharge, interest, or penalties due from the service user or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate.

(b) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

(c) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

SEC. 19. Section 43152.11 is added to the Revenue and Taxation Code, to read:

43152.11. (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 by 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 of the Health and Safety Code.

(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 43202 of the Revenue and Taxation Code is amended to read:

43202. Except in the case of fraud, intent to evade this part, authorized rules and regulations, or failure to make a return, every notice of a determination of an additional amount due shall be given within three years after the date when the amount should have been paid or the return was due, or within three years after the return was

filed, whichever period expires later. In the case of failure to make a return, the notice of determination shall be mailed within eight years after the date the report or return was due.

SEC. 21. Section 43444.2 of the Revenue and Taxation Code is amended to read:

43444.2. (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any credits or other personal property belonging to a taxpayer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any tax, interest, or penalties due from the taxpayer or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate.

(b) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

(c) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

SEC. 22. Section 45202 of the Revenue and Taxation Code is amended to read:

45202. Except in the case of fraud, intent to evade this part or rules and regulations adopted under this part, or failure to make a report or return, every notice of a determination of an additional amount due shall be given within three years after the date when the amount was required to have been paid or the report or return was due, or within three years after the report or return was filed, whichever period expires later. In the case of failure to make a report or return, the notice of determination shall be mailed within eight years after the date the report or return was due.

SEC. 23. Section 45605 of the Revenue and Taxation Code is amended to read:

45605. (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any credits or other personal property belonging to a fee payer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any fee, interest, or penalties due from the fee payer or other person, or the amount of any liability incurred under this part, and to transmit the amount withheld to the board at the time it may designate.

(b) In the case of a financial institution, to be effective, the notice shall state the amount due from the fee payer and shall be delivered or mailed to the branch office of the financial institution where the

credits or other property are held, unless another branch or office is designated by the financial institution to receive the notice.

(c) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

SEC. 24. Section 46406 of the Revenue and Taxation Code is amended to read:

46406. (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any credits or other personal property belonging to a feepayer or other person liable for any amount under this part to withhold from those credits or other personal property the amount of any fee, interest, or penalties due from that feepayer or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate.

(b) In the case of a financial institution, to be effective, the notice shall state the amount due from the feepayer and shall be delivered or mailed to the branch office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

(c) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

SEC. 25. Section 50113.1 of the Revenue and Taxation Code is amended to read:

50113.1. Except in the case of fraud, intent to evade this part, or rules and regulations adopted pursuant to this part, or failure to make a report or return, every notice of a determination of an additional amount due shall be given within three years after the date when the amount was required to have been paid or the report or return was due, or within three years after the report or return was filed, whichever period expires later. In the case of failure to make a report or return, the notice of determination shall be mailed within eight years after the date the report or return was due.

SEC. 26. Section 50136 of the Revenue and Taxation Code is amended to read:

50136. (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any credits or other personal property belonging to a fee payer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any fee, interest, or penalties due from the fee payer or other person, or the amount of any liability incurred under this part, and to transmit the amount withheld to the board at the time it may

designate.

(b) In the case of a financial institution, to be effective, the notice shall state the amount due from the fee payer and shall be delivered or mailed to the branch office of the financial institution where the credits or other property are held, unless another branch or office is designated by the financial institution to receive the notice.

(c) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

SEC. 27. Section 55062 of the Revenue and Taxation Code is amended to read:

55062. Except in the case of fraud, intent to evade this part, authorized rules and regulations, or failure to make a return, every notice of a determination of an additional amount due shall be given within three years after the date when the amount should have been paid or the return was due, or within three years after the return was filed, whichever period expires later. In the case of failure to make a return, the notice of determination shall be mailed within eight years after the date the return was due.

SEC. 28. Section 55381 of the Revenue and Taxation Code is amended to read:

55381. (a) The board shall provide any and all information obtained under this part to the department.

(b) The department and the board may utilize any information obtained pursuant to this part to develop data.

(c) It shall be unlawful for the board, or any person having an administrative duty under this part to make known, in any manner whatsoever, the business affairs, operations, or any other information pertaining to a feepayer which was submitted to the board in a report or return required by this part, or to permit any report or copy thereof to be seen or examined by any person not expressly authorized by subdivision (a) and this subdivision. However, the Governor may, by general or special order, authorize examination of the records maintained by the board under this part by other state officers, by officers of another state, by the federal government, if a reciprocal arrangement exists, or by any other person. The information so obtained pursuant to the order of the Governor shall not be made public except to the extent and in the manner that the order may authorize that it be made public.

(d) Notwithstanding subdivision (c), the successors, receivers, trustees, executors, administrators, assignees, and guarantors of a feepayer, if directly interested, may be given information regarding the determination of any unpaid fees or the amount of the fees, interest, or penalties required to be collected or assessed.

CHAPTER 1114

An act to amend Section 38012 of, and to add Section 312.3 to, the Health and Safety Code, relating to child nutrition.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. This act shall be known and may be cited as the WIC Program Contract Reform Act of 1993.

SEC. 2. It is the intent of the Legislature to accomplish all of the following:

(a) To simplify and streamline the administration of the California Special Supplemental Food Program for Women, Infants, and Children (WIC) at the state and local levels.

(b) To reduce the administrative costs of operating the WIC program within the State Department of Health Services, thereby making more food funds available to feed hungry families.

SEC. 3. The Legislature finds and declares all of the following:

(a) The State Department of Health Services delays in processing WIC local agency contracts can have a deleterious effect on the delivery of services to WIC participants.

(b) Agencies in county health departments, for example, cannot spend money without fully executed contracts, and services to participants are thus imperiled by these delays.

(c) The California WIC Evaluation, delivered to the State Director of Health Services in December 1991 by a panel of outside experts, found that the delay in processing of contracts was "one of the most serious problems facing WIC ... the program is plagued by difficulties surrounding the processing of contracts and invoices" and found that local agencies were commonly waiting for 120 to 150 days for fully executed contracts, instead of the required 90 days.

(d) The California WIC Evaluation found that, in almost every case, contract delay problems were not in the WIC branch, but elsewhere, particularly in the Department of General Services.

(e) The Legislature concurs with the recommendation of the California WIC Evaluation that an overhaul of the contract process be a top priority, with the cooperation of all state agencies currently involved in WIC contracts, and with the establishment of a revolving fund.

SEC. 4. Section 312.3 is added to the Health and Safety Code, to read:

312.3. The state department may establish a revolving fund for use in reimbursing local agencies for costs incurred in the administration of the California Special Supplemental Food Program for Women, Infants, and Children. All expenditures from the fund may be made only in accordance with law and contractual

agreements between the state department and participating local agencies, and for the purposes specified in local agency contracts. All disbursements from the fund shall be substantiated by vouchers or itemized statements.

SEC. 5. Section 38012 of the Health and Safety Code is amended to read:

38012. (a) The Department of General Services shall review and approve contracts in accordance with the provisions of Article 4 of Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(b) Contracts for direct services provided by local agencies in the California Special Supplemental Food Program for Women, Infants, and Children shall be exempt from the review and approval required by subdivision (a).

SEC. 6. Sections 1 to 5, inclusive, of this act shall not become operative if AB 454 of the 1993–94 Regular Session is chaptered.

CHAPTER 1115

An act to amend Section 19611 of the Business and Professions Code, relating to horseracing.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 19611 of the Business and Professions Code is amended to read:

19611. (a) Every thoroughbred association conducting a meeting with a total parimutuel handle of less than two hundred fifty million dollars ($250,000,000), excluding wagering at a satellite facility, shall pay a daily license fee at the following rates based upon its daily conventional and exotic parimutuel handle:

Daily Handle	License Fee Rate
$2,000,000 or less	4.8 percent of handle
$2,000,001 and more	$96,000 plus 6 percent of the handle in excess of $2,000,001

In addition, every association subject to this subdivision shall pay an additional license fee at the rate of 0.75 percent of its daily exotic parimutuel handle. Except as provided in Section 19610.5, no such association shall pay a license fee in excess of 5.1 percent of the daily conventional parimutuel handle and 5.85 percent of the daily exotic parimutuel handle.

(b) Every thoroughbred association conducting a meeting with a total parimutuel handle of two hundred fifty million dollars

($250,000,000) or more, excluding wagering at a satellite wagering facility, shall pay the license fees set forth in subdivision (a) on all handle that totals less than two hundred fifty million dollars ($250,000,000). On all handle of two hundred fifty million dollars ($250,000,000) or more, excluding wagering at a satellite wagering facility, the association shall pay a daily license fee equal to 5.7 percent of its daily conventional parimutuel handle and 6.45 percent of its daily exotic parimutuel handle.

(c) Notwithstanding subdivision (a), every thoroughbred racing association which conducts a split meeting shall pay a daily license fee at the rates specified in subdivision (b) for the short period of its meeting.

(d) After distribution of the applicable license fees set forth in subdivision (a), (b), or (c), and the payments pursuant to Sections 19610.5, 19616 and 19617, all funds remaining from the deductions provided in Section 19610 shall be distributed 55 percent as commissions and 45 percent as purses.

CHAPTER 1116

An act to amend Section 11007.7 of the Government Code, and to amend Sections 86 and 987.74 of the Military and Veterans Code, relating to veterans.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 11007.7 of the Government Code is amended to read:

11007.7. (a) The procurement of insurance or official bonds by any state agency shall be subject to approval of the Department of General Services. Any procurement of this type may, upon request of the state agency concerned, be made by the Department of General Services on behalf of the agency.

(b) Whenever the procurement of insurance or official bonds for or on behalf of the state is authorized by law and no state agency is specifically authorized to purchase the insurance or official bonds, the Department of General Services may procure the insurance or official bonds.

(c) This section shall not apply to any of the following:

(1) Insurance procured by the Department of Transportation or the California Transportation Commission under Sections 100.7 and 30450 to 30453, inclusive, of the Streets and Highways Code.

(2) Workers' compensation insurance procured under Section 11870 of the Insurance Code.

(3) Insurance procured by the California State University.

SEC. 2. Section 86 of the Military and Veterans Code is amended to read:

86. (a) Any person deeming himself or herself a veteran and who applies for benefits may appeal any decision made by a division of the department to the California Veterans Board. Upon receipt of the appeal, the board shall grant a hearing, if requested, and shall render its decision in writing to the appellant not later than the second meeting of the board following the receipt of the appeal or of the hearing if one is held. An appeal shall be deemed to have been received by the board on the date of the first meeting of the board subsequent to delivery of the appeal to the secretary of the board. Except for judicial review, the board's decision is final and the board shall have the power to change or modify with good cause any decision that is adverse to the appellant. Except as described in subdivision (b), all hearings of appeals may be delegated by the board to the chief deputy director or a deputy director of the department. Hearings shall be held in the department office nearest to the appellant's home unless the appellant requests otherwise.

(b) Hearings of appeals related to the Veterans' Farm and Home Purchase Act may be delegated by the board only to the Office of Administrative Hearings to be conducted by administrative law judges of the Office of Administrative Hearings pursuant to Chapter 4 (commencing with Section 11370) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The administrative law judges shall submit their proposed decisions to the board for final decision. The administrative law judges shall make all reasonable efforts to hold hearings at neutral locations, however, if no other facilities are available without incurring excessive costs, the hearings may be held at the department office nearest to the appellant's home.

SEC. 3. Section 987.74 of the Military and Veterans Code is amended to read:

987.74. (a) All properties purchased by the department shall be covered by insurance. Insurance purchased by the department shall be guaranteed replacement cost coverage as described in subdivisions (e) and (f) of Section 10102 of the Insurance Code against fire and other hazards for the full replacement cost of the improvements or structures, shall include limited building code upgrade as described in Section 10103 of the Insurance Code, and shall be placed with a company or companies as the department may determine from time to time.

The department may charge purchasers a premium to cover the cost to the department for insurance obtained pursuant to this subdivision. The premium shall not exceed the actual cost to the department for the coverage provided.

(b) The contract made between the department and the purchaser shall provide that the purchaser maintain the farm or home as his or her place of residence and keep in good order and repair all buildings, fences, and other permanent improvements

situated thereon. Insurance policies purchased by the department shall be obtained to insure and keep insured against fire and other hazards, all buildings, fences, and other permanent improvements on the property. All policies shall be written with any loss payable to the department and the purchaser as their interests may appear. Insurance shall be in the amount, with the insurance companies, and under the terms and conditions as may be specified by the department.

(c) Upon renewal, the department shall assist the purchaser in determining the insurance level necessary to repair or replace the damaged or destroyed dwelling with like or equivalent construction and in determining how best to purchase additional coverage, if desired. The purchaser shall be solely responsible for requesting in writing and maintaining any additional amounts of insurance necessary to protect his or her interest in the property, and shall bear the risk of any loss in excess of the amount of insurance in force at the time of the loss.

(d) The department shall annually send a disclosure notice to all purchasers who have residential property insurance provided through the department. The notice shall identify the type of coverage, and shall disclose all of the following in a clear and reasonable manner:

(1) The limits of liability for the structure and improvements.

(2) The amount of any deductibles.

(3) Whether the policy covers the increased costs due to changes in building ordinances or laws regulating construction or repair.

(4) A statement explaining the importance of having guaranteed replacement cost coverage.

(5) A statement that the policy provided by the department provides limited building code upgrade coverage and the applicable limits and restrictions to that coverage.

CHAPTER 1117

An act to amend Sections 8051 and 8832 of, and to add Section 8038 to, the Fish and Game Code, relating to commercial fishing, and making an appropriation therefor.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 8038 is added to the Fish and Game Code, to read:

8038. A license issued under this article is valid from January 1 to December 31, inclusive, or, if issued after the beginning of that term, for the remainder thereof.

SEC. 2. Section 8051 of the Fish and Game Code is amended to read:

8051. (a) The landing tax imposed pursuant to Section 8041 shall be determined pursuant to Section 8042 by using the tax rates in the following schedule:

	Rate per pound
(1) All fish, except as otherwise specified in this section	$0.0013
(2) Mollusks and crustaceans, excluding squid and crab	.0125
(3) Crab	.0019
(4) Squid	.0019
(5) Salmon, based only on the weight in the round	.0500
(6) Lobster	.0125
(7) Abalone	.0125
(8) Anchovies	.0013
(9) Sardines	.0063
(10) Mackerel	.0013
(11) Halibut	.0125
(12) Angel shark, based only on the weight in the round	.0113
(13) Swordfish, based only on the weight in the round	.0125
(14) Thresher shark, based only on the weight in the round	.0113
(15) Bonito shark, based only on the weight in the round	.0113
(16) Herring	.0125
(17) Sea urchin	.0013
(18) The following fish:	.0125
Barracuda	
Flying fish	
Frogs	
Giant sea bass	
Saltwater worms	
White sea bass	
Yellowtail	

(b) This section shall become operative on January 1, 1994.

SEC. 3. Section 8832 of the Fish and Game Code is amended to read:

8832. Trawl nets and Chinese shrimp nets may be used in marine and brackish waters inside of the Golden Gate Bridge to take shrimp, oriental gobies, longjaw mudsuckers, plainfin midshipmen, and staghorn sculpin only in accordance with regulations which the commission may prescribe.

CHAPTER 1118

An act to amend Section 19602 of the Business and Professions Code, relating to horseracing.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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 audiovisual signals of the race or races and their results to those 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) (1) Except as provided in paragraph (2), 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 8 percent of the total amount received by the association from the out-of-state betting system. In addition, with respect to thoroughbred racing only, 3 percent of the amount remaining after the payment of the license fee shall be deposited with the official registering agency pursuant to subdivision (a) of Section 19617.2, and shall thereafter be distributed in accordance with subdivisions (b) and (c) of Section 19617.2. The remaining amount received by the association shall be distributed to the association that 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 that conducts the racing meeting and the horsemen participating in the racing meeting. Notwithstanding any other provision of law, racing associations may form a partnership, joint venture, or any other affiliation in order to negotiate terms and conditions of agreements with out-of-state betting systems.

(2) A thoroughbred association that hosts the series of races known as the "Breeder's Cup" shall not be required to pay to the state the license fees required pursuant to paragraph (1). Amounts received by the association from out-of-state betting systems as wagers on Breeder's Cup races shall distributed as follows: 50 percent as commissions to the association that conducts the racing meeting, and 50 percent as purses to the horsemen participating in the 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 that 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 that 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 that 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 that 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.

CHAPTER 1119

An act to amend Section 13142.5 of the Water Code, relating to water.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

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

(a) It is desirable to promote the reuse of water to accommodate California's growing need for water.

(b) The use of reclaimed water, in lieu of potable water, by industrial facilities provides environmental benefits in the form of increased conservation of potable water and the reuse of nonpotable water which would otherwise be discharged.

(c) The use of reclaimed water by industrial facilities reduces the total mass of pollutants entering the waters of each watershed.

(d) The users of reclaimed water do not have control over the quality of the incoming reclaimed water and should not be penalized for their use of that water.

(e) If the reclaimed water is of adequate quality for reuse, as agreed upon by both the supplier of the reclaimed water and the industrial facility, and is available for reuse in sufficient quantities and at a total cost comparable with potable water, and the use of the water is in accordance with Article 7 (commencing with Section 13550) of Chapter 7 of Division 7 of the Water Code, the use of the reclaimed water should not subject the industrial facility to waste discharge permit violations caused by contaminants in the reclaimed water.

SEC. 2. Section 13142.5 of the Water Code is amended to read:

13142.5. In addition to any other policies established pursuant to this division, the policies of the state with respect to water quality as it relates to the coastal marine environment are that:

(a) Waste water discharges shall be treated to protect present and future beneficial uses, and, where feasible, to restore past beneficial uses of the receiving waters. Highest priority shall be given to improving or eliminating discharges that adversely affect any of the following:

(1) Wetlands, estuaries, and other biologically sensitive sites.

(2) Areas important for water contact sports.
(3) Areas that produce shellfish for human consumption.
(4) Ocean areas subject to massive waste discharge.

Ocean chemistry and mixing processes, marine life conditions, other present or proposed outfalls in the vicinity, and relevant aspects of areawide waste treatment management plans and programs, but not of convenience to the discharger, shall for the purposes of this section, be considered in determining the effects of such discharges. Toxic and hard-to-treat substances should be pretreated at the source if such substances would be incompatible with effective and economical treatment in municipal treatment plants.

(b) For each new or expanded coastal powerplant or other industrial installation using seawater for cooling, heating, or industrial processing, the best available site, design, technology, and mitigation measures feasible shall be used to minimize the intake and mortality of all forms of marine life.

(c) Where otherwise permitted, new warmed or cooled water discharges into coastal wetlands or into areas of special biological importance, including marine reserves and kelp beds, shall not significantly alter the overall ecological balance of the receiving area.

(d) Independent baseline studies of the existing marine system should be conducted in the area that could be affected by a new or expanded industrial facility using seawater in advance of the carrying out of the development.

(e) (1) Adequately treated reclaimed water should, where feasible, be made available to supplement existing surface and underground supplies and to assist in meeting future water requirements of the coastal zone, and consideration, in statewide programs of financial assistance for water pollution or water quality control, shall be given to providing optimum water reclamation and use of reclaimed water.

(2) If reclaimed water is available for industrial use, any discharge to waters in the coastal zone, including the San Francisco Bay, after industrial use, may be authorized if all of the following conditions are met:

(A) The discharge will not unreasonably affect beneficial uses.

(B) The discharge is consistent with applicable water quality control plans and state policy for water quality control.

(C) The use of reclaimed water is consistent with Chapter 7 (commencing with Section 13500).

(D) The discharge is consistent with all applicable requirements of Chapter 5.5 (commencing with Section 13370).

(E) The discharge is to the same general receiving water location as that to which the wastewater would be discharged if not reused.

(3) Any requirement imposed pursuant to Section 13263 or 13377 shall be adjusted to reflect a credit for waste present in the reclaimed water before reuse. The credit shall be limited to the difference between the amount of waste present in the nonreclaimed water

supply otherwise available to the industry and the amount of waste present in the reclaimed water.

(4) If the amount of waste in the discharge exceeds prescribed requirements because the amount of waste in the reclaimed water is in excess of that agreed to be furnished by the supplier to the discharger, no enforcement action shall be taken against the discharger unless both of the following statements apply:

(A) The supplier of the reclaimed water fails to correct the problem within 30 days after the cause of the problem is identified, or within any greater period of time agreed to by the appropriate regional board.

(B) The discharger continues to receive the reclaimed water from the supplier.

(f) This section shall not apply to industrial discharges into publicly owned treatment works.

CHAPTER 1120

An act to amend Sections 19428, 19430, 19432, 19435, 19437, 19605.3, 19605.4, 19701, and 19702 of, to amend and renumber Section 19446 of, to add Sections 19407.5 and 19481.5 to, and to repeal Sections 19415 and 19446 of, and to repeal and add Section 19481 of, the Business and Professions Code, relating to racing, and making an appropriation therefor.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 19407.5 is added to the Business and Professions Code, to read:

19407.5. "Director" means the Director of the California Horse Racing Board.

SEC. 2. Section 19415 of the Business and Professions Code is repealed.

SEC. 3. Section 19428 of the Business and Professions Code is amended to read:

19428. The board shall appoint a director who shall receive the annual salary established by the board and approved by the Department of Personnel Administration. The director shall be the board's executive officer and shall carry out and execute the duties as specified by law and by the board.

SEC. 4. Section 19430 of the Business and Professions Code is amended to read:

19430. The salaries of the director, and other employees of the board, the per diem allowance of members of the board, and the necessary traveling and other expenses of the director and members

of the board, shall be paid monthly by the Treasurer on the warrant of the Controller and the certification of the chairperson of the board out of the money appropriated for that purpose.

SEC. 5. Section 19432 of the Business and Professions Code is amended to read:

19432. The director shall keep a full and true record of all proceedings of the board, preserve at the board's general office all books, documents, and papers of the board, prepare for service such notices and other papers as may be required of him or her by the board, and perform such other duties as the board may prescribe.

SEC. 6. Section 19435 of the Business and Professions Code is amended to read:

19435. The board, its director, or the stewards, may issue subpoenas for the attendance of witnesses or the production of any records, books, memoranda, documents, or other papers or things, as is necessary to enable any of them to effectually discharge their duties, and may administer oaths or affirmations as necessary in connection therewith.

SEC. 7. Section 19437 of the Business and Professions Code is amended to read:

19437. Any person who testifies falsely under oath in any proceeding before, or any investigation by the board, its director, or the stewards, is guilty of a felony and shall be punished in the same manner prescribed by the Penal Code for the punishment of perjury.

SEC. 8. Section 19446 of the Business and Professions Code, as added by Chapter 424 of the Statutes of 1991, is repealed.

SEC. 9. Section 19446 of the Business and Professions Code, as amended by Section 13 of Chapter 1091 of the Statutes of 1991, is amended and renumbered to read:

19446.1. Notwithstanding any other provision of law, a veterinarian shall not administer medications to any horse entered in the same race in which a horse is entered which he or she owns or trains.

In addition to any penalty provided for by this chapter or any other law, a violation of this section by any licensed veterinarian shall be grounds for denial, revocation, or suspension of a license or imposition of a fine pursuant to Section 4883 and the veterinarian shall be subject to disciplinary action pursuant to Article 4 (commencing with Section 4875) of Chapter 11 of Division 2.

SEC. 10. Section 19481 of the Business and Professions Code is repealed.

SEC. 10.5. Section 19481 is added to the Business and Professions Code, to read:

19481. In performing its responsibilities, the board shall do all of the following:

(a) Establish safety standards governing the uniformity and content of the track base and racing surface, inner and outer rails, gates and gaps, turf, access and egress to the track, lighting for night racing, equipment for horse and rider, drainage, communication,

veterinary service, medical and ambulance service, and other track facilities in order to improve the safety of horses, riders, and workers in the racing inclosure.

(b) Designate a steward at all horseracing meetings to be responsible for maintaining safety standards.

SEC. 11. Section 19481.5 is added to the Business and Professions Code, to read:

19481.5. Notwithstanding any other provision of law, no license shall be issued to conduct a horserace meeting upon a track unless the track has been inspected by the board within 30 days prior to the date of application for a license and the track has been approved by the board as conforming to the racetrack safety standards set forth in subdivision (a) of Section 19481.

This section shall become operative on January 1, 1995.

SEC. 12. Section 19605.3 of the Business and Professions Code is amended to read:

19605.3. (a) An organization described in Section 19608.2 has executed an agreement approved by the board with the association conducting a racing meeting and the satellite wagering facility. The agreement shall provide, among other things, for all of the following:

(1) The conditions for transmission of the signal.

(2) That the wagers made at the satellite wagering facility will be included in the appropriate conventional or exotic pool at the racetrack where the racing meeting is conducted.

(3) The agreement of the parties, if any, respecting the payment of fees or charges by one party to the other in substitution of, or in addition or supplemental to, the distributions of the amount deducted pursuant to the first paragraph of either Section 19605.7 or Section 19605.71. The agreement as to the payment of those fees or charges shall not operate to increase or reduce the amounts otherwise payable from the amount handled pursuant to this article, other than to a party to the agreement. Any dispute relating to the amount of fees or charges to be paid by any party as a condition of receiving the live audiovisual signal from an association or fair may be appealed to the board. However, nothing in this paragraph shall be construed to require an association or fair to execute an agreement.

(b) The accommodations and equipment used in conducting wagering at the satellite wagering facility and their location have been approved by the board.

(c) The method used by the satellite wagering facility to transmit wagers, odds, results, and other data related to wagering has been approved by the board.

(d) (1) Any association or fair that operates a satellite wagering facility shall conduct wagering on all racing that is offered to the satellite wagering facility, except as otherwise provided in Section 19607.5 with respect to the northern zone, as long as the satellite wagering facility is not sustaining a loss on either a day meeting or night meeting, as determined by the board, and, if sustaining a loss

on either a day meeting or night meeting, as long as the satellite wagering facility is reimbursed for that loss by either an organization described in Section 19608.2 or an association. Any association that operates a satellite wagering facility may, but is not required to, accept an audiovisual signal. Notwithstanding any other provision of this paragraph, an association that conducts a racing meeting and a fair that operates a satellite wagering facility may agree to provide an audiovisual signal and to accept wagering on less than all of the races. Acceptance of the audiovisual signal may be on such terms and conditions, including the payment of fees and charges, subject to paragraph (3) of subdivision (a), as the parties may mutually agree.

(2) In calculating the loss, if any, for operating a satellite wagering facility for a night meeting, only the expenses incurred by the satellite wagering facility because of the acceptance of night wagers shall be considered, and no overhead expenses or expenses of the satellite wagering facility which would be incurred regardless of the acceptance of night wagers shall be considered.

(e) Notwithstanding any other law or any agreement under subdivision (a), for purposes of determining license fees and breakage at the racetrack where the racing meeting is conducted, wagers at a satellite wagering facility shall not be included in the conventional or exotic pools of the association conducting the racing meeting.

(f) The horsemen's organization that represents the horsemen at the association that conducts the racing meeting on which wagers are accepted consents to the acceptance of wagers at the satellite wagering facility, except that the association or fair operating the satellite wagering facility may appeal the withholding of consent to the board that may determine that consent is not required.

SEC. 13. Section 19605.4 of the Business and Professions Code is amended to read:

19605.4. Notwithstanding Section 19605.3, the live audiovisual signal of night harness, quarter horse, Appaloosa, or Arabian races in the central or southern zone may be offered to satellite wagering facilities in the northern zone and the signal of those races in the northern zone may be offered to satellite wagering facilities in the central or southern zone. Racing associations may agree to accept that audiovisual signal. However, satellite wagering facilities located at fairs shall not be required pursuant to that agreement to accept more than five night racing programs per week. Acceptance of the audiovisual signal may be on such terms and conditions, including the payment of fees and charges, subject to paragraph (3) of subdivision (a) of Section 19605.3, as the parties may mutually agree.

SEC. 14. Section 19701 of the Business and Professions Code is amended to read:

19701. Notwithstanding any other provision of law, a mule racing meeting or mule races may be conducted by any county fair, district agricultural association fair, or citrus fruit fair.

SEC. 15. Section 19702 of the Business and Professions Code is

amended to read:

19702. The board shall administer this chapter and shall issue a license for the conducting of a mule racing meeting or mule races, which meeting shall not exceed 10 races per day for not more than 11 days.

CHAPTER 1121

An act to amend Sections 23456 and 24405 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 23456 of the Revenue and Taxation Code is amended to read:

23456. For purposes of this part, Section 56 of the Internal Revenue Code is modified as follows:

(a) (1) Section 56(a)(2) of the Internal Revenue Code, relating to mining exploration and development costs, shall apply only to expenses incurred during income years beginning on or after January 1, 1988.

(2) Section 56(a)(5) of the Internal Revenue Code, relating to pollution control facilities, shall apply only to amounts allowable as a deduction under Section 24372.3.

(b) Section 56(c)(2) of the Internal Revenue Code, relating to Merchant Marine Capital Construction Funds, shall not be applicable.

(c) For purposes of applying Section 56(d) of the Internal Revenue Code, all references to "December 31, 1986," are modified to read "December 31, 1987," and all references to "January 1, 1987," are modified to read "January 1, 1988."

(d) For each income year beginning on or after January 1, 1988, and before January 1, 1990, Section 56(f)(2)(E) of the Internal Revenue Code as it read during that period is modified to refer to both of the following:

(1) Cooperatives under Section 24404 in lieu of the deduction allowed under Section 1382(b) of the Internal Revenue Code.

(2) Credit unions under Section 24405 as though the deduction allowed under Section 1382(b) of the Internal Revenue Code applied to credit unions.

(e) Section 56(g)(4)(A) of the Internal Revenue Code is modified to provide the following:

(1) In the case of any property placed in service on or after January 1, 1981, and prior to January 1, 1987, and not described in

clause (i), (ii), or (iii) of Section 56(g)(4)(A) of the Internal Revenue Code, the amount allowable as depreciation or amortization with respect to that property shall be the same amount that would have been allowable for the income year had the taxpayer depreciated the property under the straightline method for each income year of the useful life (determined without regard to Section 24354.2) for which the taxpayer has held the property.

(2) In the case of any property placed in service on or after January 1, 1987, and prior to January 1, 1990, and not described in clause (i), (ii), or (iii) of Section 56(g)(4)(A) of the Internal Revenue Code, the amount allowable as depreciation or amortization with respect to that property shall be determined by each of the following:

(A) Taking into account the adjusted basis of that property (as determined for purposes of computing alternative minimum taxable income) as of the close of the last income year beginning before January 1, 1990.

(B) Using the straightline method over the remainder of the recovery period applicable to that property under the alternative system of Section 168(g) of the Internal Revenue Code.

(3) The amendments made to paragraph (2) by the act adding this paragraph shall apply to income years beginning on or after January 1, 1990.

(f) (1) Section 56(g)(4)(C) of the Internal Revenue Code, relating to disallowance of items not deductible in computing earnings and profits, shall be modified as follows:

(A) (i) A deduction shall be allowed for amounts allowable as a deduction for purposes of the regular tax under Sections 24402, 24410, 24411, and 25106.

(ii) For each income year beginning on or after January 1, 1990, a deduction shall be allowed for amounts allowable as a deduction to a credit union for purposes of the regular tax under Section 24405.

(B) Section 56(g)(4)(C)(ii) of the Internal Revenue Code, relating to special rule for 100 percent dividends, shall not be applicable.

(C) Section 56(g)(4)(C)(iii) of the Internal Revenue Code, relating to special rule for dividends from Section 936 companies, shall not be applicable.

(D) Section 56(g)(4)(C)(iv) of the Internal Revenue Code, relating to special rule for certain dividends received by certain cooperatives, shall not be applicable.

(2) Section 56(g)(4)(D)(ii) of the Internal Revenue Code is modified to specify that Sections 24364 and 24407 shall not apply to expenditures paid or incurred in income years beginning on or after January 1, 1990.

(3) With respect to corporations which are not subject to the tax imposed under Chapter 2 (commencing with Section 23101), the amount of interest income included in the adjusted current earnings shall not exceed the amount of interest income included for purposes

of the regular tax.

(4) Appropriate adjustments shall be made to limit deductions from adjusted current earnings for interest expense in accordance with the provisions of Sections 24344 and 24425.

(g) The provisions of Section 56(h) of the Internal Revenue Code, relating to adjustments based on energy preferences, shall not apply.

SEC. 1.5. Section 23456 of the Revenue and Taxation Code is amended to read:

23456. For purposes of this part, Section 56 of the Internal Revenue Code is modified as follows:

(a) (1) Section 56(a)(2) of the Internal Revenue Code, relating to mining exploration and development costs, shall apply only to expenses incurred during income years beginning on or after January 1, 1988.

(2) Section 56(a)(5) of the Internal Revenue Code, relating to pollution control facilities, shall apply only to amounts allowable as a deduction under Section 24372.3.

(b) Section 56(c)(2) of the Internal Revenue Code, relating to Merchant Marine Capital Construction Funds, shall not be applicable.

(c) For purposes of applying Section 56(d) of the Internal Revenue Code, all references to "December 31, 1986," are modified to read "December 31, 1987," and all references to "January 1, 1987," are modified to read "January 1, 1988."

(d) For each income year beginning on or after January 1, 1988, and before January 1, 1990, Section 56(f)(2)(E) of the Internal Revenue Code, as it read during that period, is modified to refer to both of the following:

(1) Cooperatives under Section 24404 in lieu of the deduction allowed under Section 1382(b) of the Internal Revenue Code.

(2) Credit unions under Section 24405 as though the deduction allowed under Section 1382(b) of the Internal Revenue Code applied to credit unions.

(e) Section 56(g)(4)(A) of the Internal Revenue Code is modified to provide the following:

(1) In the case of any property placed in service on or after January 1, 1981, and prior to January 1, 1987, and not described in clause (i), (ii), or (iii) of Section 56(g)(4)(A) of the Internal Revenue Code, the amount allowable as depreciation or amortization with respect to that property shall be the same amount that would have been allowable for the income year had the taxpayer depreciated the property under the straightline method for each income year of the useful life (determined without regard to Section 24354.2) for which the taxpayer has held the property.

(2) In the case of any property placed in service on or after January 1, 1987, and prior to January 1, 1990, and not described in clause (i), (ii), or (iii) of Section 56(g)(4)(A) of the Internal Revenue Code, the amount allowable as depreciation or amortization with respect to that property shall be determined by

each of the following:

(A) Taking into account the adjusted basis of that property (as determined for purposes of computing alternative minimum taxable income) as of the close of the last income year beginning before January 1, 1990.

(B) Using the straightline method over the remainder of the recovery period applicable to that property under the alternative system of Section 168(g) of the Internal Revenue Code.

(3) The amendments made to paragraph (2) by the act adding this paragraph shall apply to income years beginning on or after January 1, 1990.

(f) (1) Section 56(g)(4)(C) of the Internal Revenue Code, relating to disallowance of items not deductible in computing earnings and profits, shall be modified as follows:

(A) (i) A deduction shall be allowed for amounts allowable as a deduction for purposes of the regular tax under Sections 24402, 24410, 24411, and 25106.

(ii) For each income year beginning on or after January 1, 1990, a deduction shall be allowed for amounts allowable as a deduction to a credit union for purposes of the regular tax under Section 24405.

(B) Section 56(g)(4)(C)(ii) of the Internal Revenue Code, relating to special rule for 100 percent dividends, shall not be applicable.

(C) Section 56(g)(4)(C)(iii) of the Internal Revenue Code, relating to special rule for dividends from Section 936 companies, shall not be applicable.

(D) Section 56(g)(4)(C)(iv) of the Internal Revenue Code, relating to special rule for certain dividends received by certain cooperatives, shall not be applicable.

(2) Section 56(g)(4)(D)(ii) of the Internal Revenue Code is modified to specify that Sections 24364 and 24407 shall not apply to expenditures paid or incurred in income years beginning on or after January 1, 1990.

(3) With respect to corporations which are not subject to the tax imposed under Chapter 2 (commencing with Section 23101), the amount of interest income included in the adjusted current earnings shall not exceed the amount of interest income included for purposes of the regular tax.

(4) Appropriate adjustments shall be made to limit deductions from adjusted current earnings for interest expense in accordance with the provisions of Sections 24344 and 24425.

SEC. 2. Section 24405 of the Revenue and Taxation Code is amended to read:

24405. (a) In the case of other associations organized and operated in whole or in part on a cooperative or a mutual basis, all income resulting from or arising out of business activities for or with their members carried on by them or their agents, or when done on a nonprofit basis for or with nonmembers, shall be an allowable deduction. However, the deduction allowable under this section

shall not apply to those cooperative or mutual associations whose income is principally derived from the sale in the regular course of business of tangible personal property other than water, agricultural products, or food sold at wholesale.

(b) For the purposes of subdivision (a), "food sold at wholesale" means a sale of food to anyone engaged in the business of selling food who holds a seller's permit issued pursuant to Section 6066, and who at the time of purchasing the food either:

(1) Intends to sell it in the regular course of business.

(2) Is unable to ascertain at the time of purchase whether the food will be sold or used for some other purpose.

(c) For the purposes of subdivision (a), a credit union's activities are "for or with" the members of the credit union if the activities involve the investment of surplus member savings capital in investments permitted for credit unions pursuant to Sections 14406, 14652, 14653, 14653.5, 14654, 14655, and 14656 of the Financial Code. "Surplus member savings capital" means the savings capital of credit union members which is in excess of the amount of savings capital which is loaned to members of the credit union. The term "savings capital" shall have the meaning set forth in subdivision (a) of Section 14400 of the Financial Code.

(d) For purposes of subdivision (a), "income resulting from or arising out of business activities for or with their members" includes, but is not limited to, all income resulting from reciprocal transactions with member credit unions.

SEC. 3. The Legislature declares its intent and hereby provides that the changes made to subdivision (e) of Section 23456 of the Revenue and Taxation Code by this act shall be operative for each income year beginning on or after January 1, 1990, as no imposition of an alternative minimum tax on special deductions allowed to corporations operating on a cooperative basis was intended. In addition, it is the intent of the Legislature that, for each income year commencing on or after January 1, 1988, and prior to January 1, 1990, paragraph (5) of subdivision (d) of former Section 23456 of the Revenue and Taxation Code, as amended by Chapter 452 of the Statutes of 1990, and in effect and operative on July 31, 1990, allowing a special rule for cooperatives under Section 24404 of the Revenue and Taxation Code be expanded to include credit unions under Section 24405 of the Revenue and Taxation Code.

SEC. 4. The provisions of this act shall apply to all income years that are not closed by an applicable statute of limitations.

SEC. 5. The Legislature finds and declares that this act serves a statewide public purpose because the Legislature did not intend, and does not intend, to impose a tax on transactions between member credit unions.

SEC. 6. Section 1.5 of this bill incorporates amendments to Section 23456 of the Revenue and Taxation Code proposed by both this bill and AB 35. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each

bill amends Section 23456 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 35, in which case Section 23456 of the Revenue and Taxation Code, as amended by AB 35, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

SEC. 7. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 1122

An act to amend Section 309.76 of, and to add Section 429.16 to, the Health and Safety Code, and to add Sections 6716 and 6717 to the Labor Code, relating to occupational safety and health.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. (a) It is the intent of the Legislature in enacting this act that the state comply with federal requirements as set forth in the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. Sec. 4851 and following), Title X of the Housing and Community Development Act of 1992 (P.L. 102-550), and Title IV of the Toxic Substances Control Act (15 U.S.C. 2601 and following), and to establish a program within the State Department of Health Services to meet those requirements.

(b) It is in the interest of California citizens to establish this program in order to:

(1) Ensure access to over ten million dollars ($10,000,000) in federal housing funds currently authorized for the state.

(2) Allow the state to be eligible for millions of dollars in future federal housing funds.

(3) Maximize state control over the enforcement of the requirements imposed on all states by the Residential Lead-Based Paint Hazard Reduction Act and federal regulations promulgated thereunder.

SEC. 2. Section 309.76 of the Health and Safety Code is amended to read:

309.76. The department shall continue to direct the Childhood Lead Poisoning Prevention Program to implement a program to identify and conduct medical followup of high-risk children, and to establish procedures for environmental abatement and followup designed to reduce the incidence of excessive childhood lead exposures in California. In implementing this program, the department shall utilize its own studies, as well as relevant information from the scientific literature and childhood lead

poisoning programs from outside California. The particular activities specified in this section shall be initiated by January 1, 1990, and completed on or before January 1, 1993. The program shall include at least all of the following components:

(a) Lead screening. The department shall:

(1) Design and implement at least one pilot blood lead screening project targeting children at high risk of elevated blood lead levels. In designing any pilot projects, the department shall give special consideration to conducting screening through the Child Health Disability and Prevention Program.

(2) Conduct a pilot screening project to evaluate blood lead levels among children of workers exposed to lead in their occupations.

(3) Develop and issue health advisories urging health care providers to conduct routine annual screening of high-risk children between the ages of one and five years of age.

(4) Study the options for, and feasibility of, implementing a mandatory childhood blood lead testing program in California. The study shall include an evaluation of the voluntary response and cooperation of health care providers to the health advisory program specified in paragraph (3). The results of this study shall be submitted to the Legislature by July 1, 1991.

(5) Develop a program to assist local health departments in identifying and following up cases of elevated blood lead levels.

(6) Develop and conduct programs to educate health care providers regarding the magnitude and severity of, and the necessary responses to, the childhood lead poisoning problem in California.

(b) The department, in consultation with the Department of Housing and Community Development, shall adopt regulations governing the abatement of lead paint in and on housing, including, but not limited to, standards for enforcement, testing, abatement, and disposal.

(c) The department shall conduct a study to evaluate whether abatement of lead in soil is effective at reducing blood lead levels in children.

SEC. 3. Section 429.16 is added to the Health and Safety Code, to read:

429.16. (a) A program is hereby established within the department to meet the requirements of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. Sec. 4851 and following) and Title X of the Housing and Community Development Act of 1992 (P.L. 102-550).

(b) The department shall implement and administer the program. The department shall have powers and authority consistent with the intent of, and shall promulgate regulations to establish the program as an authorized state program pursuant to, Title IV, Section 402 to 404, inclusive, of the Toxic Substances Control Act (15 U.S.C. Sec. 2601 and following).

(c) Regulations regarding accreditation of training providers that

are promulgated pursuant to subdivision (b) shall include, but not be limited to, provisions governing accreditation of providers of health and safety training to employees who engage in or supervise lead-related construction work as defined in Section 6716 of the Labor Code, certification of employees who have successfully completed that training. Regulations regarding accreditation of training providers shall, as a condition of accreditation, require providers to offer training that meets the requirements of Section 6717 of the Labor Code. The department shall, not later than August 1, 1994, adopt regulations establishing fees for the accreditation of training providers, the certification of individuals, and the licensing of entities engaged in lead-related occupations. The fees imposed under this subdivision shall be established at levels not exceeding an amount sufficient to cover the costs of administering and enforcing the standards and regulations promulgated under this section. The fees established pursuant to this subdivision shall not be imposed on any state or local government or nonprofit training program.

(d) All regulations affecting the training of employees shall be adopted in consultation with the Division of Occupational Safety and Health. The regulations shall include provisions for allocating to the division an appropriate portion of funds to be expended for the program for the division's cost of enforcing compliance with training and certification requirements. The department shall adopt regulations to establish the program on or before August 1, 1994.

(e) The department shall review and amend its training, certification, and accreditation regulations promulgated under this section as is necessary to ensure continued eligibility for federal and state funding of lead-hazard reduction activities in the state.

SEC. 4. Section 6716 is added to the Labor Code, to read:

6716. For the purposes of this division, "lead-related construction work" means any of the following:

(a) Any construction, alteration, painting, demolition, salvage, renovation, repair, or maintenance of any building or structure, including preparation and cleanup, that, by using or disturbing lead-containing material or soil, may result in significant exposure of employees to lead as determined by the standard adopted pursuant to Section 6717.

(b) The transportation, disposal, storage, or containment of materials containing lead on site or at a location at which construction activities are performed. "Lead-related construction work" does not include any activity related to the manufacture or mining of lead or the installation or repair of automotive materials containing lead.

SEC. 5. Section 6717 is added to the Labor Code, to read:

6717. (a) On or before February 1, 1994, the division shall propose to the standards board for its review and adoption, a standard that protects the health and safety of employees who engage in lead-related construction work and meets all requirements imposed by the federal Occupational Safety and Health

Administration. The standards board shall adopt the standard on or before December 31, 1994. The standard shall at least prescribe protective measures appropriate to the work activity and the lead content of materials to be disturbed by the activity, and shall include requirements and specifications pertaining to the following:

(1) Sampling and analysis of surface coatings and other materials that may contain significant amounts of lead.

(2) Concentrations and amounts of lead in surface coatings and other materials which may constitute a health hazard to employees engaged in lead-related construction work.

(3) Engineering controls, work practices, and personal protective equipment, including respiratory protection, fit-testing requirements, and protective clothing and equipment.

(4) Washing and showering facilities.

(5) Medical surveillance and medical removal protection.

(6) Establishment of regulated areas and appropriate posting and warning requirements.

(7) Recordkeeping.

(8) Training of employees engaged in lead-related construction work and their supervisors, which shall consist of current certification as required by regulations promulgated under subdivision (c) of Section 429.16 of the Health and Safety Code and include training with respect to at least the following:

(A) Health effects of lead exposure, including symptoms of overexposure.

(B) The construction activities, methods, processes, and materials that can result in lead exposure.

(C) The requirements of the lead standard promulgated pursuant to this section.

(D) Appropriate engineering controls, work practices, and personal protection for lead-related work.

(E) The necessity for fit-testing for respirator use and how fit-testing is conducted.

CHAPTER 1123

An act to add Sections 252 and 253 to the Education Code, relating to education, and making an appropriation therefor.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 252 is added to the Education Code to read:

252. (a) The Superintendent of Public Instruction shall, to the extent possible within existing resources, review and revise, where necessary, the policies and practices of programs administered by

the department that provide services to school districts in order to promote improved gender equity.

(b) The superintendent shall make available, upon request, wherever possible, the following data, compiled by gender and ethnicity:

(1) Assessment scores for all grades tested.

(2) The number of pupils enrolled in mathematics and science courses, as well as courses in other fields of study in which ethnic minority populations or members of either gender have been traditionally underrepresented among participants.

(3) The number of high school graduates.

(4) The number of high school graduates who complete the minimum requirements for admission to the University of California.

(5) The number of pupils who leave school before graduation.

(6) The number of pupils participating in interscholastic athletics.

(c) The superintendent shall request the United States Department of Education to amend the Title IV-C grant for race, sex, and national origin desegregation received pursuant to Section 2000c-2 of Title 42 of the United States Code, and any regulations adopted pursuant thereto, so that funds received under those federal laws that are currently designated for technical assistance activities also may be used for gender equity monitoring and assistance activities.

SEC. 2. Section 253 is added to the Education Code, to read:

253. (a) Compliance with the sex discrimination provisions of this chapter and regulations adopted pursuant to this chapter shall be included in the annual Coordinated Compliance Review Manual provided to school districts by the Superintendent of Public Instruction. Any review of that compliance shall also include a review of the school district's records of complaints of sexual harassment brought by pupils and employees of the school district.

(b) The superintendent shall annually review 20 school districts for compliance with sex discrimination laws and regulations as specified in subdivision (a). The superintendent shall select from those districts subject to review, in a given year, a sampling of districts from each of the following categories:

(1) Those districts within which the greatest number of sex discrimination complaints have been filed since its previous coordinated compliance review.

(2) Those districts with the largest enrollments.

(3) All other districts, selected on a random basis.

(c) The superintendent and the department shall only be required to implement the provisions enumerated in this section in fiscal years in which sufficient funds have been appropriated for those purposes.

SEC. 3. (a) The sum of eighty thousand dollars ($80,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for the purposes of this act.

(b) It is the intent of the Legislature that funding for sex

discrimination compliance activities required pursuant to subdivision (b) of Section 253 of the Education Code be provided annually in the Budget 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 1124

An act to amend Section 76300 of, and to repeal Section 76310 of, the Education Code, relating to postsecondary education, and making an appropriation therefor.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 76300 of the Education Code, as amended by Chapter 67 of the Statutes of 1993, is amended to read:

76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b) The fee prescribed by this section shall be thirteen dollars ($13) per unit per semester.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84711.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid. The governing board of a community college district may also waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment is a 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.

(i) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) and (h).

From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) and (h). From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 7 percent of the fee waivers provided pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and

delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992–93 fiscal year.

(j) The board of governors shall adopt regulations implementing this section.

(k) 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 chaptered before July 1, 1995, deletes or extends that date.

SEC. 2. Section 76310 of the Education Code, as added by Chapter 8 of the Statutes of 1993, is repealed.

SEC. 3. The Board of Governors of the California Community Colleges shall allocate funds appropriated for the Board Financial Aid Program pursuant to subdivision (i) of Section 76300 of the Education 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.

SEC. 5. Ninety-one percent of the funds allocated for the Board Financial Aid Program in Provision 5(b) of Item 6870-101-001 of the Budget Act of 1993 is hereby reappropriated to Schedule (a) of Item 6870-101-001 of the Budget Act of 1993.

CHAPTER 1125

An act to amend Section 186.22 of, to amend, repeal, and add Sections 186.2, 487, and 666.5 of, to add and repeal Sections 487h, 499, and 666.7 of, and to repeal Section 499b.1 of, the Penal Code, to amend, repeal, and add Section 10851 of the Vehicle Code, and to amend, repeal, and add Section 653.5 of the Welfare and Institutions Code, relating to crimes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 186.2 of the Penal Code is amended to read:

186.2. For purposes of the application of this chapter, the

following definitions shall govern:

(a) "Criminal profiteering activity" means any act committed or attempted or any threat made for financial gain or advantage, which act or threat may be charged as a crime under any of the following sections:

(1) Arson, as defined in Section 451.

(2) Bribery, as defined in Sections 67, 67.5, and 68.

(3) Child pornography or exploitation, as defined in subdivision (b) of Section 311.2, or Section 311.3 or 311.4, which may be prosecuted as a felony.

(4) Felonious assault, as defined in Section 245.

(5) Embezzlement, as defined in Sections 424 and 503.

(6) Extortion, as defined in Section 518.

(7) Forgery, as defined in Section 470.

(8) Gambling, as defined in Sections 337a to 337f, inclusive, and Section 337i, except the activities of a person who participates solely as an individual bettor.

(9) Kidnapping, as defined in Section 207.

(10) Mayhem, as defined in Section 203.

(11) Murder, as defined in Section 187.

(12) Pimping and pandering, as defined in Section 266.

(13) Receiving stolen property, as defined in Section 496.

(14) Robbery, as defined in Section 211.

(15) Solicitation of crimes, as defined in Section 653f.

(16) Grand theft, as defined in Section 487.

(17) Theft or taking of any motor vehicle, trailer, or vessel, as described in Section 487h of this code, or of any vehicle, as described in Section 10851 of the Vehicle Code.

(18) Trafficking in controlled substances, as defined in Sections 11351, 11352, and 11353 of the Health and Safety Code.

(19) Violation of the laws governing corporate securities, as defined in Section 25541 of the Corporations Code.

(20) Any of the offenses contained in Chapter 7.5 (commencing with Section 311) of Title 9, relating to obscene matter, or in Chapter 7.6 (commencing with Section 313) of Title 9, relating to harmful matter which may be prosecuted as a felony.

(21) Presentation of a false or fraudulent claim, as defined in Section 550.

(22) Money laundering, as defined in Section 186.10.

(23) Conspiracy to commit any of the crimes listed above, as defined in Section 182.

(b) "Pattern of criminal profiteering activity" means engaging in at least two incidents of criminal profiteering, as defined by this act, which meet the following requirements:

(1) Have the same or a similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics.

(2) Are not isolated events.

(3) Were committed as a criminal activity of organized crime.

Acts that would constitute a "pattern of criminal profiteering activity" may not be used by a prosecuting agency to seek the remedies provided by this chapter unless the underlying offense occurred after the effective date of this chapter and the prior act occurred within 10 years, excluding any period of imprisonment, of the commission of the underlying offense. A prior act may not be used by a prosecuting agency to seek remedies provided by this chapter if a prosecution for that act resulted in an acquittal.

(c) "Prosecuting agency" means the Attorney General or the district attorney of any county.

(d) "Organized crime" means crime which is of a conspiratorial nature and that is either of an organized nature and which seeks to supply illegal goods and services such as narcotics, prostitution, loan sharking, gambling, and pornography, or that, through planning and coordination of individual efforts, seeks to conduct the illegal activities of arson for profit, hijacking, insurance fraud, smuggling, operating vehicle theft rings, or systematically encumbering the assets of a business for the purpose of defrauding creditors.

(e) "Underlying offense" means an offense enumerated in subdivision (a) for which the defendant is being prosecuted.

(f) This section shall remain in effect only until January 1, 1997, and as of that date is repealed.

SEC. 2. Section 186.2 is added to the Penal Code, to read:

186.2. For purposes of the application of this chapter, the following definitions shall govern:

(a) "Criminal profiteering activity" means any act committed or attempted or any threat made for financial gain or advantage, which act or threat may be charged as a crime under any of the following sections:

(1) Arson, as defined in Section 451.

(2) Bribery, as defined in Sections 67, 67.5, and 68.

(3) Child pornography or exploitation, as defined in subdivision (b) of Section 311.2, or Section 311.3 or 311.4, which may be prosecuted as a felony.

(4) Felonious assault, as defined in Section 245.

(5) Embezzlement, as defined in Sections 424 and 503.

(6) Extortion, as defined in Section 518.

(7) Forgery, as defined in Section 470.

(8) Gambling, as defined in Sections 337a to 337f, inclusive, and Section 337i, except the activities of a person who participates solely as an individual bettor.

(9) Kidnapping, as defined in Section 207.

(10) Mayhem, as defined in Section 203.

(11) Murder, as defined in Section 187.

(12) Pimping and pandering, as defined in Section 266.

(13) Receiving stolen property, as defined in Section 496.

(14) Robbery, as defined in Section 211.

(15) Solicitation of crimes, as defined in Section 653f.

(16) Grand theft, as defined in Section 487.

(17) Trafficking in controlled substances, as defined in Sections 11351, 11352, and 11353 of the Health and Safety Code.

(18) Violation of the laws governing corporate securities, as defined in Section 25541 of the Corporations Code.

(19) Any of the offenses contained in Chapter 7.5 (commencing with Section 311) of Title 9, relating to obscene matter, or in Chapter 7.6 (commencing with Section 313) of Title 9, relating to harmful matter which may be prosecuted as a felony.

(20) Presentation of a false or fraudulent claim, as defined in Section 550.

(21) Money laundering, as defined in Section 186.10.

(22) Conspiracy to commit any of the crimes listed above, as defined in Section 182.

(b) "Pattern of criminal profiteering activity" means engaging in at least two incidents of criminal profiteering, as defined by this act, which meet the following requirements:

(1) Have the same or a similar purpose, result, principals, victims or methods of commission, or are otherwise interrelated by distinguishing characteristics.

(2) Are not isolated events.

(3) Were committed as a criminal activity of organized crime.

Acts which would constitute a "pattern of criminal profiteering activity" may not be used by a prosecuting agency to seek the remedies provided by this chapter unless the underlying offense occurred after the effective date of this chapter and the prior act occurred within 10 years, excluding any period of imprisonment, of the commission of the underlying offense. A prior act may not be used by a prosecuting agency to seek remedies provided by this chapter if a prosecution for that act resulted in an acquittal.

(c) "Prosecuting agency" means the Attorney General or the district attorney of any county.

(d) "Organized crime" means crime which is of a conspiratorial nature and that is either of an organized nature and which seeks to supply illegal goods and services such as narcotics, prostitution, loan sharking, gambling, and pornography, or that, through planning and coordination of individual efforts, seeks to conduct the illegal activities of arson for profit, hijacking, insurance fraud, smuggling, operating vehicle theft rings, or systematically encumbering the assets of a business for the purpose of defrauding creditors.

(e) "Underlying offense" means an offense enumerated in subdivision (a) for which the defendant is being prosecuted.

This section shall become operative on January 1, 1997.

SEC. 3. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment

in the state prison for one, two, or three years.

(b) (1) Except as provided in paragraph (2), any person who is convicted of a felony which is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion. However, if the underlying felony is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years, at the court's discretion. The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(2) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall not be paroled until a minimum of 15 calendar years have been served.

(c) Any person who is convicted of a public offense punishable as a felony or a misdemeanor, which is committed for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in a county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, provided that any person sentenced to imprisonment in a county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in a county jail.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of those offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense,

and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(8) Grand theft of any vehicle, trailer, or vessel, as described in Section 487h.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (8), inclusive, of subdivision (e), which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) This section shall remain in effect only until January 1, 1997, and on that date is repealed.

SEC. 4. Section 487 of the Penal Code is amended to read:

487. Grand theft is theft committed in any of the following cases:

(a) When the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400), except as provided in subdivision (b).

(b) Notwithstanding subdivision (a), grand theft is committed in any of the following cases:

(1) (A) When domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops are taken of a value exceeding one hundred dollars ($100).

(B) For purposes of establishing that the value of avocados or citrus fruit under this paragraph exceeds one hundred dollars ($100), that value may be shown by the presentation of credible evidence which establishes that on the day of the theft avocados or citrus fruit of the same variety and weight exceeded one hundred dollars ($100) in wholesale value.

(2) When fish, shellfish, mollusks, crustaceans, kelp, algae, or other aquacultural products are taken from a commercial or research

operation which is producing that product, of a value exceeding one hundred dollars ($100).

(3) Where the money, labor, or real or personal property is taken by a servant, agent, or employee from his or her principal or employer and aggregates four hundred dollars ($400) or more in any 12 consecutive month period.

(c) When the property is taken from the person of another.

(d) When the property taken is a firearm, horse, mare, gelding, any bovine animal, any caprine animal, mule, jack, jenny, sheep, lamb, hog, sow, boar, gilt, barrow, or pig.

(e) This section shall remain in effect only until January 1, 1997, and as of that date is repealed.

SEC. 5. Section 487 is added to the Penal Code, to read:

487. Grand theft is theft committed in any of the following cases:

(a) When the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400), except as provided in subdivision (b).

(b) Notwithstanding subdivision (a), grand theft is committed in any of the following cases:

(1) (A) When domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops are taken of a value exceeding one hundred dollars ($100).

(B) For the purposes of establishing that the value of avocados or citrus fruit under this paragraph exceeds one hundred dollars ($100), that value may be shown by the presentation of credible evidence which establishes that on the day of the theft avocados or citrus fruit of the same variety and weight exceeded one hundred dollars ($100) in wholesale value.

(2) When fish, shellfish, mollusks, crustaceans, kelp, algae, or other aquacultural products are taken from a commercial or research operation which is producing that product, of a value exceeding one hundred dollars ($100).

(3) Where the money, labor, or real or personal property is taken by a servant, agent, or employee from his or her principal or employer and aggregates four hundred dollars ($400) or more in any 12 consecutive month period.

(c) When the property is taken from the person of another.

(d) When the property taken is an automobile, firearm, horse, mare, gelding, any bovine animal, any caprine animal, mule, jack, jenny, sheep, lamb, hog, sow, boar, gilt, barrow, or pig.

(e) This section shall become operative on January 1, 1997.

SEC. 6. Section 487h is added to the Penal Code, to read:

487h. (a) Every person who feloniously steals or takes any motor vehicle, as defined in Section 415 of the Vehicle Code, any trailer, as defined in Section 630 of the Vehicle Code, any special construction equipment, as defined in Section 565 of the Vehicle Code, or any vessel, as defined in Section 21 of the Harbors and Navigation Code, is guilty of grand theft, and upon conviction thereof, shall be

punished by imprisonment in the state prison for 16 months or two or three years or a fine of not more than ten thousand dollars ($10,000), or both, or by imprisonment in a county jail not to exceed one year or a fine of not more than one thousand dollars ($1,000), or both.

(b) Any person who, having been convicted of two previous misdemeanor violations of subdivision (a), subdivision (d) of Section 487, involving an automobile, or Section 10851 of the Vehicle Code, or any combination of those offenses as misdemeanors, is subsequently convicted of a violation of subdivision (a) shall be punished for the subsequent conviction by imprisonment in the state prison for two, three, or four years.

(c) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person who is convicted of a felony violation of subdivision (a) or (b), and who has been previously convicted of two or more felony violations of the offense set forth in subdivision (a), the offense set forth in subdivision (d) of Section 487, involving a vehicle, or the offense set forth in Section 10851 of the Vehicle Code, or who has been previously convicted of one felony violation of any of those offenses and at least two misdemeanor violations of those offenses.

(d) If the court grants probation under subdivision (c), it shall specify on the court record the reason or reasons for that order.

(e) This section shall remain in effect only until January 1, 1997, and as of that date is repealed.

SEC. 7. Section 499 is added to the Penal Code, to read:

499. (a) Any person who, having been convicted of a previous violation of Section 10851 of the Vehicle Code, or of subdivision (d) of Section 487, involving a vehicle or vessel, and having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for the offense, is subsequently convicted of a violation of Section 499b, involving a vehicle or vessel, shall be punished for the subsequent offense by imprisonment in a county jail not exceeding one year or the state prison for 16 months, two, or three years.

(b) Any person convicted of a violation of Section 499b, who has been previously convicted under charges separately brought and tried two or more times of a violation of Section 499b, all of these violations involving a vehicle or vessel, and who has been imprisoned therefor as a condition of probation or otherwise at least once, shall be punished by imprisonment in a county jail for not more than one year or in the state prison for 16 months, two, or three years.

(c) Any person convicted of a violation of Section 499b, who has been previously convicted under charges separately brought and tried three or more times of a violation of Section 499b, all of these violations involving a vehicle or vessel, shall be punished by imprisonment in the state prison for 16 months, two, or three years.

(d) Any person convicted of a violation of Section 499b, who has

twice been previously convicted under charges separately brought and tried of a violation of Section 499b, all of these violations involving a vehicle or vessel, and who has been previously convicted of a violation of Section 487h, subdivision (d) of Section 487, involving an automobile, or Section 10851 of the Vehicle Code, shall be punished by imprisonment in the state prison for 16 months, two, or three years.

(e) This section shall remain in effect only until January 1, 1997, and as of that date is repealed.

SEC. 8. Section 499 is added to the Penal Code, to read:

499. (a) Any person who, having been convicted of a previous violation of Section 10851 of the Vehicle Code, or of subdivision (d) of Section 487, involving a vehicle or vessel, and having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for the offense, is subsequently convicted of a violation of Section 499b, involving a vehicle or vessel, is punishable for the subsequent offense by imprisonment in the county jail not exceeding one year or the state prison for 16 months, two, or three years.

(b) Any person convicted of a violation of Section 499b, who has been previously convicted under charges separately brought and tried two or more times of a violation of Section 499b, all such violations involving a vehicle or vessel, and who has been imprisoned therefore as a condition of probation or otherwise at least once, is punishable by imprisonment in the county jail for not more than one year or in the state prison for 16 months, two, or three years.

(c) This section shall become operative on January 1, 1997.

SEC. 9. Section 499b.1 of the Penal Code is repealed.

SEC. 10. Section 666.5 of the Penal Code is amended to read:

666.5. (a) Every person who, having been previously convicted of felony vehicle theft under Section 10851 of the Vehicle Code, or felony grand theft involving an automobile in violation of subdivision (d) of Section 487 or Section 487h, regardless of whether or not the person actually served a prior prison term for those offenses, is subsequently convicted of any of these offenses shall be punished by imprisonment in the state prison for three, four, or five years, or a fine of ten thousand dollars ($10,000), or both the fine and the imprisonment.

(b) The existence of any fact which would bring a person under subdivision (a) shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(c) This section shall remain in effect only until January 1, 1997, and as of that date is repealed.

SEC. 11. Section 666.5 is added to the Penal Code, to read:

666.5. (a) Every person who, having been previously convicted of felony vehicle theft under Section 10851 of the Vehicle Code, or

felony grand theft involving an automobile in violation of subdivision (d) of Section 487, regardless of whether or not the person actually served a prior prison term for those offenses, is subsequently convicted of any of these offenses shall be punished by imprisonment in the state prison for two, three, or four years, or a fine of ten thousand dollars ($10,000), or both the fine and the imprisonment.

(b) The existence of any fact which would bring a person under subdivision (a) shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(c) This section shall become operative on January 1, 1997.

SEC. 12. Section 666.7 is added to the Penal Code, to read:

666.7. (a) Every person who, having been twice convicted previously of receiving stolen property in violation of subdivision (a) of Section 496, involving any vehicle, trailer, or vessel, regardless of whether or not the person actually served a prior prison term for those offenses, is subsequently convicted of that offense involving any vehicle, trailer, or vessel, shall be punished by imprisonment in the state prison for two, three, or four years, by a fine of ten thousand dollars ($10,000), or by both that imprisonment and fine.

(b) The existence of any fact that would bring a person under subdivision (a) shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(c) This section shall remain in effect only until January 1, 1997, and as of that date is repealed.

SEC. 13. Section 10851 of the Vehicle Code is amended to read:

10851. (a) Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle, or any person who is a party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, is guilty of a public offense and, upon conviction thereof, shall be punished by imprisonment in the state prison for 16 months or two or three years or a fine of not more than ten thousand dollars ($10,000), or both, or by imprisonment in the county jail not to exceed one year or a fine of not more than one thousand dollars ($1,000), or both.

(b) Any person who, having been convicted of two previous misdemeanor violations of this section, subdivision (d) of Section 487 of the Penal Code, involving an automobile, or any combination of these offenses as misdemeanors, is subsequently convicted of a violation of subdivision (a) shall be punished for the subsequent conviction by imprisonment in the state prison for two, three, or four

years.

(c) If the vehicle is (1) an ambulance, as defined in subdivision (a) of Section 165, (2) a distinctively marked vehicle of a law enforcement agency or fire department, taken while the ambulance or vehicle is on an emergency call and this fact is known to the person driving or taking, or any person who is party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, or (3) a vehicle which has been modified for the use of a disabled veteran or any other disabled person and which displays a distinguishing license plate or placard issued pursuant to Section 22511.5 or 22511.9 and this fact is known or should reasonably have been known to the person driving or taking, or any person who is party or an accessory in the driving or unauthorized taking or stealing, the offense is a felony punishable by imprisonment in the state prison for two, four, or six years and by a fine of not more than ten thousand dollars ($10,000).

(d) (1) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person who is convicted of a felony violation of subdivision (a), (b), or (c), and who has been previously convicted of two or more felony violations of the offense set forth in subdivision (a) or (c), the offense set forth in subdivision (d) of Section 487 of the Penal Code, involving a vehicle, or the offense set forth in Section 487h of the Penal Code, or who has been previously convicted of one felony violation of any of those offenses and at least two misdemeanor violations of those offenses.

(2) If the court grants probation under paragraph (1), it shall specify on the court record the reason or reasons for that order.

(e) In any prosecution for a violation of subdivision (a) or (c), the consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of the owner's consent on a previous occasion to the taking or driving of the vehicle by the same or a different person.

(f) The existence of any fact which makes subdivision (c) applicable shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(g) This section shall remain in effect only until January 1, 1997, and as of that date is repealed.

SEC. 14. Section 10851 is added to the Vehicle Code, to read:

10851. (a) Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle, or any person who is a party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, is guilty of a public offense and, upon conviction

thereof, shall be punished by imprisonment in a county jail for not more than one year or in the state prison or by a fine of not more than five thousand dollars ($5,000), or by both the fine and imprisonment.

(b) If the vehicle is (1) an ambulance, as defined in subdivision (a) of Section 165, (2) a distinctively marked vehicle of a law enforcement agency or fire department, taken while the ambulance or vehicle is on an emergency call and this fact is known to the person driving or taking, or any person who is party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, or (3) a vehicle which has been modified for the use of a disabled veteran or any other disabled person and which displays a distinguishing license plate or placard issued pursuant to Section 22511.5 or 22511.9 and this fact is known or should reasonably have been known to the person driving or taking, or any person who is party or an accessory in the driving or unauthorized taking or stealing, the offense is a felony punishable by imprisonment in the state prison for two, three, or four years or by a fine of not more than ten thousand dollars ($10,000), or by both the fine and imprisonment.

(c) In any prosecution for a violation of subdivision (a) or (b), the consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of the owner's consent on a previous occasion to the taking or driving of the vehicle by the same or a different person.

(d) The existence of any fact which makes subdivision (b) applicable shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(e) This section shall become operative on January 1, 1997.

SEC. 15. Section 653.5 of the Welfare and Institutions Code, as amended by Section 22 of Chapter 59 of the Statutes of 1993, is amended to read:

653.5. (a) Whenever any person applies to the probation officer to commence proceedings in the juvenile court, the application shall be in the form of an affidavit alleging that there was or is within the county, or residing therein, a minor within the provisions of Section 602, or that a minor committed an offense described in Section 602 within the county, and setting forth facts in support thereof. The probation officer may make any investigation he or she deems necessary to determine whether proceedings in the juvenile court shall be commenced.

(b) Except as provided in subdivision (c), if the probation officer determines that proceedings pursuant to Section 650 should be commenced to declare a person to be a ward of the juvenile court on the basis that he or she is a person described in Section 602, the probation officer may cause the affidavit to be taken to the prosecuting attorney.

(c) Notwithstanding subdivision (b), the probation officer may cause the affidavit to be taken within 48 hours to the prosecuting attorney in all of the following cases:

(1) If it appears to the probation officer that the minor has been referred to the probation officer for any violation of an offense listed in subdivision (b) of Section 707.

(2) If it appears to the probation officer that the minor is under 16 years of age at the date of the offense and that the offense constitutes a second felony referral to the probation officer.

(3) If it appears to the probation officer that the minor was 16 years of age or older at the date of the offense and that the offense constitutes a felony referral to the probation officer.

(4) If it appears to the probation officer that the minor has been referred to the probation officer for the sale or possession for sale of a controlled substance as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(5) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 11350 or 11377 of the Health and Safety Code where the violation takes place at a public or private elementary, vocational, junior high school, or high school, or a violation of Section 245.5, 626.9, or 626.10 of the Penal Code.

(6) If it appears to the probation officer that the minor was 14 years of age or older at the date of the offense and the offense for which the referral was made constitutes a violation of Section 487h of the Penal Code or Section 10851 of the Vehicle Code.

(7) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 186.22 of the Penal Code.

(8) If it appears to the probation officer that the minor has previously been placed in a program of informal probation pursuant to Section 654.

(9) If it appears to the probation officer that the minor has committed an offense in which the restitution owed to the victim exceeds one thousand dollars ($1,000). For purposes of this paragraph, the definition of "victim" in paragraph (1) of subdivision (a) of Section 729.6 and "restitution" in subdivision (d) of Section 729.6 shall apply.

Except for offenses listed in paragraph (5), the provisions of subdivision (c) shall not apply to a narcotics and drug offense set forth in Section 1000 of the Penal Code.

The prosecuting attorney shall within his or her discretionary power institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 and Section 26500 of the Government Code. However, if it appears to the prosecuting attorney that the affidavit was not properly referred, that the offense for which the minor was referred should be charged as a misdemeanor, or that the minor may benefit from a program of informal supervision, he or she shall refer the matter to the probation

officer for whatever action the probation officer may deem appropriate.

(d) In all matters where the minor is not in custody and is already a ward of the court or a probationer under Section 602, the prosecuting attorney, within five judicial days of receipt of the affidavit from the probation officer, shall institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 of this code and Section 26500 of the Government Code, unless it appears to the prosecuting attorney that the affidavit was not properly referred or that the offense for which the minor was referred requires additional substantiating information, in which case he or she shall immediately notify the probation officer of what further action he or she is taking.

(e) This section shall remain in effect only until January 1, 1997, and as of that date is repealed.

SEC. 16. Section 653.5 is added to the Welfare and Institutions Code, to read:

653.5. (a) Whenever any person applies to the probation officer to commence proceedings in the juvenile court, the application shall be in the form of an affidavit alleging that there was or is within the county, or residing therein, a minor within the provisions of Section 602, or that a minor committed an offense described in Section 602 within the county, and setting forth facts in support thereof. The probation officer may make any investigation he or she deems necessary to determine whether proceedings in the juvenile court shall be commenced.

(b) Except as provided in subdivision (c), if the probation officer determines that proceedings pursuant to Section 650 should be commenced to declare a person to be a ward of the juvenile court on the basis that he or she is a person described in Section 602, the probation officer may cause the affidavit to be taken to the prosecuting attorney.

(c) Notwithstanding the provisions of subdivision (b), the probation officer may cause the affidavit to be taken within 48 hours to the prosecuting attorney in all of the following cases:

(1) If it appears to the probation officer that the minor has been referred to the probation officer for any violation of an offense listed in subdivision (b) of Section 707.

(2) If it appears to the probation officer that the minor is under 16 years of age at the date of the offense and that the offense constitutes a second felony referral to the probation officer.

(3) If it appears to the probation officer that the minor was 16 years of age or older at the date of the offense and that the offense constitutes a felony referral to the probation officer.

(4) If it appears to the probation officer that the minor has been referred to the probation officer for the sale or possession for sale of a controlled substance as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(5) If it appears to the probation officer that the minor has been

referred to the probation officer for a violation of Section 11350 or 11377 of the Health and Safety Code where the violation takes place at a public or private elementary, vocational, junior high school, or high school, or a violation of Section 245.5, 626.9, or 626.10 of the Penal Code.

(6) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 186.22 of the Penal Code.

(7) If it appears to the probation officer that the minor has previously been placed in a program of informal probation pursuant to Section 654.

(8) If it appears to the probation officer that the minor has committed an offense in which the restitution owed to the victim exceeds one thousand dollars ($1,000). For purposes of this paragraph, the definition of "victim" in paragraph (1) of subdivision (a) of Section 729.6 and "restitution" in subdivision (d) of Section 729.6 shall apply.

Except for offenses listed in paragraph (5), the provisions of subdivision (c) shall not apply to a narcotics and drug offense set forth in Section 1000 of the Penal Code.

The prosecuting attorney shall within his or her discretionary power institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 and Section 26500 of the Government Code. However, if it appears to the prosecuting attorney that the affidavit was not properly referred, that the offense for which the minor was referred should be charged as a misdemeanor, or that the minor may benefit from a program of informal supervision, he or she shall refer the matter to the probation officer for whatever action the probation officer may deem appropriate.

(d) In all matters where the minor is not in custody and is already a ward of the court or a probationer under Section 602, the prosecuting attorney, within five judicial days of receipt of the affidavit from the probation officer, shall institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 of this code and Section 26500 of the Government Code, unless it appears to the prosecuting attorney that the affidavit was not properly referred or that the offense for which the minor was referred requires additional substantiating information, in which case he or she shall immediately notify the probation officer of what further action he or she is taking.

(e) This section shall become operative on January 1, 1997.

SEC. 17. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless

otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 18. This act is an urgency statute necessary for the immediate preservation of the public peace, 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 vehicle theft statutes with enhanced penalties which were repealed on January 1, 1993, it is necessary that this act take immediate effect.

CHAPTER 1126

An act to amend Section 13143.9 of the Government Code, and to amend Section 25509 of, and to add Sections 25503.9 and 25509.2 to, the Health and Safety Code, relating to hazardous materials.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 13143.9 of the Health and Safety Code is amended to read:

13143.9. (a) The State Fire Marshal shall, in carrying out Section 13143, prepare, adopt, and submit building standards and other fire and life safety regulations for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 establishing minimum requirements for the storage, handling, and use of hazardous materials, as defined, in Article 9 of the 1988 Uniform Fire Code, and any subsequent editions, published by the Western Fire Chiefs Association and the International Conference of Building Officials. The State Fire Marshal shall seek the advice of the Office of Emergency Services in establishing these requirements. This section does not prohibit a city, county, or district from adopting an ordinance, resolution, or regulation imposing stricter or more stringent requirements than a standard adopted pursuant to this section.

(b) A business which files the annual inventory form in compliance with Chapter 6.95 (commencing with Section 25500) of Division 20, including the addendum adopted pursuant to Section 25503.9, shall be deemed to have met the requirements of subdivision (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to this section.

(c) A business which is not required to file a hazardous materials inventory form pursuant to Section 25509 but which is required by the local fire chief to comply with subdivision (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal

pursuant to this section, shall, notwithstanding Chapter 6.95 (commencing with Section 25500) of Division 20, file the inventory form adopted pursuant to Section 25503.3 and the addendum adopted pursuant to Section 25503.9 with the local fire chief for purposes of complying with this requirement, if determined to be necessary by the fire chief.

SEC. 2. Section 25503.9 is added to the Health and Safety Code, to read:

25503.9. On or before January 1, 1995, the office shall, in consultation with the administering agencies and the State Fire Marshal, adopt by regulation, a single comprehensive addendum to the hazardous materials reporting form for businesses to submit to administering agencies for purposes of complying with subdivisions (b) and (c) of Section 13143.9 and subdivision (b) of Section 25509. The regulations shall also specify criteria for sharing data electronically. Not later than two years after the effective date of those regulations, and annually thereafter, each administering agency shall require businesses to use that addendum when complying with subdivisions (b) and (c) of Section 13143.9 and subdivision (b) of Section 25509. The addendum shall be filed with the administering agency, when required by the local fire chief.

SEC. 3. Section 25509 of the Health and Safety Code is amended to read:

25509. (a) The annual inventory form shall include, but shall not be limited to, information on all of the following which are handled in quantities equal to or greater than the quantities specified in subdivision (a) of Section 25503.5:

(1) A listing of the chemical name and common names of every hazardous substance or chemical product handled by the business.

(2) The category of waste, including the general chemical and mineral composition of the waste listed by probable maximum and minimum concentrations, of every hazardous waste handled by the business.

(3) A listing of the chemical name and common names of every other hazardous material or mixture containing a hazardous material handled by the business which is not otherwise listed pursuant to paragraph (1) or (2).

(4) The maximum amount of each hazardous material or mixture containing a hazardous material disclosed in paragraphs (1), (2), and (3) which is handled at any one time by the business over the course of the year.

(5) Sufficient information on how and where the hazardous materials disclosed in paragraphs (1), (2), and (3) are handled by the business to allow fire, safety, health, and other appropriate personnel to prepare adequate emergency responses to potential releases of the hazardous materials.

(6) The SIC Code number of the business if applicable.

(7) The name and phone number of the person representing the business and able to assist emergency personnel in the event of an

emergency involving the business during nonbusiness hours.

(b) If the local fire chief requires the business to comply with the requirements of subdivision (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9, the business shall also file the addendum required by Section 25503.9 with the administering agency.

(c) The administering agency may permit the reporting of the amount of hazardous material under this section by ranges, rather than a specific amount, as long as those ranges provide the information necessary to meet the needs of emergency rescue personnel, to determine the potential hazard from a release of the materials, and meets the purposes of this chapter.

(d) (1) Except as provided in subdivision (e), the annual inventory form required by this section shall also include all inventory information required by Section 11022 of Title 42 of the United States Code, as that section read on January 1, 1989, or as it may be subsequently amended.

(2) The office may adopt or amend existing regulations specifying the inventory information required by this subdivision.

(e) If, pursuant to federal law or regulation, as it currently exists or as it may be amended, there is a determination that the inventory information required by subdivisions (a) and (c) is substantially equivalent to the inventory information required under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Sec. 11001 et seq.), the requirements of subdivision (d) shall not apply.

SEC. 4. Section 25509.2 is added to the Health and Safety Code, to read:

25509.2. (a) The Legislature hereby finds and declares all of the following:

(1) Persons attempting to do business in this state are increasingly experiencing excessive and duplicative regulatory requirements at different levels of government.

(2) To streamline and ease the regulatory burdens of doing business in this state, compliance with the hazardous materials release response plans and inventory requirements of this chapter shall also suffice to meet the requirements of the Uniform Fire Code with regard to the requirement for a hazardous materials management plan and hazardous materials inventory statement, as set forth in Article 80 of the Uniform Fire Code and its appendices.

(3) Businesses which are required to comply with this chapter do so on one form, with one fee and one inspection. The administering agency shall forward the data collected, within 15 days of receipt and confirmation, with other local agencies in a format easily interpreted by those agencies with shared responsibilities for protection of the public health and safety and the environment.

(4) Enforcement of this chapter and the Uniform Fire Code shall be coordinated.

(b) Notwithstanding Section 13143.9, and any standards and

regulations adopted pursuant to that section, any business which files the annual inventory form in compliance with this article, including the addendum adopted pursuant to Section 25503.9, as required by the local fire chief to comply with subdivision (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9, shall be deemed to have met the requirements of subdivision (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9.

(c) Notwithstanding Section 13143.9, and any standards and regulations adopted pursuant to that section, any business which establishes and maintains a business plan for emergency response to a release or a threatened release of a hazardous material in accordance with Section 25503.5, shall be deemed to have met the requirements of subdivision (b) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9.

(d) Except for the addendum required by the local fire chief, the administering agency shall be the sole enforcement agency for purposes of determining compliance pursuant to subdivisions (b) and (c).

(e) Except as otherwise expressly provided in this section, this section does not affect or otherwise limit the authority of the local fire chief to enforce the Uniform Fire Code.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction or because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1127

An act to amend Sections 68022, 74952.7, 77528, 77548, 77549, and 77623 of the Food and Agricultural Code, relating to husbandry, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 68022 of the Food and Agricultural Code is amended to read:

68022. "Kiwifruit" means any variety of kiwifruit ("Kiwi," "Chinese Gooseberry," or species Actinidia deliciosa) produced in the state, including any kiwifruit delivered to a processor for processing into any kiwifruit product.

SEC. 2. Section 74952.7 of the Food and Agricultural Code is amended to read:

74952.7. (a) Any producer who meets any of the requirements specified by subdivision (b) may apply to the director prior to the formation of the commission, or apply to the commission after its formation, for, and, if found eligible, shall, at the discretion of the commission, receive either an exemption from, or a refund of, the assessment.

(b) A producer shall be eligible to claim an exemption from, or refund of, the assessment for winegrapes grown by the producer, with regard to which the producer does any of the following:

(1) Processes winegrapes which are grown by the producer. However, the producer shall not be eligible for an exemption or refund of assessments on winegrapes which are grown and sold, but a producer who is also a vintner, and who commercially sells less than 25 tons of winegrapes in a marketing season, is not subject to assessment.

(2) Sells to a related vintner or a related handler.

(3) Contracts or otherwise arranges with a related vintner for processing into wine, with the producer retaining ownership of the wine for sale other than in bottled form.

(4) Is a producer who is also a vintner and who contracts or otherwise arranges with a nonrelated vintner for processing his or her winegrapes into wine and retains ownership of the wine for sale other than in bottled form.

(c) For the purpose of this section, an agricultural nonprofit cooperative association is not a "related vintner" or a "related handler." A vintner or handler is a "related vintner" or "related handler" if any one of the following relationships exists:

(1) The producer has an ownership interest in the vintner or handler processing the winegrapes. For purposes of this paragraph, the term "ownership interest" does not include an interest that is

limited to ownership of shares of stock in a vintner or handler that is a publicly traded stock corporation, unless the ownership interest includes a right to management or control in the corporation.

(2) The vintner or handler processing the winegrapes has an ownership interest in the producer.

(3) The producer, or any person controlling the producer, if the producer is not a natural person, is a member of the immediate family of the vintner or handler processing the winegrapes, or of any person controlling the vintner or handler, if the vintner or handler is not a natural person. For the purpose of this paragraph, "member of the immediate family" means parents, spouses, and children.

(d) In order to be eligible for the exemption or refund, the producer shall file a claim with the director prior to formation of the commission and with the commission after its formation on a form prescribed by the commission attesting to the facts establishing the producer's right to the exemption or refund. The director or the commission shall then determine whether the claim should be granted.

(e) The commission shall serve written notice on the claimant of its decision within 30 days of receipt of the claim. All approved claims shall be subject to verification through an independent audit of the claimant and the related vintner's or handler's business records by the commission or its duly authorized agent or, in the case of a local commission, by the director or his or her duly authorized agent. The local commission shall not serve as the director's duly authorized agent for purposes of auditing business records.

(f) Every producer receiving an exemption or refund shall, in addition to the requirements of Section 74954, maintain sales invoices, and all other business documents specified by the commission as necessary to verify the claim. The records shall be preserved 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 or, in the case of a local commission, by the director or his or her duly authorized agent. The local commission shall not serve as the director's duly authorized agent for purposes of records inspection.

(g) No claim of exemption or refund shall be approved by the commission after two years from the date the assessment was due. Failure to file a claim of exemption or refund within that two-year period constitutes a waiver of all claims or demands for an exemption or refund against the commission.

SEC. 3. Section 77528 of the Food and Agricultural Code is amended to read:

77528. (a) "Producer" means any person who owns timber in California immediately prior to felling, or the first person who acquires either the legal title or beneficial title to timber after it has been felled from land owned in California by a federal agency, or any other person, agency, or entity exempt from property taxation under federal or state law.

"Producer" includes any person who owns or acquires legal title or beneficial title to downed timber in this state and also includes the seller of timber located on land in the state owned by that seller if the timber sales agreement, contract, or other document provides for the payment of the purchase price on the basis of actual timber volume scaled and does not contain a passage of title clause.

(b) For purposes of this chapter, a person in California that owns, controls, or is affiliated with any other person engaged in the selling or acquiring of timber in California in any marketing year shall be considered to be the producer of all timber sold or acquired by that person.

"Affiliate" or "affiliated with" means a person who directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

"Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of any person.

(c) "Producer" does not include any person who sells or acquires in any marketing year less than 5,000,000 board feet net Scribner Decimal C log rule, or the equivalent thereof as determined by the commission.

SEC. 4. Section 77548 of the Food and Agricultural Code is amended to read:

77548. (a) Any producer member and his or her alternate member shall be a producer or an authorized representative of a producer. Producer members and their alternate members shall maintain their qualifications pursuant to Section 77528 during their term of office.

(b) Not more than one producer 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 of the commission from the same corporation, firm, partnership, association, or business organization, shall serve as an alternate to the member.

(c) 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 forest products industry.

(d) The industry 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 industry member or his or her alternate member may have a financial interest in the forest products industry. However, the industry member or his or her alternate member shall not be a producer as defined in subdivision (a) of Section 77528, or a person who sells or acquires timber but who is exempt from the

meaning of "producer" pursuant to subdivision (c) of that section.

SEC. 5. Section 77549 of the Food and Agricultural Code is amended to read:

77549. The term of office of each member, except the ex officio members, shall be three years, commencing with the beginning of the following marketing year and until a qualified successor is elected.

However, with respect to the first producer members of the commission, one-third of each category specified in Section 77541 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.

No member may serve more than three consecutive three-year terms.

SEC. 6. Section 77623 of the Food and Agricultural Code is amended to read:

77623. Every producer and every person described in subdivision (c) of Section 77528 shall keep a complete and accurate record of all transactions involving the sale or purchase of timber. The records shall be in simple form and contain information as the commission shall prescribe. The records shall be retained by the producer or person 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.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that eligible producers are properly defined and identified prior to the collection of assessments, it is necessary that this act take effect immediately.

CHAPTER 1128

An act to add Section 76330.1 to the Education Code, relating to community colleges.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 76330.1 is added to the Education Code, to read:

76330.1. The governing board of a community college district shall exempt from subdivision (a) of Section 76330, and charge the fees specified in Section 76300 to, any student who is employed by, or who is a volunteer of, a public agency that provides police, fire protection, corrections, probation, emergency medical services, or emergency medical dispatch services, for any course taken for the purpose of fulfilling a state-mandated training requirement in the curriculum identified and approved by the Commission on Peace Officer Standards and Training, the Board of Corrections, the Board of Fire Services, the Emergency Medical Services Authority, or the Board of Corrections, if the course cannot be made available by the district at no charge on a noncredit basis.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 3. This act shall not become operative unless Assembly Bill 39 is chaptered during the 1993 portion of the 1993–94 Regular Session.

CHAPTER 1129

An act to add Division 32 (commencing with Section 60000) to the Public Resources Code, relating to solid waste.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Division 32 (commencing with Section 60000) is added to the Public Resources Code, to read:

DIVISION 32. SACRAMENTO REGIONAL COUNTY SOLID WASTE MANAGEMENT DISTRICT ACT

CHAPTER 1. GENERAL PROVISIONS

60000. This division shall be known, and may be cited, as the Sacramento Regional County Solid Waste Management District Act.

60001. The Legislature hereby finds and declares as follows:

(a) The California Integrated Waste Management Act of 1989 (Division 30 (commencing with Section 40000)) requires the preparation of countywide or regional agency integrated waste management plans that include, among other elements, source reduction and recycling elements and household hazardous waste elements.

(b) The City of Sacramento and the County of Sacramento have found that it would be to their mutual advantage and benefit to work together and share costs in the planning, implementation, and enforcement of solid waste management programs, including source reduction and recycling, household hazardous waste management, and public education.

(c) The purpose of this division is to establish a district for the purpose of:

(1) Providing a coordinated solid waste management system for the county and cities within the county, including efficient solid waste program and solid waste facility planning, and the development of comprehensive and cost-effective solid waste management services.

(2) Demonstrating a commitment to, and facilitating the development of, the most efficient and cost-effective strategies for achieving source reduction and recycling goals, and establishing markets for recycled products.

60002. "Board of supervisors" means the Sacramento County Board of Supervisors.

60003. "City" means any city within Sacramento County.

60004. "County" means the County of Sacramento.

60005. "District" means the Sacramento Regional County Solid

Waste Management District.

60006. "Governing board" means the governing body of the district.

60007. "State act" means the California Integrated Waste Management Act of 1989 (Division 30 (commencing with Section 40000).

CHAPTER 2. CREATION OF THE SACRAMENTO REGIONAL COUNTY SOLID WASTE MANAGEMENT DISTRICT

60020. (a) The Sacramento Regional County Solid Waste Management District shall be formed if both of the following conditions are met by July 1, 1994:

(1) The county and the city have adopted a resolution stating their intent that their territory be included within the district's jurisdiction.

(2) Formation of the district has been approved by the local agency formation commission in accordance with the Cortese-Knox Local Government Reorganization Act of 1985 (Division 1 (commencing with Section 56000) of Title 6 of the Government Code) following the submittal of a resolution of application by the county and the city.

(b) Any other city within the county may subsequently have its territory included in the district if both of the following condition are met:

(1) The city submits a resolution to the governing board of the district stating its intent that its territory be included within the district's jurisdiction.

(2) The governing board of the district approves inclusion of the city within the district by a majority vote.

(c) This division shall become inoperative on July 1, 1994, if the district is not formed in accordance with subdivision (a) by that date.

CHAPTER 3. ADMINISTRATION

60025. The initial governing board shall consist of eight members, as follows:

(a) Three members of the Sacramento City Council, appointed by the Mayor of Sacramento.

(b) Five members of the board of supervisors.

60026. (a) The membership of the governing board shall be adjusted to correspond to changes in population. Beginning in 1995, and once every five years thereafter, the composition of the governing board shall be restructured in accordance with changes in population. Each city that adopts a resolution stating its intent to participate in the district shall have one representative member for every 130,000 in population. If the population increases so that the number of representatives of the unincorporated areas of the county, based on one representative for every 130,000 in population, is more

than five, the threshold for increasing membership according to population shall be increased to maintain a representation based on five members.

(b) If existing cities in the county, or cities created subsequent to the effective date of this division, petition the governing board to join the district and, if the governing board of the district consents, a city may have a representative on the governing board if the population of the petitioning city is greater that 65,000.

(c) (1) Each governing board member appointed pursuant to subdivision (a) of Section 60025 shall select an alternate member of the governing board, who shall be a member of the respective city council, appointed by the Mayor of Sacramento, and who may vote in the absence or disqualification of the regular member.

(2) Each governing board member appointed pursuant to subdivision (b) of Section 60025 shall select an alternate member of the governing board, who shall be an elected county officer, and who may vote in the absence or disqualification of the regular member.

(d) The term of office of each member of the governing board shall be coextensive with the term of the elective office which the member holds.

(e) The governing board shall annually select a chairperson from its membership, with the chairperson alternately selected from the city and the county.

(f) Each governing board member shall have one vote, except in case of a tie vote, when the chairperson of the governing board shall have two votes. A majority vote of those present and voting shall be required for any action of the governing board.

(g) A majority of the members of the governing board shall constitute a quorum for the transaction of business, except that less than a quorum may vote to adjourn a meeting.

60028. (a) The controller of the district shall be the auditor-controller of the county; the clerk of the district shall be the clerk of the the board of supervisors; the legal counsel of the district shall be the county counsel of the county; and the treasurer of the district shall be the treasurer-tax collector-county clerk-recorder of the county.

(b) The controller of the district shall cause an independent audit of the district's finances to be made by a certified public accountant, or public accountant, in compliance with Section 6505 of the Government Code.

(c) The county shall be the administering agency for the district.

(d) The county shall designate a local enforcement agency or shall request the California Integrated Waste Management Board to act as the enforcement agency pursuant to the state act. District staff shall not act as the local enforcement agency for facilities and programs that are operated or controlled by the district.

60029. Within 90 days after the first meeting of the governing board, and thereafter prior to the commencement of each fiscal year, the governing board shall adopt a budget for the district for the

ensuing fiscal year.

CHAPTER 4. POWERS AND FUNCTIONS

60030. (a) Any merger of county and city solid waste management operations pursuant to this division shall be subject to the provisions contained in that certain agreement between the city, county, and Stationary Engineers Local 39 International Union of Operating Engineers, AFL-CIO, dated December 11, 1992.

(b) Unless otherwise provided in the agreement specified in subdivision (a), all officers and employees of the city and the county who, as of the date of formation of the district, have solid waste management responsibilities shall be ex officio officers and employees, respectively, of the district, shall, unless otherwise provided by the governing board, perform, without additional compensation, for the district those duties that they performed for the city or the county, and, to the extent appropriate, the provisions of Sections 40121, 40122, 40123, and 40125 of the Health and Safety Code, with regard to the officers and employees of a county air pollution control district, shall apply to the officers and employees of the district.

(c) The Director of Public Works of Sacramento County shall be the chief administrative officer of the district and shall be responsible for the proper and efficient administration of the district. In addition to the other powers and duties delegated by the governing board, the chief administrative officer shall have the power to do all of the following:

(1) Under the policy direction of the governing board, to plan, organize, and direct all district activities.

(2) To authorize expenditures within the designations and limitations of the approved budget.

(3) To make recommendations to and requests of the governing board concerning all of the matters that are to be performed by the governing board.

(4) To have charge of, handle, or have access to any property of the district.

60031. The district shall provide for regular meetings and special meetings in accordance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

60032. (a) The powers and duties of the district shall be the same as the powers granted to, and the duties imposed upon, cities and counties pursuant to the state act and Division 31 (commencing with Section 50000).

(b) The district is a regional agency for purposes of, and, as such, is subject to, the California Integrated Waste Management Act of 1989 (Division 30 (commencing with Section 40000)), including, but not limited to, the conditions set forth in Article 3 (commencing with Section 40970) of Chapter 1 of Part 2 of Division 30.

(c) No provision of this division shall be construed to grant any powers to, or impose duties upon, the district that are not otherwise granted or imposed by, or that in any way conflict with, the California Integrated Waste Management Act of 1989 (Division 30 (commencing with Section 40000)).

(d) The district shall have the authority to:

(1) Levy service charges pursuant to Section 25827 of the Government Code, collect delinquent charges pursuant to Section 25828 of the Government Code, and levy fees pursuant to Section 25830 of the Government Code for the collection and disposal of solid waste.

(2) Acquire and dispose of real property pursuant to Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure.

(3) Make and enter into contracts and franchises; issue permits; employ agents and employees; lease, acquire, construct, provide for maintenance and operation, or maintain and operate, any building, works or improvements; acquire, hold, or dispose of property wherever located; incur debts, liabilities or obligations; receive gifts, contributions, and donations of property, funds, services, and other forms of assistance from persons, firms, corporations, and any governmental entity; sue and be sued in its own name; and sell assets and accrue revenues.

(4) Issue, or cause to be issued, bonded and other indebtedness, and pledge any property or revenue as security to the extent permitted under Article 2 (commencing with Section 6540) of Chapter 5 of Division 7 of Title 1 of the Government Code or otherwise, including, but not limited to, bonds or other evidences of indebtedness of a nonprofit corporation issued on behalf of the district or any of its parties.

(5) Administer district solid waste programs and activities and supervise the city and county employees who manage those programs and activities.

(6) Create zones within its jurisdiction in which it may provide differing levels of service if the governing board determines that the creation of such a zone is in the best interest of the district and its residents.

60033. Notwithstanding any other provision of law:

(a) Any city within which the district provides any solid waste handling services may impose a fee upon the district which may not exceed the fee that the city could have charged a private franchisee providing the same services, provided, however, that the fee may not, in any case, exceed 10 percent of the total revenue which the district derives from its operations within the city.

(b) The county, to the extent that the district provides any solid waste handling services within the unincorporated territory of the county, may impose a fee upon the district which may not exceed the fee that the county could have charged a private franchisee providing the same services, provided, however, that the fee may

not, in any case, exceed 10 percent of the total revenue which the district derives from its operations within the unincorporated territory.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative district 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 1130

An act to amend Sections 21003, 21080.1, 21080.3, 21080.7, 21081.6, 21087, 21090, 21091, 21092, 21092.3, 21100, 21151.5, 21152, 21167.1, 21167.4, 21167.6, and 21167.8 of, to add Section 21064.5 to, to add Chapter 4.5 (commencing with Section 21156) to Division 13 of, and to repeal Sections 21087.5, 21155, and 21168.3 of, the Public Resources Code, relating to environmental quality.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. This act shall be known, and may be cited as, the Dills, Allen, Sher California Environmental Quality Act Revision Act of 1993.

SEC. 2. Section 21003 of the Public Resources Code is amended to read:

21003. The Legislature further finds and declares that it is the policy of the state that:

(a) Local agencies integrate the requirements of this division with planning and environmental review procedures otherwise required by law or by local practice so that all those procedures, to the maximum feasible extent, run concurrently, rather than consecutively.

(b) Documents prepared pursuant to this division be organized and written in a manner that will be meaningful and useful to decisionmakers and to the public.

(c) Environmental impact reports omit unnecessary descriptions of projects and emphasize feasible mitigation measures and feasible alternatives to projects.

(d) Information developed in individual environmental impact reports be incorporated into a data base which can be used to reduce delay and duplication in preparation of subsequent environmental impact reports.

(e) Information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations.

(f) All persons and public agencies involved in the environmental review process be responsible for carrying out the process in the most efficient, expeditious manner in order to conserve the available financial, governmental, physical, and social resources with the objective that those resources may be better applied toward the mitigation of actual significant effects on the environment.

SEC. 3. Section 21064.5 is added to the Public Resources Code, to read:

21064.5. "Mitigated negative declaration" means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration is released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.

SEC. 4. Section 21080.1 of the Public Resources Code is amended to read:

21080.1. (a) The lead agency shall have the responsibility for determining whether an environmental impact report or a negative declaration shall be required for any project which is subject to this division. That determination shall be final and conclusive on all persons, including responsible agencies, unless challenged, as provided in Section 21167.

(b) In the case of a project described in subdivision (c) of Section 21065, the lead agency shall, upon the request of a potential applicant, provide for consultation prior to the filing of the application regarding the range of actions, potential alternatives, mitigation measures, and any potential and significant effects on the environment of the project.

SEC. 5. Section 21080.3 of the Public Resources Code is amended to read:

21080.3. (a) Prior to determining whether a negative declaration or environmental impact report is required for a project, the lead agency shall consult with all responsible agencies and with any other public agency which has jurisdiction by law over natural resources affected by the project which are held in trust for the people of the State of California. Prior to that required consultation, the lead agency may informally contact any such agency.

(b) In order to expedite the requirements of subdivision (a), the Office of Planning and Research, upon request of a lead agency, shall assist the lead agency in determining the various responsible agencies for a proposed project. In the case of a project described in

subdivision (c) of Section 21065, the request may also be made by the project applicant.

SEC. 6. Section 21080.7 of the Public Resources Code is amended to read:

21080.7. (a) No environmental impact report or negative declaration is required for any project involving the construction of housing or neighborhood commercial facilities in an urbanized area if the lead agency does all of the following:

(1) Finds, after giving notice pursuant to subdivision (c) or (d) of Section 21092 and following the procedure prescribed by law or regulation which would be necessary to make a determination pursuant to Section 21080.1, all of the following:

(A) The project is consistent with a comprehensive regulatory document which has been adopted pursuant to Article 8 (commencing with Section 65450) of Chapter 3 of Title 7 of the Government Code or, in the coastal zone, a local coastal program certified pursuant to Article 2 (commencing with Section 30510) of Chapter 6 of Division 20.

(B) For purposes of this section, the plan or program was adopted pursuant to the procedure established by Article 8 (commencing with Section 65450) of Chapter 3 of Title 7 of the Government Code not more than five years prior to the finding made pursuant to this section.

(C) The plan or program has been the subject of an environmental impact report.

(D) The environmental impact report is sufficiently detailed so that the significant effects on the environment of the project and measures necessary to mitigate or avoid those effects can be determined, including any significant physical effects on existing structures and neighborhoods of historical or aesthetic significance that exist in the area covered by the plan or program and measures necessary to mitigate or avoid those effects.

(2) Makes one or more of the findings as required pursuant to Section 21081.

(3) Files a notice of the decision on the proposed activity with the county clerk. Those notices shall be available for public inspection, and a list of the notices shall be posted on a weekly basis in the office of the county clerk. Each list shall remain posted for a period of 30 days.

(b) As used in this section:

(1) "Neighborhood commercial facilities" means those commercial facilities which are an integral part of a project involving the construction of housing and which will serve the residents of the housing.

(2) "Urbanized area" means a central city or cities and surrounding closely settled territory, as defined by the United States Department of Commerce Bureau of the Census in the Federal Register, Volume 39, Number 85, for Wednesday, May 1, 1974, at pages 15202 and 15203, and as periodically updated.

SEC. 7. Section 21081.6 of the Public Resources Code is amended to read:

21081.6. When making the findings required by subdivision (a) of Section 21081 or when adopting a negative declaration pursuant to paragraph (2) of subdivision (c) of Section 21080, the following requirements shall apply:

(a) The public agency shall adopt a reporting or monitoring program for the changes to the project which it has adopted or made a condition of project approval in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of an agency having jurisdiction by law over natural resources affected by the project, that agency shall, if so requested by the lead or responsible agency, prepare and submit a proposed reporting or monitoring program.

(b) If there is a project for which mitigation is adopted, a public agency shall comply with subdivision (a) by, among other things, adopting mitigation measures as conditions of project approval. Those conditions of project approval may be set forth in referenced documents which address required mitigation measures.

(c) Prior to the close of the public review period for a draft environmental impact report or mitigated negative declaration, a responsible agency, or a public agency having jurisdiction over natural resources affected by the project, shall either submit to the lead agency complete and detailed performance objectives for mitigation measures which would address the significant effects on the environment identified by the responsible agency or agency having jurisdiction over natural resources affected by the project, or refer the lead agency to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to a lead agency by a responsible agency or an agency having jurisdiction over natural resources affected by the project shall be limited to measures which mitigate impacts to resources which are subject to the statutory authority of, and definitions applicable to, that agency. Compliance or noncompliance by a responsible agency or agency having jurisdiction over natural resources affected by a project with that requirement shall not limit the authority of the responsible agency or agency having jurisdiction over natural resources affected by a project, or the authority of the lead agency, to approve, condition, or deny projects as provided by this division or any other provision of law.

(d) The lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

SEC. 8. Section 21087 of the Public Resources Code is amended to read:

21087. (a) The Office of Planning and Research shall, at least once every two years, review the guidelines adopted pursuant to

Section 21083 and shall recommend proposed changes or amendments to the Secretary of the Resources Agency. The Secretary of the Resources Agency shall certify and adopt guidelines, and any amendments thereto, at least once every two years, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, which shall become effective upon the filing thereof. However, guidelines shall not be adopted or amended without compliance with Sections 11346.4, 11346.5, and 11346.8 of the Government Code.

(b) On or before July 1, 1995, the Office of Planning and Research shall recommend proposed changes and the Secretary of the Resources Agency shall certify and adopt revisions to the guidelines pursuant to Section 21083 to reflect the changes to this division enacted during 1993.

SEC. 9. Section 21087.5 of the Public Resources Code is repealed.

SEC. 10. Section 21090 of the Public Resources Code is amended to read:

21090. For all purposes of this division, all public and private activities or undertakings pursuant to, or in furtherance of, a redevelopment plan shall be deemed to be a single project. However, further environmental review of any public or private activity or undertaking pursuant to, or in furtherance of, a redevelopment plan shall be conducted if any of the events specified in Section 21166 have occurred.

SEC. 11. Section 21091 of the Public Resources Code is amended to read:

21091. (a) The public review period for a draft environmental impact report shall not be less than 30 days. If the draft environmental impact report is submitted to the State Clearinghouse for review, the review period shall be at least 45 days.

(b) The public review period for a proposed negative declaration shall not be less than 20 days. If the proposed negative declaration is submitted to the State Clearinghouse for review, the review period shall be at least 30 days.

(c) Notwithstanding subdivisions (a) and (b), if a draft environmental impact report or a proposed negative declaration is submitted to the State Clearinghouse for review and the period of review by the State Clearinghouse is longer than the public review period established pursuant to subdivision (a) or (b), whichever is applicable, the public review period shall be at least as long as the period of review by the State Clearinghouse.

(d) (1) The lead agency shall consider any comments it receives on a draft environmental impact report or on a proposed negative declaration, which are received within the public review period.

(2) (A) With respect to the consideration of comments received on a draft environmental impact report, the lead agency shall evaluate any comments on environmental issues that are received from persons who have reviewed the draft and shall prepare a written response pursuant to subparagraph (B). The lead agency

may also respond to comments that are received after the close of the public review period.

(B) The written response shall describe the disposition of any significant environmental issue that is raised by commenters. The responses shall be prepared consistent with Section 15088 of Title 14 of the California Code of Regulations, as those regulations existed on June 1, 1993.

(e) (1) Criteria for shorter review periods by the State Clearinghouse for documents which must be submitted to the State Clearinghouse shall be set forth in the written guidelines issued by the Office of Planning and Research and made available to the public.

(2) Those shortened review periods shall not be less than 30 days for a draft environmental impact report and 20 days for a negative declaration.

(3) Any request for a shortened review period shall only be made in writing by the decisionmaking body of the lead agency to the Office of Planning and Research. The decisionmaking body may designate by resolution or ordinance a person authorized to request a shortened review period. Any designated person shall notify the decisionmaking body of this request.

(4) Any request approved by the State Clearinghouse shall be consistent with the criteria set forth in the written guidelines of the Office of Planning and Research.

(5) A shortened review period shall not be approved by the Office of Planning and Research for any proposed project of statewide, regional, or areawide environmental significance as determined pursuant to Section 21083.

(6) Any approval of a shortened review period shall be given prior to, and reflected in, the public notice required pursuant to Section 21092.

(f) Prior to carrying out or approving a project for which a negative declaration has been adopted, the lead agency shall consider the negative declaration together with any comments that were received and considered pursuant to paragraph (1) of subdivision (d).

SEC. 12. Section 21092 of the Public Resources Code is amended to read:

21092. (a) Any lead agency which is preparing an environmental impact report or a negative declaration or making a determination pursuant to Section 21157 shall provide public notice of that fact within a reasonable period of time prior to certification of the environmental impact report or adoption of the negative declaration.

(b) (1) The notice shall specify the period during which comments will be received on the draft environmental report or negative declaration, and shall include the date, time, and place of any public meetings or hearings on the proposed project, a brief description of the proposed project and its location, the significant

effects on the environment, if any, anticipated as a result of the project, and the address where copies of the draft environmental impact report or negative declaration, and all documents referenced in the draft environmental impact report or negative declaration, are available for review.

(2) This section shall not be construed in any manner which results in the invalidation of an action because of the alleged inadequacy of the notice content, provided that there has been substantial compliance with the notice content requirements of this section.

(3) The notice required by this section shall be given to the last known name and address of all organizations and individuals who have previously requested notice and shall also be given by at least one of the following procedures:

(A) Publication, no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(B) Posting of notice by the lead agency on- and off-site in the area where the project is to be located.

(C) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

(c) For any project involving the burning of municipal wastes, hazardous waste, or refuse-derived fuel, including, but not limited to, tires, meeting the qualifications of subdivision (d), notice shall be given to all organizations and individuals who have previously requested notice and shall also be given by at least the procedures specified in subparagraphs (A), (B), and (C) of paragraph (3) of subdivision (b). In addition, notification shall be given by direct mailing to the owners and occupants of property within one-fourth of a mile of any parcel or parcels on which is located a project subject to this subdivision. This subdivision does not apply to any project for which notice has already been provided as of July 14, 1989, in compliance with this section as it existed prior to July 14, 1989.

(d) The notice requirements of subdivision (c) apply to both of the following:

(1) The construction of a new facility.

(2) The expansion of an existing facility which burns hazardous waste which would increase its permitted capacity by more than 10 percent. For purposes of this paragraph, the amount of expansion of an existing facility shall be calculated by comparing the proposed facility capacity with whichever of the following is applicable:

(A) The facility capacity approved in the facility's hazardous waste facilities permit pursuant to Section 25200 of the Health and Safety Code or its grant of interim status pursuant to Section 25200.5 of the Health and Safety Code, or the facility capacity authorized in any state or local agency permit allowing the construction or

operation of a facility for the burning of hazardous waste, granted before January 1, 1990.

(B) The facility capacity authorized in the facility's original hazardous waste facilities permit, grant of interim status, or any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted on or after January 1, 1990.

(e) The notice requirements specified in subdivision (b) or (c) shall not preclude a public agency from providing additional notice by other means if the agency so desires, or from providing the public notice required by this section at the same time and in the same manner as public notice otherwise required by law for the project.

SEC. 13. Section 21092.3 of the Public Resources Code is amended to read:

21092.3. The notices required pursuant to Sections 21080.4 and 21092 for an environmental impact report shall be posted in the office of the county clerk of each county in which the project will be located and shall remain posted for a period of 30 days. The notice required pursuant to Section 21092 for a negative declaration shall be so posted for a period of 20 days, unless otherwise required by law to be posted for 30 days. The county clerk shall post the notices within 24 hours of receipt.

SEC. 14. Section 21100 of the Public Resources Code is amended to read:

21100. (a) All state agencies, boards, and commissions shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project which they propose to carry out or approve that may have a significant effect on the environment. Whenever feasible, a standard format shall be used for environmental impact reports. The environment impact report shall include a detailed statement setting forth the following:

(1) The significant effects on the environment of the proposed project.

(2) Any significant effects on the environment which cannot be avoided if the project is implemented.

(3) Any significant effects on the environment which would be irreversible if the project is implemented.

(4) Any growth-inducing impacts of the project.

(5) Mitigation measures proposed to minimize the significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.

(6) Alternatives to the proposed project.

(7) The relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity.

(b) The report shall also contain a statement briefly indicating the reasons for determining that various effects on the environment of

a project are not significant and consequently have not been discussed in detail in the environmental impact report.

(c) For purposes of this section, any significant effect on the environment shall be limited to substantial, or potentially substantial, adverse changes in physical conditions which exist within the area as defined in Section 21060.5.

(d) Previously approved land use documents, including, but not limited to, general plans, specific plans, and local coastal plans, may be used in cumulative impact analysis. The cumulative impact analysis for an individual project shall not be required to consider a project for which information first becomes available after completion of the draft environmental impact report and could not otherwise have been reasonably anticipated, if the environmental impact report is certified within 150 days of the close of the public comment period.

SEC. 15. Section 21151.5 of the Public Resources Code is amended to read:

21151.5. (a) Each local agency shall establish, by ordinance or resolution, time limits, not to exceed one year for completing and certifying environmental impact reports, and 105 days for completing negative declarations, for projects described in subdivision (c) of Section 21065. These time limits shall apply only to those circumstances in which the local agency is the lead agency for a project. These ordinances or resolutions may establish different time limits for different types or classes of projects and different types of environmental impact reports, but all limits shall be measured from the date on which an application requesting approval of the project is received and accepted as complete by the local agency. No application for a project may be deemed incomplete for lack of a waiver of time periods prescribed by local ordinance or resolution.

(b) The ordinances or resolutions required by this section may provide for a reasonable extension of the time period in the event that compelling circumstances justify additional time and the project applicant consents thereto.

(c) If a draft environmental impact report, environmental impact report, focused environmental impact report, or negative declaration is prepared under a contract to a public agency, the contract shall be executed within 45 days from the date on which an application requesting approval of the project is received and accepted as complete by the local agency.

SEC. 16. Section 21152 of the Public Resources Code is amended to read:

21152. (a) Whenever a local lead agency approves or determines to carry out a project which is subject to this division, it shall file notice of the approval or the determination within five working days after the approval or determination becomes final, with the county clerk of each county in which the project will be located. The notice shall indicate the determination of the local agency whether the

project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to this division. The notice shall also include certification that the final environmental impact report, if one was prepared, together with comments and responses, is available to the general public.

(b) Whenever a local lead agency determines that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172, and it approves or determines to carry out the project, it, or the person specified in subdivision (b) or (c) of Section 21065, may file a notice of the determination with the county clerk of each county in which the project will be located. Any notice filed pursuant to this subdivision by a person specified in subdivision (b) or (c) of Section 21065 shall have a certificate of determination attached to it issued by the local lead agency responsible for making the determination that the project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172. The certificate of determination may be in the form of a certified copy of an existing document or record of the local lead agency.

(c) All notices filed pursuant to this section shall be available for public inspection, and shall be posted within 24 hours of receipt in the office of the county clerk. Each notice shall remain posted for a period of 30 days. Thereafter, the clerk shall return the notice to the local lead agency with a notation of the period it was posted. The local lead agency shall retain the notice for not less than nine months.

SEC. 17. Section 21155 of the Public Resources Code is repealed.

SEC. 18. Chapter 4.5 (commencing with Section 21156) is added to Division 13 of the Public Resources Code, to read:

CHAPTER 4.5. STREAMLINED ENVIRONMENTAL REVIEW

Article 1. Findings

21156. It is the intent of the Legislature in enacting this chapter that a master environmental impact report shall evaluate the cumulative impacts, growth inducing impacts, and irreversible significant effects on the environment of subsequent projects to the greatest extent feasible. The Legislature further intends that the environmental review of subsequent projects be substantially reduced to the extent that the project impacts have been reviewed and appropriate mitigation measures are set forth in a certified master environmental impact report.

Article 2. Master Environmental Impact Report

21157. (a) A master environmental impact report may be prepared for any one of the following projects:

(1) A general plan, element, general plan amendment, or specific

plan.

(2) A project that consists of smaller individual projects which will be carried out in phases.

(3) A rule or regulation which will be implemented by subsequent projects.

(4) Projects to be carried out pursuant to a development agreement.

(5) Public and private projects pursuant to, or in furtherance of, a redevelopment plan.

(6) A state highway project or mass transit project which will be subject to multiple stages of review or approval.

(b) When a lead agency prepares a master environmental impact report, the document shall include all of the following:

(1) A detailed statement as required by Section 21100.

(2) A description of anticipated subsequent projects that would be within the scope of the master environmental impact report, that contains sufficient information with regard to the kind, size, intensity, and location of the subsequent projects, including, but not limited to, all of the following:

(A) The specific type of project anticipated to be undertaken.

(B) The maximum and minimum intensity of any anticipated subsequent project, such as the number of residences in a residential development, and, with regard to a public works facility, its anticipated capacity and service area.

(C) The anticipated location and alternative locations for any development projects.

(D) A capital outlay or capital improvement program, or other scheduling or implementing device that governs the submission and approval of subsequent projects.

(3) A description of potential impacts of anticipated subsequent projects for which there is not sufficient information reasonably available to support a full assessment of potential impacts in the master environmental impact report. This description shall not be construed as a limitation on the impacts which may be considered in a focused environmental impact report.

(c) Lead agencies may develop and implement a fee program in accordance with applicable provisions of law to generate the revenue necessary to prepare a master environmental impact report.

21157.1. The preparation and certification of a master environmental impact report, if prepared and certified consistent with this division, may allow for the limited review of subsequent projects that were described in the master environmental impact report as being within the scope of the report, in accordance with the following requirements:

(a) The lead agency for a subsequent project shall be the lead agency or any responsible agency identified in the master environmental impact report.

(b) The lead agency shall prepare an initial study on any proposed

subsequent project. This initial study shall analyze whether the subsequent project may cause any significant effect on the environment that was not examined in the master environmental impact report and whether the subsequent project was described in the master environmental impact report as being within the scope of the report.

(c) If the lead agency determines that a proposed subsequent project will have no additional significant effect on the environment, as defined in subdivision (d) of Section 21158, that was not identified in the master environmental impact report and that no new or additional mitigation measures or alternatives may be required, the lead agency shall make a written finding based upon the information contained in the initial study that the subsequent project is within the scope of the project covered by the master environmental impact report. No new environmental document nor findings pursuant to Section 21081 shall be required by this division. Prior to approving or carrying out the proposed subsequent project, the lead agency shall provide notice of this fact pursuant to Section 21092 and incorporate all feasible mitigation measures or feasible alternatives set forth in the master environmental impact report which are appropriate to the project. Whenever a lead agency approves or determines to carry out any subsequent project pursuant to this section, it shall file a notice pursuant to Section 21108 or 21152.

(d) Where a lead agency cannot make the findings required in subdivision (c), the lead agency shall prepare, pursuant to Section 21157.7, either a mitigated negative declaration or environmental impact report.

21157.5. (a) A proposed mitigated negative declaration shall be prepared for any proposed subsequent project if both of the following occur:

(1) An initial study has identified potentially new or additional significant effects on the environment that were not analyzed in the master environmental impact report.

(2) Feasible mitigation measures or alternatives will be incorporated to revise the proposed subsequent project, before the negative declaration is released for public review, in order to avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment will occur.

(b) If there is substantial evidence in light of the whole record before the lead agency that the proposed subsequent project may have a significant effect on the environment and a mitigated negative declaration is not prepared, the lead agency shall prepare an environmental impact report or a focused environmental impact report pursuant to Section 21158.

21157.6. The master environmental impact report shall not be used for the purposes of this chapter if the certification occurred more than five years prior to the filing of an application for a subsequent project unless the lead agency reviews the adequacy of the master environmental impact report and does either of the

following:

(a) Finds that no substantial changes have occurred with respect to the circumstances under which the master environmental impact report was certified or that no new information, which was not known and could not have been known at the time that the master environmental impact report was certified as complete, has become available.

(b) Certifies a subsequent or supplemental environmental impact report which has been either incorporated into the previously certified master environmental impact or references any deletions, additions, or any other modifications to the previously certified environmental impact report.

21157.7. If a later approved project, which was not identified by the lead agency in a certified master environmental impact report as an anticipated subsequent project and was not analyzed in the master environmental impact report's cumulative impacts analysis, makes substantial changes with respect to the circumstances under which the master environmental impact report was certified or provides new information, which was not known and could not have been known at the time that the master environmental impact report was certified, the lead agency shall do one of the following:

(a) Consistent with the requirements of Section 21157.6, prepare a subsequent or supplemental environmental impact report that updates or revises the certified master environmental impact report to include a description of any additional anticipated subsequent projects as being within the scope of the report.

(b) If any new significant effect on the environment of a subsequent project that is described in the certified master environmental impact report as being within the scope of the report can be avoided or mitigated to a point where no significant effect on the environment of a subsequent project that is described in the certified master environmental impact report as being within the scope of the report will occur and no project specific effects mandate the preparation of a focused environmental impact report, prepare a mitigated negative declaration consistent with Section 21157.5 for the subsequent project.

(c) Prepare a focused environmental impact report consistent with Section 21158 for all subsequent projects described in the certified master environmental impact report as being within the scope of the report.

Article 3. Focused Environmental Impact Report

21158. (a) A focused environmental impact report is an environmental impact report on a subsequent project identified in a master environmental impact report. A focused environmental impact report may be utilized only if the lead agency finds that the analysis in the master environmental impact report of cumulative impacts, growth inducing impacts, and irreversible significant effects

on the environment is adequate for the subsequent project. The focused environmental impact report shall incorporate, by reference, the master environmental impact report and analyze only the subsequent project's additional significant effects on the environment, as defined in subdivision (d), and any new or additional mitigation measures or alternatives that were not identified and analyzed by the master environmental impact report.

(b) The focused environmental impact report need not examine those effects which the lead agency finds were one of the following:

(1) Mitigated or avoided pursuant to subdivision (a) of Section 21081 as a result of mitigation measures identified in the master environmental impact report which will be required as part of the approval of the subsequent project.

(2) Examined at a sufficient level of detail in the master environmental impact report to enable those significant environmental effects to be mitigated or avoided by specific revisions to the project, the imposition of conditions, or by other means in connection with the approval of the subsequent project.

(3) Subject to a finding pursuant to subdivision (b) of Section 21081.

(c) A focused environmental impact report on any subsequent project shall analyze any significant effects on the environment where substantial new or additional information shows that the adverse environmental impact may be more significant than was described in the master environmental impact report. The substantial new or additional information may also show that mitigation measures or alternatives identified in the master environmental impact report, which were previously determined to be infeasible, are feasible and will avoid or reduce the significant effects on the environment of the subsequent project to a level of insignificance.

(d) For purposes of this chapter, "additional significant effects on the environment" are those project specific effects on the environment which were not addressed as significant effects on the environment in the master environmental impact report.

(e) Nothing in this chapter is intended to limit or abridge the ability of a lead agency to focus upon the issues that are ripe for decision at each level of environmental review, or to exclude duplicative analysis of environmental effects examined in previous environmental impact reports pursuant to Section 21093.

21158.5. (a) Where a project consists of multiple-family residential development of not more than 100 units or a residential and commercial or retail mixed-use development of not more than 100,000 square feet which complies with all of the following, a focused environmental impact report shall be prepared, notwithstanding that the project was not identified in a master environmental impact report:

(1) Is consistent with a general plan, specific plan, community plan, or zoning ordinance for which an environmental impact report

was prepared within five years of the certification of the focused environmental impact report.

(2) The lead agency cannot make the finding described in subdivision (c) of Section 21157.1, a negative declaration or mitigated negative declaration cannot be prepared pursuant to Section 21080, 21157.5, or 21158, and Section 21166 does not apply.

(3) Meets one or more of the following conditions:

(A) The parcel on which the project is to be developed is surrounded by immediately contiguous urban development.

(B) The parcel on which the project is to be developed has been previously developed with urban uses.

(C) The parcel on which the project is to be developed is within one-half mile of an existing rail transit station.

(b) A focused environmental impact report prepared pursuant to this section shall be limited to a discussion of potentially significant effects on the environment specific to the project, or which substantial new information shows will be more significant than described in the prior environmental impact report. No discussion shall be required of alternatives to the project, cumulative impacts of the project, or the growth inducing impacts of the project.

Article 4.1. Expedited Environmental Review for Environmentally Mandated Projects

21159.1. (a) A focused environmental impact report may be utilized if a project meets all of the following requirements:

(1) The project consists solely of the installation of pollution control equipment required by a rule or regulation of an agency listed in Section 21159.4 and other components necessary to complete the installation of that equipment.

(2) The agency certified an environmental impact report on the rule or regulation or reviewed it pursuant to a certified regulatory program, and, in either case, the review included an assessment of growth inducing impacts and cumulative impacts of, and alternatives to, the project.

(3) The environmental review required by paragraph (2) was completed within five years of certification of the focused environmental impact report.

(4) An environmental impact report is not required pursuant to Section 21166.

(b) The discussion of significant effects on the environment in the focused environmental impact report shall be limited to project-specific potentially significant effects on the environment of the project which were not discussed in the environmental analysis of the rule or regulation required pursuant to subdivision (a) of Section 21159. No discussion of growth-inducing impacts or cumulative impacts shall be required in the focused environmental impact report, and the discussion of alternatives shall be limited to a discussion of alternative means of compliance, if any, with the rule

or regulation.

21159.2. (a) If a project consists solely of compliance with a performance standard or treatment requirement imposed by an agency listed in Section 21159.4, the lead agency for the compliance project shall, to the greatest extent feasible, utilize the environmental analysis required pursuant to subdivision (a) of Section 21159 in the preparation of a negative declaration, mitigated negative declaration, or environmental impact report on the compliance project or in otherwise fulfilling its responsibilities under this division. The use of numerical averages or ranges in an environmental analysis shall not relieve a lead agency of its obligations under this division to identify and evaluate the environmental effects of a compliance project.

(b) If the lead agency determines that an environmental impact report on the compliance project is required, the lead agency shall prepare an environmental impact report which addresses only the project-specific issues related to the compliance project or other issues that were not discussed in sufficient detail in the environmental analysis to enable the lead agency to fulfill its responsibilities under Section 21100 or 21151, as applicable. The mitigation measures imposed by the lead agency for the project shall relate only to the significant effects on the environment to be mitigated. The discussion of alternatives shall be limited to a discussion of alternative means of compliance, if any, with the rule or regulation.

21159.3. In the preparation of any environmental impact report pursuant to Section 21159.1 or 21159.2, the following deadlines shall apply:

(a) A lead agency shall determine whether an environmental impact report should be prepared within 30 days of its determination that the application for the project is complete.

(b) If the environmental impact report will be prepared under contract to the lead agency pursuant to Section 21082.1, the lead agency shall issue a request for proposals for preparation of the environmental impact report as soon as it has enough information to prepare a request for proposals, and in any event, not later than 30 days after the time for response to the notice of preparation has expired. The contract shall be awarded within 30 days of the response date for the request for proposals.

21159.4. This article shall only apply to the State Air Resources Board, a district, as defined in Section 39025 of the Health and Safety Code, the State Water Resources Control Board, a California regional water quality control board, the Department of Toxic Substances Control, and the California Integrated Waste Management Board.

Article 5. Public Assistance Program

21159.9. On or before March 1, 1994, the Office of Planning and Research shall implement, utilizing existing resources, a public

assistance and information program, to ensure efficient and effective implementation of this division, to do both of the following:

(a) Establish a public education and training program for planners, developers, and other interested parties to assist them in implementing this division.

(b) Establish a data base to assist in the preparation of environmental documents.

SEC. 19. Section 21167.1 of the Public Resources Code is amended to read:

21167.1. (a) In all actions or proceedings brought pursuant to Sections 21167, 21168, and 21168.5, including the hearing of the action or proceeding on appeal from the decision of a lower court, all courts wherein the action or proceeding is, or may hereafter be, pending shall give the action or proceeding preference over all other civil actions therein, in the matter of setting the same for hearing or trial, and in hearing the same, to the end that the action or proceeding shall be quickly heard and determined. The court shall regulate the briefing schedule so that, to the extent feasible, the court shall commence hearings on an appeal within one year of the date of the filing of the appeal.

(b) In order to ensure that actions or proceedings brought pursuant to Sections 21167, 21168, and 21168.5 may be quickly heard and determined in the lower courts, the superior courts in all counties with a population of more than 200,000 shall designate one or more judges to develop expertise in this division and related land use and environmental laws, so that those judges will be available to hear, and quickly resolve, actions or proceedings brought pursuant to Sections 21167, 21168, and 21168.5.

SEC. 20. Section 21167.4 of the Public Resources Code is amended to read:

21167.4. (a) In any action or proceeding alleging noncompliance with this division, the petitioner shall request a hearing within 90 days of filing the petition or shall be subject to dismissal on the court's own motion or on the motion of any party interested in the action or proceeding.

(b) The petitioner shall serve a notice of the request for a hearing on all parties within 14 calendar days of filing the request for a hearing.

SEC. 21. Section 21167.6 of the Public Resources Code is amended to read:

21167.6. Notwithstanding any other provision of law, in all actions or proceedings brought pursuant to Section 21167, except those involving the Public Utilities Commission, all of the following shall apply:

(a) At the time the action is filed, the petitioner shall file a request that the respondent public agency prepare the record of proceedings relating to the subject of the action or proceeding. The request, together with the petition, shall be served upon the public agency not later than 10 business days after the action is filed.

(b) (1) The public agency shall prepare and certify the record of proceedings not later than 60 days after the request specified in subdivision (a) is served upon the public agency. The parties shall pay any costs or fees imposed for the preparation of the record of proceedings in conformance with any law or rule of court.

(2) The petitioner may elect to prepare the record of proceedings or the parties may agree to an alternative method of preparation of the record of proceedings, subject to certification of its accuracy by the public agency, within the time limit specified in this subdivision.

(c) The time limit prescribed by subdivision (b) may be extended only upon stipulation of all parties who have been properly served in the action or proceeding or upon order of the court. Extensions shall be liberally granted by the court when the size of the record of proceedings renders infeasible compliance with that time limit. There is no limit on the number of extensions which may be granted by the court, but no single extension shall exceed 60 days unless the court determines that a longer extension is in the public interest.

(d) If the public agency fails to prepare and certify the record within the time limit prescribed in subdivision (b), or any continuances of that time limit, the petitioner may move for sanctions, and the court may, upon that motion, grant appropriate sanctions.

(e) The clerk of the superior court shall prepare and certify the clerk's transcript on appeal not later than 60 days after the notice designating the papers or records to be included in the clerk's transcript is filed with the superior court, if the party or parties pay any costs or fees for preparation of the clerk's transcript imposed in conformance with any law or rules of court. Nothing in this subdivision precludes an election to proceed pursuant to Rule 5.1 of the California Rules of Court.

(f) Extensions of the period for the filing of any brief on appeal may be allowed only by stipulation of the parties or by order of the court for good cause shown. Extensions shall be limited to one 30-day extension for the preparation of an opening brief, and one 30-day extension for the preparation of a responding brief, except that the court may grant a longer extension or additional extensions if it determines that there is a substantial likelihood of settlement that would avoid the necessity of completing the appeal.

(g) At the completion of the filing of briefs, the appellant shall notify the court of completion of the filing of briefs, whereupon the clerk of the reviewing court shall set the appeal for hearing on the first available calendar date.

SEC. 22. Section 21167.8 of the Public Resources Code is amended to read:

21167.8. (a) Not later than 20 days after service upon a public agency of a petition or complaint brought to pursuant to Section 21167, the public agency shall file with the court a notice setting forth the time and place at which all parties shall meet and attempt to settle the litigation. The meeting shall be scheduled and held not

later than 45 days after the date of service of the petition or complaint upon the public agency. The notice of the settlement meeting shall be served by mail upon the counsel for each party. If the public agency does not know the identity of counsel for any party, the notice shall be served by mail upon the party for whom counsel is not known.

(b) The petitioner or plaintiff shall serve a presettlement statement by mail on all parties not less than five days in advance of the meeting. The statement shall include, but not be limited to, all of the following:

(1) A concise description of the case, including a brief procedural history, and all the facts material to a consideration of the issues presented by the litigation.

(2) The anticipated issues to be raised in the litigation. Counsel shall confer with their clients in advance regarding settlement and shall be prepared to negotiate a settlement whenever reasonably possible.

(3) An offer of the position for which the petitioner or plaintiff would settle, which may consist of the petitioner's prayer.

(c) At the time and place specified in the notice filed with the court, the parties shall meet and attempt in good faith to settle the litigation and the dispute which forms the basis of the litigation. The settlement meeting discussions shall be comprehensive in nature and shall focus on the legal issues raised by the parties concerning the project that is the subject of the litigation.

(d) The settlement meeting may be continued from time to time without postponing or otherwise delaying other applicable time limits in the litigation. The settlement meeting is intended to be conducted concurrently with any judicial proceedings.

(e) After the settlement procedure is completed, the parties shall jointly prepare, sign, and file a settlement statement with the court, including, but not limited to, all of the following:

(1) The legal and factual contentions raised by each party.

(2) The contentions that were settled or otherwise agreed upon and the nature of that agreement.

(3) The efforts made by each party to settle the unresolved issues.

(4) The list of participants in the settlement proceedings.

(f) If the litigation is not settled, the court, in its discretion, may, or at the request of any party, shall, schedule a further settlement conference before a judge of the superior court. If the petition or complaint is later heard on its merits, the judge hearing the matter shall not be the same judge conducting the settlement conference, except in counties that have only one judge of the superior court.

(g) The failure of any party, who was notified pursuant to subdivision (a), to participate in the litigation settlement process, without good cause, may result in an imposition of sanctions by the court. The failure of the petitioner or plaintiff to participate in that process, without good cause, shall result in dismissal with prejudice of the action or proceeding.

SEC. 23. Section 21168.3 of the Public Resources Code is repealed.

SEC. 24. This act shall become operative only if Senate Bill 919 of the 1993–94 Regular Session of the Legislature is enacted and takes effect.

SEC. 25. 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 1131

An act to amend Section 65941 of the Government Code, to amend Section 42302.1 of the Health and Safety Code, and to amend Sections 21080, 21081, 21082.2, 21168.9, and 21177 of, and to add Article 4 (commencing with Section 21159) to Chapter 4.5 of Division 13 of, the Public Resources Code, relating to environmental quality.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. (a) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) shall not apply to a discretionary decision by an air quality management district for a project consisting of the application of coatings within an existing facility at an automotive manufacturing plant if the district finds all of the following:

(1) The project will not cause a net increase in any emissions of any pollutant for which a national or state ambient air quality standard has been established after the internal emission accounting for previous emission reductions achieved at the facility and recognized by the district.

(2) The project will not cause a net increase in adverse impacts of toxic air contaminants as determined by a health risk assessment. For purposes of this section, the term "net increase in adverse impacts of toxic air contaminants as determined by a health risk assessment" shall be determined in accordance with the rules and regulations of the district.

(3) The project will not cause any other adverse effect on the environment.

(b) The district shall provide a 10-day notice, at the time of the issuance of a permit, of any such exemption by mail to any person

who requests such a notice in writing, and by publication in two newspapers of general circulation in the area of the project. The notice shall state that the complete file on the project and the basis for the district's findings is available for inspection and copying at the office of the air quality management district.

(c) Any person may appeal to the hearing board as provided in Section 42302.1 of the Health and Safety Code, from the issuance of a permit after a decision of any district that a project is exempt pursuant to this section. If there is substantial evidence in light of the whole record before the hearing board that the project may not satisfy one or more of the criteria established pursuant to subdivision (a), the permit shall be revoked. If there is no such substantial evidence, the exemption shall be upheld and there shall be no further compliance with the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code. Any appeal under this subdivision shall be scheduled for hearing on the calendar of the hearing board within 10 working days of the appeal being filed. The hearing board shall give the appeal priority on its calendar and shall render a decision on the appeal within 21 working days of the appeal being filed. The hearing board may delegate the authority to hear and decide such an appeal to a subcommittee of the hearing board.

(d) On or before December 31, 1995, the Resources Agency shall prepare and submit to the Legislature and the Governor a study on the exemption established pursuant to this section in order to determine the advisability of expanding this exemption to include other industrial facilities. The study shall identify the potential benefits and adverse impacts on the environment from an expansion of the exemption and shall determine the potential benefits and adverse impacts on public participation in such an exemption process.

SEC. 2. Section 65941 of the Government Code is amended to read:

65941. (a) The information compiled pursuant to Section 65940 shall also indicate the criteria which the agency will apply in order to determine the completeness of any application submitted to it for a development project.

(b) If a public agency is a lead or responsible agency for purposes of the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, that criteria shall not require the applicant to submit the informational equivalent of an environmental impact report as part of a complete application, or to otherwise require proof of compliance with that act as a prerequisite to a permit application being deemed complete. However, that criteria may require sufficient information to permit the agency to make the determination required by Section 21080.1 of the Public Resources Code.

(c) Consistent with this chapter, a responsible agency shall, at the request of the applicant, commence processing a permit application

for a development project prior to final action on the project by a lead agency to the extent that the information necessary to commence the processing is available. For purposes of this subdivision, "lead agency" and "responsible agency" shall have the same meaning as those terms are defined in Section 21067 of the Public Resources Code and Section 21069 of the Public Resources Code, respectively.

SEC. 3. Section 42302.1 of the Health and Safety Code is amended to read:

42302.1. Within 10 days of any decision or action pertaining to the issuance of a permit by a district, or within 10 days after mailing of the notice of issuance of the permit to any person who has requested notice or within 10 days of the publication and mailing of notice provided for in Section 1 of the act amending this section in the 1993 Regular Session of the Legislature, any aggrieved person who, in person or through a representative, appeared, submitted written testimony, or otherwise participated in the action before the district may request the hearing board of the district to hold a public hearing to determine whether the permit was properly issued. Except as provided in Section 1 of the act amending this section in the 1993 Regular Session of the Legislature, within 30 days of the request, the hearing board shall hold a public hearing and shall render a decision on whether the permit was properly issued.

SEC. 5. Section 21080 of the Public Resources Code is amended to read:

21080. (a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps unless the project is exempt from this division.

(b) This division shall not apply to any of the following activities:

(1) Ministerial projects proposed to be carried out or approved by public agencies.

(2) Emergency repairs to public service facilities necessary to maintain service.

(3) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(4) Specific actions necessary to prevent or mitigate an emergency.

(5) Projects which a public agency rejects or disapproves.

(6) Actions undertaken by a public agency relating to any thermal powerplant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering,

or design purposes, or for the conditional sale or purchase of equipment, fuel, water (except groundwater), steam, or power for a thermal powerplant, if the powerplant site and related facility will be the subject of an environmental impact report, negative declaration, or other document, prepared pursuant to a regulatory program certified pursuant to Section 21080.5, which will be prepared by the State Energy Resources Conservation and Development Commission, by the Public Utilities Commission, or by the city or county in which the powerplant and related facility would be located if the environmental impact report, negative declaration, or document includes the environmental impact, if any, of the action described in this paragraph.

(7) Activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, an Olympic games under the authority of the International Olympic Committee, except for the construction of facilities necessary for the Olympic games.

(8) The establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies which the public agency finds are for the purpose of (A) meeting operating expenses, including employee wage rates and fringe benefits, (B) purchasing or leasing supplies, equipment, or materials, (C) meeting financial reserve needs and requirements, (D) obtaining funds for capital projects necessary to maintain service within existing service areas, or (E) obtaining funds necessary to maintain those intracity transfers as are authorized by city charter. The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this paragraph is claimed setting forth with specificity the basis for the claim of exemption.

(9) All classes of projects designated pursuant to Section 21084.

(10) A project for the institution or increase of passenger or commuter services on rail or highway rights-of-way already in use, including modernization of existing stations and parking facilities.

(11) A project for the institution or increase of passenger or commuter service on high-occupancy vehicle lanes already in use, including the modernization of existing stations and parking facilities.

(12) Facility extensions not to exceed four miles in length which are required for the transfer of passengers from or to exclusive public mass transit guideway or busway public transit services.

(13) A project for the development of a regional transportation improvement program or the state transportation improvement program.

(14) Any project or portion thereof located in another state which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.) or similar state laws of that state. Any emissions or discharges that would have a significant effect on the environment in this state are subject to this division.

(15) Projects undertaken by a local agency to implement a rule or regulation imposed by a state agency, board, or commission under a certified regulatory program pursuant to Section 21080.5. Any site-specific effect of the project which was not analyzed as a significant effect on the environment in the plan or other written documentation required by Section 21080.5 is subject to this division.

(c) If a lead agency determines that a proposed project, not otherwise exempt from this division, does not have a significant effect on the environment, the lead agency shall adopt a negative declaration to that effect. The negative declaration shall be prepared for the proposed project in either of the following circumstances:

(1) There is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment.

(2) An initial study identifies potentially significant effects on the environment, but (A) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration is released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (B) there is no substantial evidence in light of the whole record before the lead agency that the project, as revised, may have a significant effect on the environment.

(d) If there is substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment, an environmental impact report shall be prepared.

(e) Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

SEC. 6. Section 21081 of the Public Resources Code is amended to read:

21081. Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless the public agency makes one or more of the following findings:

(a) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

(b) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(c) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of

employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

SEC. 7. Section 21082.2 of the Public Resources Code is amended to read:

21082.2. (a) The lead agency shall determine whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record.

(b) The existence of public controversy over the environmental effects of a project shall not require preparation of an environmental impact report if there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment.

(c) Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

(d) If there is substantial evidence, in light of the whole record before the lead agency, that a project may have a significant effect on the environment, an environmental impact report shall be prepared.

(e) Statements in an environmental impact report and comments with respect to an environmental impact report shall not be deemed determinative of whether the project may have a significant effect on the environment.

SEC. 8. Article 4 (commencing with Section 21159) is added to Chapter 4.5 of Division 13 of the Public Resources Code, to read:

Article 4. Expedited Environmental Review for Environmentally Mandated Projects

21159. (a) An agency listed in Section 21159.4 shall perform, at the time of the adoption of a rule or regulation requiring the installation of pollution control equipment, or a performance standard or treatment requirement, an environmental analysis of the reasonably foreseeable methods of compliance. In the preparation of this analysis, the agency may utilize numerical ranges or averages where specific data is not available; however, the agency shall not be required to engage in speculation or conjecture. The environmental analysis shall, at minimum, include, all of the following:

(1) An analysis of the reasonably foreseeable environmental impacts of the methods of compliance.

(2) An analysis of reasonably foreseeable feasible mitigation measures.

(3) An analysis of reasonably foreseeable alternative means of compliance with the rule or regulation.

(b) The preparation of an environmental impact report at the time of adopting a rule or regulation pursuant to this division shall be deemed to satisfy the requirements of this section.

(c) The environmental analysis shall take into account a reasonable range of environmental, economic, and technical factors, population and geographic areas, and specific sites.

(d) Nothing in this section shall require the agency to conduct a project level analysis.

(e) For purposes of this article, the term "performance standard" includes process or raw material changes or product reformulation.

(f) Nothing in this section is intended, or may be used, to delay the adoption of any rule or regulation for which an analysis is required to be performed pursuant to this section.

21159.4. This article shall apply to the following agencies: the State Air Resources Board, any district as defined in Section 39025 of the Health and Safety Code, the State Water Resources Control Board, a California regional water quality control board, the Department of Toxic Substances Control, and the California Integrated Waste Management Board.

SEC. 9. Section 21168.9 of the Public Resources Code is amended to read:

21168.9. (a) If a court finds, as a result of a trial, hearing, or remand from an appellate court, that any determination, finding, or decision of a public agency has been made without compliance with this division, the court shall enter an order that includes one or more of the following:

(1) A mandate that the determination, finding, or decision be voided by the public agency, in whole or in part.

(2) If the court finds that a specific project activity or activities will prejudice the consideration or implementation of particular mitigation measures or alternatives to the project, a mandate that the public agency and any real parties in interest suspend any or all specific project activity or activities, pursuant to the determination, finding, or decision, that could result in an adverse change or alteration to the physical environment, until the public agency has taken any actions that may be necessary to bring the determination, finding, or decision into compliance with this division.

(3) A mandate that the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with this division.

(b) Any order pursuant to subdivision (a) shall include only those mandates which are necessary to achieve compliance with this division and only those specific project activities in noncompliance with this division. The order shall be made by the issuance of a peremptory writ of mandate specifying what action by the public agency is necessary to comply with this division. However, the order shall be limited to that portion of a determination, finding, or decision or the specific project activity or activities found to be in noncompliance only if a court finds that (1) the portion or specific

project activity or activities are severable, (2) severance will not prejudice complete and full compliance with this division, and (3) the court has not found the remainder of the project to be in noncompliance with this division. The trial court shall retain jurisdiction over the public agency's proceedings by way of a return to the peremptory writ until the court has determined that the public agency has complied with this division.

(c) Nothing in this section authorizes a court to direct any public agency to exercise its discretion in any particular way. Except as expressly provided in this section, nothing in this section is intended to limit the equitable powers of the court.

SEC. 10. Section 21177 of the Public Resources Code is amended to read:

21177. (a) No action or proceeding may be brought pursuant to Section 21167 unless the alleged grounds for noncompliance with this division were presented to the public agency orally or in writing by any person during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination.

(b) No person shall maintain an action or proceeding unless that person objected to the approval of the project orally or in writing during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination.

(c) This section does not preclude any organization formed after the approval of a project from maintaining an action pursuant to Section 21167 if a member of that organization has complied with subdivision (b).

(d) This section does not apply to the Attorney General.

(e) This section does not apply to any alleged grounds for noncompliance with this division for which there was no public hearing or other opportunity for members of the public to raise those objections orally or in writing prior to the approval of the project, or if the public agency failed to give the notice required by law.

SEC. 11. 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. 12. This act shall become operative only if Assembly Bill 1888 is enacted and takes effect.

CHAPTER 1132

An act to amend Sections 66170, 66171, 66175, 76330, and 76355 of the Education Code, relating to postsecondary education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 66170 of the Education Code is amended to read:

66170. As used in this article, the following terms have the following meanings:

(a) "Degree" means a degree awarded by any public postsecondary educational institution or any private postsecondary educational institution approved to operate by the Council for Private Postsecondary and Vocational Education, accredited by an agency recognized by the United States Department of Education, or operated pursuant to Section 94303.

(b) "Duplicate degree tuition" means the tuition fee established pursuant to this article.

(c) "Governing board" means the Trustees of the California State University, the Regents of the University of California, the Board of Directors of the Hastings College of the Law, and the California Maritime Academy Board of Governors.

SEC. 2. Section 66171 of the Education Code is amended to read:

66171. (a) Each governing board shall charge duplicate degree tuition to a student who has earned a degree equivalent to or higher than the degree awarded by the program in which he or she is enrolled or who has earned a baccalaureate degree or postbaccalaureate degree and is enrolled without a declared degree objective.

(b) No duplicate degree tuition shall be charged to a student who is any of the following:

(1) A dislocated worker, as certified by a state agency in accordance with Title 3 of the federal Job Training Partnership Act.

(2) A displaced homemaker, as defined in accordance with the Higher Education Act of 1965, as amended (20 U.S.C. Sec. 1001 et seq.).

(3) A person who has earned an education credential or certificate who is an enrollee in a program leading to a nonadministrative credential or certificate that has been approved by the Commission on Teacher Credentialing.

(4) A recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income or State Supplementary Program, or a general assistance program.

(c) For purposes of this article:

(1) A degree earned in a joint degree or double-major program shall not be considered an equivalent degree earned prior to any other degree awarded by the joint degree or double-major program.

(2) A program that awards a master's degree as part of a course of study leading to a doctorate shall not be considered a program that awards the master's degree, unless the stated objective of the student is to earn the master's degree.

SEC. 3. Section 66175 of the Education Code is amended to read:

66175. (a) This article shall become operative at the commencement of the first regular academic semester, quarter, or term commencing on or after July 1, 1993.

(b) Each governing board shall report to the Legislature on or before April 1, 1993, concerning the implementation and impact of this article.

SEC. 4. Section 76330 of the Education Code, as added by Chapter 8 of the Statutes of 1993, is amended to read:

76330. (a) The governing board of each community college district shall charge a fee of fifty dollars ($50) per semester unit, or the quarter unit equivalent, to each student who previously has been awarded a baccalaureate or graduate degree from any public postsecondary educational institution or any private postsecondary educational institution approved to operate by the Council for Private Postsecondary and Vocational Education, accredited by an agency recognized by the United States Department of Education, or operated pursuant to Section 94303. Any student charged a fee pursuant to this section shall be exempt from the fees required pursuant to Section 76300.

(b) The governing board shall exempt from subdivision (a), and charge the fees specified in Section 76300 to, a student who is any of the following:

(1) A dislocated worker, as certified by a state agency in accordance with Subchapter III of the federal Job Training Partnership Act (29 U.S.C. Sec. 1651 et seq.).

(2) A displaced homemaker, as defined in accordance with the Higher Education Act of 1965, as amended (20 U.S.C. Sec. 1001 et seq.).

(3) A recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

(4) An enrollee in a course offered pursuant to a contract between the community college and a public or private entity if (A) the contract provides for the payment by the public or private entity of all costs associated with the course and (B) full-time equivalent student enrollment in the course is not counted for the purpose of determining district or statewide apportionment.

(5) A student who demonstrates, pursuant to Chapter 2 (commencing with Section 69500) of Part 42 or Section 76310, financial need in excess of the amount of the fee specified in

subdivision (a).

(c) Nonresident students who pay nonresident tuition shall be exempt from subdivision (a).

(d) The governing board of a community college district may require each student not required to pay the fee charged pursuant to subdivision (a) to file a written oath or affirmation, at the time of enrollment, that he or she either does not have a baccalaureate degree or higher degree or is eligible for an exemption.

(e) It is the intent of the Legislature that governing boards conduct selective audits of any oath or affirmation filed by students pursuant to subdivision (d). If any audit conducted under this subdivision results in a finding by the community college district that a student owes additional fees pursuant to this section, the district may require the student to pay the additional fees, plus an amount not to exceed two times the additional fees.

(f) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(g) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(h) It is the further intent of the Legislature that students who have not previously been awarded a baccalaureate or graduate degree be given priority for enrollment.

(i) (1) This section shall be operative beginning with the first regular academic semester, quarter, or term commencing after January 1, 1993.

(2) Notwithstanding subdivision (c) of Section 84750, decreases in the 1992–93 fiscal year in credit full-time equivalent students (FTES) resulting from the implementation of this section shall not result in any reduction in revenue for the 1993–94 fiscal year. Decreases in FTES in the 1992–93 fiscal year shall result in a revenue reduction over the three-year period beginning with the 1994–95 fiscal year, except that community college districts shall be entitled to restore any reductions in apportionment revenue if there is a subsequent increase in FTES. For purposes of this paragraph, any revenue loss associated with decreases in FTES shall be distributed on a district-by-district basis. District revenue loss shall not be distributed on a statewide average basis.

(3) The board of governors shall report to the Legislature on or before January 1, 1994, on the implementation and impact of this section.

(j) 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. 5. Section 76355 of the Education Code, as added by Chapter 8 of the Statutes of 1993, is amended to read:

76355. (a) The governing board of a district maintaining a community college may require community college students to pay a fee in the total amount of not more than ten dollars ($10) for each semester, seven dollars ($7) for summer school, seven dollars ($7) for each intersession of at least four weeks, or seven dollars ($7) for each quarter for health supervision and services, including direct or indirect medical and hospitalization services, or the operation of a student health center or centers, or both.

Commencing with the semester or quarter that begins after January 1, 1993, the governing board of each community college district may increase this fee by the same percentage increase as the Implicit Price Deflator for State and Local Government Purchase of Goods and Services. Whenever that calculation produces an increase of one dollar ($1) above the existing fee, the fee may be increased by one dollar ($1).

(b) If pursuant to this section a fee is required, the governing board of the district shall decide the amount of the fee, if any, that a part-time student is required to pay. The governing board may decide whether the fee shall be mandatory or optional.

(c) The governing board of a district maintaining a community college shall adopt rules and regulations that exempt the following students from any fee required pursuant to subdivision (a):

(1) Students who depend exclusively upon prayer for healing in accordance with the teachings of a bona fide religious sect, denomination, or organization.

(2) Students who are attending a community college under an approved apprenticeship training program.

(3) Low-income students, including those students receiving financial aid pursuant to Section 76310.

(d) All fees collected pursuant to this section shall be deposited in the fund of the district designated by the California Community Colleges Budget and Accounting Manual. These fees shall be expended only to provide health services as specified in regulations adopted by the board of governors.

Authorized expenditures shall not include, among other things, athletic trainers' salaries, athletic insurance, medical supplies for athletics, physical examinations for intercollegiate athletics, ambulance services and the salaries of health professionals for athletic events, any deductible portion of accident claims filed for athletic team members, or any other expense that is not available to all students. No student shall be denied a service supported by student health fees on account of participation in athletic programs.

(e) Any community college district that provided health services in the 1986–87 fiscal year shall maintain health services, at the level provided during the 1986–87 fiscal year, in the 1987–88 fiscal year, and each fiscal year thereafter. If the cost to maintain that level of service exceeds the limits specified in subdivision (a), the excess cost shall be borne by the district.

(f) A district that begins charging a health fee during the 1992–93

fiscal year, or any fiscal year thereafter, may use funds for startup costs from other district funds and recover all or part of those funds from health fees collected within the first five years following the commencement of charging the fee.

(g) The board of governors shall adopt regulations that generally describe the types of health services included in the health service program.

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 for the student fee changes and accounting changes made by this act to become effective for the spring 1993 academic term, it is necessary that this act take effect immediately.

CHAPTER 1133

An act to amend Section 11624 of the Insurance Code, relating to insurance.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 11624 of the Insurance Code is amended to read:

11624. The plan shall contain:

(a) Standards for determining eligibility of applicants for insurance, including a requirement of a certificate of eligibility as provided in Section 11624.08, and in establishing those standards the following may be taken into consideration in respect to the applicant or any other person who may reasonably be expected to operate the applicant's automobile with his or her permission:

(1) His or her criminal conviction record.

(2) His or her record of suspension or revocation of a license to

operate an automobile.

(3) His or her automobile accident records.

(4) His or her age and mental, physical and moral characteristics which pertain to his or her ability to safely and lawfully operate an automobile.

(5) The condition or use of the automobile.

(b) Procedures for making application for insurance, for apportionment of eligible applicants among the subscribing insurers and for appeal to the commissioner by persons who believe themselves aggrieved by the operation of the plan.

(c) A provision that the organization administering the plan shall notify the Department of Insurance regarding the name of each applicant for insurance who is rejected by the assigned risk plan and the statutory grounds for the rejection. The information contained in that notification shall be for the confidential use of the Department of Insurance.

(d) Rules and regulations governing the administration and operation of the plan.

(e) Provisions showing the basis upon which premium charges shall be made, and the manner of payment thereof. Premium charges for the plan shall not be excessive, inadequate, nor unfairly discriminatory, and shall be actuarially sound so as to result in no subsidy of the plan. In no event shall the commissioner be required to approve a plan rate that includes a provision for operating profits greater than zero dollars. The commissioner shall not be required to allow a contingency provision with respect to a plan rate if the commissioner takes final action on an application for a rate change within 180 days from the date the application is submitted to the commissioner by the plan's advisory committee. The plan shall include procedures for notifying within a reasonable time the agent, broker, or solicitor who obtained insurance under the plan for the insured of any nonpayment of premium to the insurer when notice of the nonpayment is sent to the insured pursuant to Section 662.

(f) Any other provisions as may be necessary to carry out the purpose of this article.

SEC. 2. This act shall not become operative unless both Senate Bill 558 and Assembly Bill 1021 of the 1993–94 Regular Session are enacted and become operative.

CHAPTER 1134

An act to amend Sections 922.5, 11623, and 11627.5 of, and to add Section 1763.5 to, the Insurance Code, relating to insurance.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 922.5 of the Insurance Code is amended to read:

922.5. Credit in accounting and financial statement permitted by this code on account of reinsurance ceded to an alien reinsurer other than one which complies with Article 2 (commencing with Section 1580) of Chapter 4 and includes in the statements required by that article all reserves and liabilities arising out of that reinsurance shall be allowed only:

(a) To the extent of the amount of deposits by, and funds withheld from, the alien reinsurer pursuant to express provision therefor in the reinsurance contract as security for the payment of the obligations thereunder if the deposits or funds are held subject to withdrawal by, and under the control of, the ceding insurer or are placed in trust for those purposes in a qualified United States financial institution, if withdrawals from the trust cannot be made without the consent of the ceding insurer. For purposes of this subdivision, "qualified United States financial institution" means an institution that (1) is organized, or in the case of an United States Branch or agency office of a foreign banking organization is licensed, under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers, (2) is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies, and (3) is insured by the Bank Insurance Fund of the Federal Deposit Insurance Corporation.

(b) (1) Where the alien reinsurer maintains sufficient assets in the United States for the protection of policyholders in the United States and operates its business in a manner which satisfies the commissioner that it maintains standard and financial conditions reasonably comparable to those required of admitted insurers and that it is able to pay losses in the United States and that it will submit itself to the jurisdiction of the courts of this state, or a court of competent jurisdiction in any state of the United States and designate the commissioner or a designated attorney in this state as its agent for service of process in this state in any action, suit, or proceeding instituted by or on behalf of the ceding insurer for any matter arising out of the reinsurance.

(2) Where it has been demonstrated by any ceding insurer to the satisfaction of the commissioner that the alien reinsurer is a group of

insurers, including individual insurers, that maintains a trusteed account representing the group's liabilities and attributable to business written in the United States and, in addition, the group maintains a trusteed surplus of which one hundred million dollars ($100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group, the commissioner shall grant accreditation to the group. The group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants.

(c) To the extent that the amount of a clean and irrevocable letter of credit issued for a term of one year conforming to the requirements set forth below, is a substitute for advances for claims, unearned premium, and all other policy and contract liabilities and reserve obligations to be made by an alien reinsurer in connection with its liability under a specific reinsurance agreement. The clean and irrevocable letter of credit shall be issued and maintained under arrangements satisfactory to the commissioner as constituting security to the ceding insurer substantially equal to that of a deposit under subdivision (a), and that it shall be (1) issued or confirmed by a banking institution which is a member of the Federal Reserve System and of financial standing satisfactory to the commissioner, (2) issued by a California state chartered bank which is insured by the Bank Insurance Fund of the Federal Deposit Insurance Corporation and meets the conditions established by the commissioner, or (3) issued by or confirmed a United States office of a foreign banking corporation that is (A) licensed under the laws of the United States or any state thereof, (B) regulated, supervised, and examined by an agency of the United States or a state agency having regulatory authority with respect to banks and trust companies, (C) designated by the Securities Valuation office of the National Association of Insurance Commissioners as meeting its credit standards for issuing or confirming letters of credit, and (D) of a financial standing satisfactory to the commissioner. For purposes of this subdivision, a confirming bank undertakes the identical terms and obligations of the issuer including those set forth herein. The changes enacted to this subdivision at the 1982 Regular Session shall apply only to life insurers.

(d) (1) When it has been demonstrated by any ceding insurer to the satisfaction of the commissioner that the alien reinsurer is a group of incorporated insurers under common administration that maintains a trust fund in a qualified United States financial institution for the payment of the claims of its United States policyholders and ceding insurers, their assigns, and successors in interest, that has continuously transacted an insurance business outside the United States for at least three years immediately preceding the date of the financial statement for which the ceding insurer is requesting reinsurance credit, that is in good standing with its domiciliary regulator, whose individual insurer members maintain standards and

financial condition reasonably comparable to admitted insurers, that submits to this state's authority to examine its books and records and bears the expense of examination, and that has an aggregate policyholder's surplus of ten billion dollars ($10,000,000,000), the commissioner shall grant accreditation to that group. The trust shall be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of that group, plus the group shall maintain a joint trusteed surplus of which one hundred million dollars ($100,000,000) shall be deposited and maintained with a qualified United States financial institution, and shall be held jointly for the exclusive benefit of United States ceding insurers of any member of the group as additional security for any of those liabilities, and each member of the group shall make available to the commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant. The group of incorporated insurers shall file with the commissioner a certified copy of the trust agreement. Each member insurer or reinsurer shall also submit to this state's authority to examine its books and records and bears the expense of examination. The commissioner shall have the authority to require additional amounts to be held in the trust as a condition for initial or continued accreditation if the commissioner determines that these additional amounts are required for the protection of ceding insurers.

(2) The group and, if the commissioner requests, any member of the group, shall report annually to the commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners Annual Statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund.

(3) The trust described in paragraph (1) shall be established in a form approved by the commissioner. The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. The assuming insurer or its legal successor shall not withdraw its funds from the trust without notice to the commissioner and the ceding insurer. The investments of the trust shall be limited to "general investments" and "excess investments" that would qualify as authorized investments for a California insurer.

(4) No later than February 28 of each year the trustees shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end.

(5) For purposes of this subdivision, "qualified United States financial institution" means an institution that is (A) a member of the Federal Reserve System and of financial standing satisfactory to the commissioner, (B) a California state chartered bank that is insured by the Bank Insurance Fund of the Federal Deposit Insurance Corporation and meets the conditions established by the

commissioner, or (C) a United States office of a foreign banking corporation that is (i) licensed under the laws of the United States or any state thereof, (ii) regulated, supervised, and examined by an agency of the United States or a state agency having regulatory authority with respect to banks and trust companies, (iii) designated by the Securities Valuation Office of the National Association of Insurance Commissioners as meeting its credit standards for issuing or confirming letters of credit, and (iv) of a financial standing that is satisfactory to the commissioner.

(6) For purposes of this section, the terms "deposits" and "funds" include securities authorized as general investments by Article 3 (commencing with Section 1170) of Chapter 2, but not to exceed current market value.

(7) For purposes of this subdivision, "group of incorporated insurers" means an incorporated association of individual incorporated assuming insurers wherein each member insured underwrites solely for its own account.

(8) "Accreditation" means the issuance of a certificate of recognition as an accredited reinsurer by the commissioner to an assuming insurer not authorized to do any insurance business in this state but which (A) presents satisfactory evidence to the commissioner that it meets the applicable standards of solvency required in this state and (B) is in compliance with the conditions prescribed by regulation under which a ceding insurer may be allowed credit for reinsurance recoverable from an insurer not authorized in this state.

(9) The group of incorporated insurers shall annually file a certified copy of this annual report by the trustee.

The commissioner shall recoup administrative cost pursuant to paragraph (1) of subdivision (a) of Section 12921.6.

SEC. 1.5. Section 1763.5 is added to the Insurance Code, to read:

1763.5. In addition to the requirements of Section 1763, no surplus line broker shall solicit from, or place with, any nonadmitted insurer, any insurance covering private passenger automobiles if that insurance contains in whole or in part the limits of coverage provided under the California Automobile Assigned Risk Plan unless the surplus line broker, producing agent, broker, or insured has first submitted to the California Automobile Assigned Risk Plan a properly completed and executed application in accordance with the requirements of the plan for the coverage provided by the plan and the plan itself has determined that the application is ineligible for the limits of coverage applied for and so notifies the surplus line broker or insured in writing.

For purposes of this section, a private passenger automobile includes motorcycles, but does not include a fleet of five or more automobiles rated for business use and used in a business.

SEC. 2. Section 11623 of the Insurance Code is amended to read:

11623. (a) To assist the commissioner in carrying out the purposes of this article, an advisory committee composed of 15

members is created. The commissioner shall administer and operate the plan as authorized by law. The commissioner shall consult with the advisory committee on a regular basis on policy matters affecting the operation of the plan.

Eight members representing subscribing insurers shall be elected annually by subscribing insurers. The commissioner shall appoint the noninsurer members. Four members shall represent the public. Two members 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. In consultation with the advisory committee, the commissioner shall develop, issue, and adopt regulations to carry out the purposes of this article.

(b) Notwithstanding this act, which changes the status of the governing committee to that of an advisory committee, the committee shall have the right to retain counsel of its choice pursuant to a selection process adopted by the committee and the right and necessary standing to bring and defend actions in judicial and administrative proceedings related to the plan in the name of

the plan, with all powers attendant thereto including the right to retain consultants, counsel, and expert witnesses of its choice.

SEC. 3. Section 11627.5 of the Insurance Code is amended to read:

11627.5. (a) Every insurer to which this article applies shall, at the time of filing the annual report required by Section 900, file on a form prescribed by the commissioner, after consultation with the committee of the plan, a report which shall contain at least the following information on its assigned-risk business:

(1) Loss ratio.

(2) Loss adjustment expense ratio.

(3) Expense ratio.

(4) Combined ratio.

Reports filed in 1991 shall contain information for the prior three years, by year.

(b) The commissioner may require insurers with combined ratios that are 10 percent above the mean combined ratio for all plan participants to also report the following:

(1) The reason for the excessive ratio.

(2) A plan for reducing the ratio, and when the reduction can be expected to occur. The commissioner and the committee may require insurers subject to this subdivision to provide periodic reports on the progress in reducing the combined ratio.

(c) Information reported under this section shall be a public record.

(d) The commissioner shall report the information reported under this section, in the aggregate and by insurer, with accompanying discussion, to the appropriate policy committee of each house of the Legislature on or before April 15 of each year. The report shall include at least the following: the number of assignments made, premiums, losses, loss adjustment expenses, and administrative costs, in the aggregate and for each subscribing insurer.

SEC. 4. Section 1 of this act shall become operative only if Assembly Bill 1021 and Senate Bill 429 of the 1993–94 Regular Session of the Legislature are both chaptered and become operative on or before January 1, 1994.

CHAPTER 1135

An act to amend Section 11624.08 of the Insurance Code, relating to insurance.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 11624.08 of the Insurance Code is amended to read:

11624.08. The plan shall require a certificate of eligibility to accompany the application for coverage. The certificate shall indicate whether or not the applicant meets the criteria for the purchase of a good driver discount policy as set forth in Section 1861.025 and, if so, the name of the insurer and the insurer's representative that denied the applicant automobile insurance coverage.

The fact that an applicant has specified in the certificate of eligibility a particular insurer as having denied automobile insurance coverage shall not, by itself, be sufficient to sustain a finding in a formal action brought by the commissioner under Section 1858.1 that the specified insurer in fact denied the applicant automobile insurance coverage in violation of paragraph (1) of subdivision (b) of Section 1861.02. The certificate shall be signed by the applicant under penalty of perjury to verify its accuracy, and shall only be required with applications for personal lines automobile insurance through the plan. The agent or broker shall also be required to sign the certificate of eligibility indicating that he or she has reviewed the certificate for completeness.

SEC. 2. This act shall become operative only if both Senate Bill 558 and Senate Bill 429 are enacted before January 1, 1994.

CHAPTER 1136

An act to amend Sections 54952.7, 54953, 54953.5, 54954, 54954.2, 54954.3, 54956.9, 54957, 54957.1, 54957.5, 54957.7, 54959, 54960.1, 54961, and 54962 of, and to add Sections 54952.1, 54952.2, 54953.6, and 54954.5 to, the Government Code, relating to open meetings.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 54925.1 is added to the Government Code, to read:

54925.1. As used in this chapter, "member of a legislative body of a local agency" includes, but is not limited to, any person elected to serve as a member of a legislative body who has not yet assumed the duties of office. That person shall conform his or her conduct to the requirements of this chapter and shall be treated for purposes of enforcement of this chapter as if he or she has already assumed office.

SEC. 2. Section 54952.2 is added to the Government Code, to read:

54952.2. (a) As used in this chapter, "meeting" includes all of the following:

(1) Any congregation of a majority of the members of a legislative body in the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.

(2) Any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body.

(b) Nothing in subdivision (a) shall impose the requirements of this chapter upon any of the following:

(1) Individual contacts or conversations between a member of a legislative body and any other person.

(2) The attendance of a majority of the members of a legislative body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body, provided that a majority of the members do not discuss among themselves business of a specified nature that is within the subject matter jurisdiction of the local agency. Nothing in this paragraph is intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a legislative body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(4) The attendance of a majority of the members at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

SEC. 3. Section 54952.7 of the Government Code is amended to read:

54952.7. A legislative body of a local agency may require that a copy of this chapter be given to each member of the legislative body

and any person elected to serve as a member of the legislative body who has not assumed the duties of office. An elected legislative body of a local agency may require that a copy of this chapter be given to each member of each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body.

SEC. 4. Section 54953 of the Government Code, as amended by Section 1 of Chapter 399 of the Statutes of 1988, is amended to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) Notwithstanding any other provision of law, the legislative body of a local agency may use video teleconferencing for the benefit of the public or the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The use of video teleconferencing, as authorized by this chapter, shall be limited to the receipt of public comment or testimony by the legislative body and to deliberations of the legislative body. If the legislative body of a local agency elects to use video teleconferencing, it shall post agendas at all video teleconference locations and adopt reasonable regulations to adequately protect the statutory or constitutional rights of the parties or the public appearing before the legislative body of a local agency. The term "video teleconference" shall mean a system which provides for both audio and visual participation between all members of the legislative body and the public attending a meeting or hearing at any video teleconference location.

SEC. 5. Section 54953.5 of the Government Code is amended to read:

54953.5. (a) Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings with an audio or video tape recorder or a still or motion picture camera in the absence of a reasonable finding by the legislative body of the local agency that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

(b) Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but, notwithstanding Section 34090, may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording shall be provided without charge on a tape recorder made available by the local agency.

SEC. 6. Section 54953.6 is added to the Government Code, to read:

54953.6. No legislative body shall prohibit or otherwise restrict the broadcast of its proceedings in the absence of a reasonable

finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.

SEC. 7. Section 54954 of the Government Code is amended to read:

54954. (a) The legislative body of a local agency shall provide, by ordinance, resolution, by-laws, or by whatever other rule is required for the conduct of business by that body, the time and place for holding regular meetings.

(b) Regular and special meetings of the legislative body shall be held within the boundaries of the territory over which the local agency exercises jurisdiction except to do any of the following:

(1) Otherwise comply with the state or federal law or court order.

(2) Inspect real or personal property which cannot be conveniently brought within the boundaries of the territory over which the local agency exercises jurisdiction.

(3) Participate in meetings or discussions of multiagency significance that are outside the boundaries of a local agency's jurisdiction. However, any meeting or discussion held pursuant to this subdivision shall take place within the jurisdiction of one of the participating local agencies and be noticed by all participating agencies as provided for in this chapter.

(4) Meet in the closest meeting facility if the local agency has no meeting facility within the boundaries of the territory over which the local agency exercises jurisdiction, or at the principal office of the local agency if that office is located outside the territory over which the agency exercises jurisdiction.

(5) Meet outside their immediate jurisdiction with elected or appointed officials of the United States or the State of California when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.

(6) Meet outside their immediate jurisdiction if the meeting takes place in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility.

(7) Visit the office of the local agency's legal counsel for a closed session on pending litigation held pursuant to Section 54956.9, when to do so would reduce legal fees or costs.

(c) Meetings of the governing board of a school district shall be held within the district except under the circumstances enumerated in subdivision (b), or to do either of the following:

(1) Attend a conference on nonadversarial collective bargaining techniques.

(2) Interview members of the public residing in another district with reference to the trustees' potential employment of the superintendent of that district.

(3) Interview a potential employee from another district.

(d) Meetings of a joint powers authority shall occur within the territory of at least one of its member agencies, or as provided in

subdivision (b). However, a joint powers authority which has members throughout the state may meet at any facility in the state which complies with the requirements of Section 54961.

(e) If, by reason of fire, flood, earthquake, or other emergency, it shall be unsafe to meet in the place designated, the meetings shall be held for the duration of the emergency at the place designated by the presiding officer of the legislative body or his or her designee in a notice to the local media that have requested notice pursuant to Section 54956, by the most rapid means of communication available at the time.

SEC. 8. Section 54954.2 of the Government Code is amended to read:

54954.2. (a) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative, or in response to questions posed by the public, members of a legislative body may ask a question for clarification, provide a reference to staff or other resources for factual information, or request staff to report back to the body at a subsequent meeting concerning any matter. Furthermore, a member of a legislative body, or the body itself, may take action to direct staff to place a matter of business of a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the legislative body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the

prior meeting the item was continued to the meeting at which action is being taken.

SEC. 9. Section 54954.3 of the Government Code is amended to read:

54954.3. (a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special meeting at which action is proposed to be taken on an item shall provide an opportunity for members of the public to directly address the legislative body concerning that item prior to action on the item.

(b) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

(c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

SEC. 10. Section 54954.5 is added to the Government Code, to read:

54954.5. For purposes of describing closed session items pursuant to Section 54954.2, the agenda may describe closed sessions as provided below. No legislative body or elected official shall be in violation of Section 54954.2 if the closed session items were described in substantial compliance with this section. Substantial compliance is satisfied by including the information provided below, irrespective of format.

(a) With respect to a closed session held pursuant to Section 54956.7:

LICENSE/PERMIT DETERMINATION

Applicant(s): (Specify number of applicants)

(b) With respect to every item of business to be discussed in closed session pursuant to Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Property: (Specify street address, or if no street address, the parcel number of other unique reference, of the real property under negotiation)

Negotiating parties: (Specify name of party (not agent))

Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)

(c) With respect to every item of business to be discussed in closed session pursuant to Section 54956.9:

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Name of case: (Specify by reference to claimant's name, names of parties, case or claim numbers)

or

Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9: (Specify number of potential cases)

Initiation of litigation pursuant to subdivision (c) of Section 54956.9: (Specify number of potential cases)

(d) With respect to every item of business to be discussed in closed session pursuant to Section 54956.95:

LIABILITY CLAIMS

Claimant: (Specify name unless unspecified pursuant to Section 54961)

Agency claimed against: (Specify name)

(e) With respect to every item of business to be discussed in closed session pursuant to Section 54957:

THREAT TO PUBLIC SERVICES OR FACILITIES

Consultation with: (Specify name of law enforcement agency and title of officer)

PUBLIC EMPLOYEE APPOINTMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

(No additional information is required in connection with a closed session to consider discipline, dismissal, or release)

(f) With respect to every item of business to be discussed in closed session pursuant to Section 54957.6:

CONFERENCE WITH LABOR NEGOTIATOR

Agency negotiator: (Specify name)

Employee organization: (Specify name of organization representing employee)

or

Unrepresented employee: (Specify position title of unrepresented employee who is the subject of the negotiations)

(g) With respect to closed sessions called pursuant to Section 54957.8:

CASE REVIEW/PLANNING

(h) With respect to every item of business discussed in closed session pursuant to Section 54962 and Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code:

REPORT INVOLVING TRADE SECRET

Discussion will concern: (Specify whether discussion will concern proposed new service, program, or facility)

Estimated date of public disclosure: (Specify month and year)

HEARINGS

Subject matter: (specify whether testimony/deliberation will concern staff privileges, report of medical audit committee, or report of quality assurance committee)

SEC. 11. Section 54956.9 of the Government Code is amended to read:

54956.9. Nothing in this chapter shall be construed to prevent a legislative body of a local agency, based on advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation.

For purposes of this chapter, all expressions of the lawyer-client privilege other than those provided in this section are hereby abrogated. This section is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this chapter.

For purposes of this section, "litigation" includes any adjudicatory proceedings, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing office, or arbitrator.

For purposes of this section, litigation shall be considered pending when any of the following circumstances exist:

(a) Litigation, to which the local agency is a party, has been initiated formally.

(b) (1) A point has been reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency.

(2) Based on existing facts and circumstances, the legislative body of the local agency is meeting only to decide whether a closed session is authorized pursuant to paragraph (1) of this subdivision.

For purposes of paragraphs (1) and (2), "existing facts and circumstances" shall consist only of one of the following:

(A) Facts and circumstances that might result in litigation against the agency but which the agency believes are not yet known to a potential plaintiff or plaintiffs, which facts and circumstances need not be disclosed.

(B) Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs, which facts or circumstances shall be

publicly stated on the agenda or announced.

(C) The receipt of a claim pursuant to the Tort Claims Act or some other written communication from a potential plaintiff threatening litigation, which claim or communication shall be available for public inspection pursuant to Section 54957.5.

(D) A statement made by a person in an open and public meeting threatening litigation made on a specific matter within the responsibility of the legislative body.

(E) A statement threatening litigation made by a person outside an open and public meeting made on a specific matter within the responsibility of the local agency so long as the official or employee of the legislative body receiving knowledge of the threat makes a contemporaneous or other record of the statement prior to the meeting which record shall be available for public inspection pursuant to Section 54957.5. The records so created need not identify the alleged victim of unlawful or tortious sexual conduct or anyone making the threat on their behalf, or identify a public employee who is the alleged perpetrator of any unlawful or tortious conduct upon which a threat of litigation is based, unless the identity of the person has been publicly disclosed.

(F) Nothing in this section shall require disclosure of written communications that are privileged and not subject to disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

(c) Based on existing facts and circumstances, the legislative body of the local agency has decided to initiate or is deciding whether to initiate litigation.

Prior to holding a closed session pursuant to this section, the legislative body of the local agency shall state on the agenda or publicly announce the subdivision of this section that authorizes the closed session. If the session is closed pursuant to subdivision (a), the body shall state the title of or otherwise specifically identify the litigation to be discussed, unless the body states that to do so would jeopardize the agency's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage. A local agency shall be considered to be a "party" or to have a "significant exposure to litigation" if an officer or employee of the local agency is a party or has significant exposure to litigation concerning prior or prospective activities or alleged activities during the course and scope of that office or employment, including litigation in which it is an issue whether an activity is outside the course and scope of the office or employment.

SEC. 12. Section 54957 of the Government Code is amended to read:

54957. Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions with the Attorney General, district attorney, sheriff, or chief of police, or their respective deputies, on matters posing a threat to

the security of public buildings or a threat to the public's right of access to public services or public facilities, or from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session. As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void. The legislative body also may exclude from that public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

For the purposes of this section, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of a legislative body, or other independent contractors. Nothing in this section shall limit local officials' ability to hold closed session meetings pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code. Closed sessions held pursuant to this section shall not include discussions of a local agency's available funds, funding priorities, or budget.

SEC. 13. Section 54957.1 of the Government Code is amended to read:

54957.1. (a) The legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:

(1) Approval of an agreement concluding real estate negotiations pursuant to Section 54956.8 shall be reported after the agreement is final as specified below:

(A) If its own approval renders the agreement final, the body shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with the other party to the negotiations, the local agency shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the local agency of its approval.

(2) Approval given to the body's legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of a consultation under Section 54956.9 shall be reported in open session at the public

meeting during which the closed session is held. The report shall identify, if known, the adverse party or parties and the substance of the litigation. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but shall specify that the direction to initiate or intervene in an action has been given and that the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize the agency's ability to effectuate service of process on one or more unserved parties or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(3) Approval given to the body's legal counsel of a settlement of pending litigation, as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final, as specified below:

(A) If the body accepts a settlement offer signed by the opposing party, the body shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final, and upon inquiry by any person, the local agency shall disclose the fact of that approval and identify the substance of the agreement.

(4) Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant.

(5) Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this paragraph shall identify the title of the position and specify any change in compensation. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the nonrenewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

(6) Approval of an agreement concluding labor negotiations pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. The report shall identify the item approved and the other party or parties to the negotiation.

(b) Reports that are required to be made pursuant to this section may be made orally or in writing. The legislative body shall provide to any person who has submitted a written request to the legislative body within 24 hours of the posting of the agenda, or to any person

who has made a standing request for all documentation as part of a request for notice of meetings pursuant to Section 54954.1 or 54956, if the requester is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session. If the action taken results in one or more substantive amendments to the related documents requiring retyping, the documents need not be released until the retyping is completed during normal business hours, provided that the presiding officer of the legislative body or his or her designee orally summarizes the substance of the amendments for the benefit of the document requester or any other person present and requesting the information.

(c) The documentation referred to in paragraph (b) shall be available to any person on the next business day following the meeting in which the action referred to is taken or, in the case of substantial amendments, when any necessary retyping is complete.

(d) Nothing in this section shall be construed to require that the legislative body approve actions not otherwise subject to legislative body approval.

(e) No action for injury to a reputational, liberty, or other personal interest may be commenced by or on behalf of any employee or former employee with respect to whom a disclosure is made by a legislative body in an effort to comply with this section.

SEC. 14. Section 54957.5 of the Government Code is amended to read:

54957.5. (a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available pursuant to Sections 6253 and 6256 without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7.

(b) Writings which are public records under subdivision (a) and which are distributed during a public meeting shall be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person.

(d) Nothing in this chapter shall be construed to prevent the legislative body of a local agency from charging a fee or deposit for a copy of a public record pursuant to Section 6257.

(e) This section shall not be construed to limit or delay the public's right to inspect any record required to be disclosed under the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1). Nothing in this chapter shall be construed to require a legislative body of a

local agency to place any paid advertisement or any other paid notice in any publication.

SEC. 15. Section 54957.7 of the Government Code is amended to read:

54957.7. (a) Prior to holding any closed session, the legislative body of the local agency shall disclose, in an open meeting, the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. In the closed session, the legislative body may consider only those matters covered in its statement. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law.

(b) After any closed session, the legislative body shall reconvene into open session prior to adjournment and shall make any disclosures required by Section 54957.1 of action taken in the closed session.

(c) The announcements required to be made in open session pursuant to this section may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcements.

SEC. 16. Section 54959 of the Government Code is amended to read:

54959. Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, with wrongful intent to deprive the public of information to which it is entitled under this chapter, is guilty of a misdemeanor.

SEC. 17. Section 54960 of the Government Code is amended to read:

54960. (a) The district attorney or any interested person may commence an action by mandamus, injunction or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to actions or threatened future action of the legislative body, or to determine the validity under the laws of this state or of the United States of any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members, or to compel the legislative body to tape record its closed sessions as hereafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 54956.7, 54956.8, 54956.9, 54956.95, 54957, or 54957.6, order the legislative body to tape record its closed sessions and preserve the tape recordings for the period and under the terms of security and confidentiality the court deems appropriate.

(c) (1) Each recording so kept shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recording.

(2) The tapes shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the tape is sought by either the district attorney or the plaintiff in a civil action pursuant to Section 54959, 54960, or 54960.1 alleging that a violation of this chapter has occurred in a closed session which has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with the appropriate court with notice to the governmental agency which has custody and control of the tape recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(B) The notice shall include, in addition to the items required by Section 1010 of the Code of Civil Procedure, all of the following:

(i) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the date and time of the meeting recorded, and the governmental agency which has custody and control of the recording.

(ii) An affidavit which contains specific facts indicating that a violation of the act occurred in the closed session.

(3) If the court, following a review of the motion, finds that there is good cause to believe that a violation has occurred, the court may review, in camera, the recording of that portion of the closed session alleged to have violated the act.

(4) If, following the in camera review, the court concludes that disclosure of a portion of the recording would be likely to materially assist in the resolution of the litigation alleging violation of this chapter, the court shall, in its discretion, make a certified transcript of the portion of the recording a public exhibit in the proceeding.

(5) Nothing in this section shall permit discovery of communications which are protected by the attorney-client privilege.

SEC. 18. Section 54960.1 of the Government Code is amended to read:

54960.1. (a) The district attorney or any interested person may commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of Section 54953, 54954.2, 54954.5, 54954.6, or 54956 is null and void under this section. Nothing in this chapter shall be construed to prevent a legislative body from curing or correcting an action challenged pursuant to this section.

(b) Prior to any action being commenced pursuant to subdivision (a), the district attorney or interested person shall make a demand of the legislative body to cure or correct the action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, or 54956. The demand shall be in writing and clearly describe the challenged action of the legislative body and nature of the alleged violation.

The written demand shall be made within 90 days from the date

the action was taken unless the action was taken in an open session but in violation of Section 54954.2, in which case the written demand shall be made within 30 days from the date the action was taken. Within 30 days of receipt of the demand, the legislative body shall cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct or inform the demanding party in writing of its decision not to cure or correct the challenged action. If the legislative body takes no action within the 30-day period, the inaction shall be deemed a decision not to cure or correct the challenged action, and the 15-day period to commence the action described in subdivision (a) shall commence to run the day after the 30-day period to cure or correct expires. Within 15 days of receipt of the written notice of the legislative body's decision to cure or correct, or not to cure or correct, or within 15 days of the expiration of the 30-day period to cure or correct, whichever is earlier, the demanding party shall be required to commence the action pursuant to subdivision (a) or thereafter be barred from commencing the action.

(c) An action taken that is alleged to have been taken in violation of Sections 54953, 54954.2, 54954.5, 54954.6, and 54956 shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in substantial compliance with Sections 54953, 54954.2, 54954.5, 54954.6, and 54956.

(2) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement thereto.

(3) The action taken gave rise to a contractual obligation, including a contract let by competitive bid other than compensation for services in the form of salary or fees for professional services, upon which a party has, in good faith and without notice of a challenge to the validity of the action, detrimentally relied.

(4) The action taken was in connection with the collection of any tax.

(5) Any person, city, city and county, county, district, or any agency or subdivision of the state alleging noncompliance with subdivision (a) of Section 54954.2, Section 54956, or Section 54956.5 because of any defect, error, irregularity, or omission in the notice given pursuant to those provisions had actual notice of the item of business at least 72 hours prior to the meeting at which the action was taken if the meeting was noticed pursuant to Section 54954.2, or 24 hours prior to the meeting at which the action was taken if the meeting was noticed pursuant to Section 54956, or prior to the meeting at which the action was taken if the meeting is held pursuant to Section 54956.5.

(d) During any action seeking a judicial determination pursuant to subdivision (a) if the court determines, pursuant to a showing by the legislative body that an action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, or 54956 has been

cured or corrected by a subsequent action of the legislative body, the action filed pursuant to subdivision (a) shall be dismissed with prejudice.

(e) The fact that a legislative body takes a subsequent action to cure or correct an action taken pursuant to this section shall not be construed or admissible as evidence of a violation of this chapter.

SEC. 19. Section 54961 of the Government Code is amended to read:

54961. (a) No legislative body of a local agency shall conduct any meeting in any facility that prohibits the admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, or sex, or which is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase. This section shall apply to every local agency as defined in Section 54951.

(b) No notice, agenda, announcement, or report required under this chapter need identify any victim or alleged victim of tortious sexual conduct or child abuse unless the identity of the person has been publicly disclosed.

SEC. 20. Section 54962 of the Government Code is amended to read:

54962. Except as expressly authorized by this chapter, or by Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code as they apply to hospitals, no closed session may be held by any legislative body of any local agency.

SEC. 21. Section 1461 is added to the Health and Safety Code, to read:

1461. Notwithstanding any other provisions of law, the board of directors of any hospital subject to this chapter may order that any hearings on the reports of hospital medical audit or quality assurance committees be held in closed session. An applicant or medical staff member whose staff privileges are the direct subject of a hearing may request a public hearing. Deliberations of the board of directors in connection with matters pertaining to these hearings may be held in closed session.

SEC. 22. This bill shall become operative only if Senate Bill 1140 and Senate Bill 36 of the 1993-94 Regular Session of the Legislature are chaptered and become operative.

SEC. 23. This act shall become operative on April 1, 1994.

SEC. 24. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

However, notwithstanding Section 17160 of the Government Code, if the Commission on State Mandates determines that this act

contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide costs of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

CHAPTER 1137

An act to amend Sections 54952.7, 54953, 54953.5, 54954, 54954.2, 54954.3, 54956.9, 54957, 54957.1, 54957.5, 54957.7, 54959, 54960, 54960.1, 54961, and 54962 of, and to add Sections 54952.1, 54952.2, 54953.6, and 54954.5 to, the Government Code, and to add Section 1461 to the Health and Safety Code, relating to open meetings.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 54952.1 is added to the Government Code, to read:

54952.1. As used in this chapter, "member of a legislative body of a local agency" includes, but is not limited to, any person elected to serve as a member of a legislative body who has not yet assumed the duties of office. That person shall conform his or her conduct to the requirements of this chapter and shall be treated for purposes of enforcement of this chapter as if he or she has already assumed office.

SEC. 2. Section 54952.2 is added to the Government Code, to read:

54952.2. (a) As used in this chapter, "meeting" includes all of the following:

(1) Any congregation of a majority of the members of a legislative body in the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.

(2) Any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body.

(b) Nothing in subdivision (a) shall impose the requirements of this chapter upon any of the following:

(1) Individual contacts or conversations between a member of a legislative body and any other person.

(2) The attendance of a majority of the members of a legislative body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the local agency. Nothing in this paragraph is intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a legislative body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(4) The attendance of a majority of the members at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

SEC. 3. Section 54952.7 of the Government Code is amended to read:

54952.7. A legislative body of a local agency may require that a copy of this chapter be given to each member of the legislative body and any person elected to serve as a member of the legislative body who has not assumed the duties of office. An elected legislative body of a local agency may require that a copy of this chapter be given to each member of each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body.

SEC. 4. Section 54953 of the Government Code, as amended by Section 1 of Chapter 399 of the Statutes of 1988, is amended to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) Notwithstanding any other provision of law, the legislative body of a local agency may use video teleconferencing for the benefit of the public or the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The use of video teleconferencing, as authorized by this chapter, shall be limited to the receipt of public comment or testimony by the legislative body and to deliberations of the legislative body. If the legislative body of a local agency elects to use video teleconferencing, it shall post agendas at all video teleconference locations and adopt reasonable regulations to adequately protect the statutory or constitutional

rights of the parties or the public appearing before the legislative body of a local agency. The term "video teleconference" shall mean a system which provides for both audio and visual participation between all members of the legislative body and the public attending a meeting or hearing at any video teleconference location.

(c) No legislative body shall take action by secret ballot, whether preliminary or final.

SEC. 5. Section 54953.5 of the Government Code is amended to read:

54953.5. (a) Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings with an audio or video tape recorder or a still or motion picture camera in the absence of a reasonable finding by the legislative body of the local agency that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

(b) Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but, notwithstanding Section 34090, may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording shall be provided without charge on a tape recorder made available by the local agency.

SEC. 6. Section 54953.6 is added to the Government Code, to read:

54953.6. No legislative body shall prohibit or otherwise restrict the broadcast of its proceedings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.

SEC. 7. Section 54954 of the Government Code is amended to read:

54954. (a) The legislative body of a local agency shall provide, by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body, the time and place for holding regular meetings.

(b) Regular and special meetings of the legislative body shall be held within the boundaries of the territory over which the local agency exercises jurisdiction except to do any of the following:

(1) Otherwise comply with the state or federal law or court order.

(2) Inspect real or personal property which cannot be conveniently brought within the boundaries of the territory over which the local agency exercises jurisdiction.

(3) Participate in meetings or discussions of multiagency significance that are outside the boundaries of a local agency's jurisdiction. However, any meeting or discussion held pursuant to this subdivision shall take place within the jurisdiction of one of the

participating local agencies and be noticed by all participating agencies as provided for in this chapter.

(4) Meet in the closest meeting facility if the local agency has no meeting facility within the boundaries of the territory over which the local agency exercises jurisdiction, or at the principal office of the local agency if that office is located outside the territory over which the agency exercises jurisdiction.

(5) Meet outside their immediate jurisdiction with elected or appointed officials of the United States or the State of California when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.

(6) Meet outside their immediate jurisdiction if the meeting takes place in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility.

(7) Visit the office of the local agency's legal counsel for a closed session on pending litigation held pursuant to Section 54956.9, when to do so would reduce legal fees or costs.

(c) Meetings of the governing board of a school district shall be held within the district except under the circumstances enumerated in subdivision (b), or to do either of the following:

(1) Attend a conference on nonadversarial collective bargaining techniques.

(2) Interview members of the public residing in another district with reference to the trustees' potential employment of the superintendent of that district.

(3) Interview a potential employee from another district.

(d) Meetings of a joint powers authority shall occur within the territory of at least one of its member agencies, or as provided in subdivision (b). However, a joint powers authority which has members throughout the state may meet at any facility in the state which complies with the requirements of Section 54961.

(e) If, by reason of fire, flood, earthquake, or other emergency, it shall be unsafe to meet in the place designated, the meetings shall be held for the duration of the emergency at the place designated by the presiding officer of the legislative body or his or her designee in a notice to the local media that have requested notice pursuant to Section 54956, by the most rapid means of communication available at the time.

SEC. 8. Section 54954.2 of the Government Code is amended to read:

54954.2. (a) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative, or in response to questions posed by the public, members of a legislative body may ask a question for clarification, provide a reference to staff or other resources for factual information, or request staff to report back to the body at a subsequent meeting concerning any matter. Furthermore, a member of a legislative body, or the body itself, may take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the legislative body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

SEC. 9. Section 54954.3 of the Government Code is amended to read:

54954.3. (a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special

meeting at which action is proposed to be taken on an item shall provide an opportunity for members of the public to directly address the legislative body concerning that item prior to action on the item.

(b) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

(c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

SEC. 10. Section 54954.5 is added to the Government Code, to read:

54954.5. For purposes of describing closed session items pursuant to Section 54954.2, the agenda may describe closed sessions as provided below. No legislative body or elected official shall be in violation of Section 54954.2 if the closed session items were described in substantial compliance with this section. Substantial compliance is satisfied by including the information provided below, irrespective of its format.

(a) With respect to a closed session held pursuant to Section 54956.7:

LICENSE/PERMIT DETERMINATION

Applicant(s): (Specify number of applicants)

(b) With respect to every item of business to be discussed in closed session pursuant to Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Property: (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation)

Negotiating parties: (Specify name of party (not agent))

Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)

(c) With respect to every item of business to be discussed in closed session pursuant to Section 54956.9:

CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION

Name of case: (Specify by reference to claimant's name, names of parties, case or claim numbers)

or

Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)

CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9: (Specify number of potential cases)

Initiation of litigation pursuant to subdivision (c) of Section

54956.9: (Specify number of potential cases)

(d) With respect to every item of business to be discussed in closed session pursuant to Section 54956.95:

LIABILITY CLAIMS

Claimant: (Specify name unless unspecified pursuant to Section 54961)

Agency claimed against: (Specify name)

(e) With respect to every item of business to be discussed in closed session pursuant to Section 54957:

THREAT TO PUBLIC SERVICES OR FACILITIES

Consultation with: (Specify name of law enforcement agency and title of officer)

PUBLIC EMPLOYEE APPOINTMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

(No additional information is required in connection with a closed session to consider discipline, dismissal, or release)

(f) With respect to every item of business to be discussed in closed session pursuant to Section 54957.6:

CONFERENCE WITH LABOR NEGOTIATOR

Agency negotiator: (Specify name)

Employee organization: (Specify name of organization representing employee)

or

Unrepresented employee: (Specify position title of unrepresented employee who is the subject of the negotiations)

(g) With respect to closed sessions called pursuant to Section 54957.8:

CASE REVIEW/PLANNING

(h) With respect to every item of business discussed in closed session pursuant to Section 54962 and Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code:

REPORT INVOLVING TRADE SECRET

Discussion will concern: (Specify whether discussion will concern proposed new service, program, or facility)

Estimated date of public disclosure: (Specify month and year)

HEARINGS

Subject matter: (Specify whether testimony/deliberation will concern staff privileges, report of medical audit committee, or report of quality assurance committee)

SEC. 11. Section 54956.9 of the Government Code is amended to read:

54956.9. Nothing in this chapter shall be construed to prevent a legislative body of a local agency, based on advice of its legal counsel,

from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation.

For purposes of this chapter, all expressions of the lawyer-client privilege other than those provided in this section are hereby abrogated. This section is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this chapter.

For purposes of this section, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

For purposes of this section, litigation shall be considered pending when any of the following circumstances exist:

(a) Litigation, to which the local agency is a party, has been initiated formally.

(b) (1) A point has been reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency.

(2) Based on existing facts and circumstances, the legislative body of the local agency is meeting only to decide whether a closed session is authorized pursuant to paragraph (1) of this subdivision.

For purposes of paragraphs (1) and (2), "existing facts and circumstances" shall consist only of one of the following:

(A) Facts and circumstances that might result in litigation against the agency but which the agency believes are not yet known to a potential plaintiff or plaintiffs, which facts and circumstances need not be disclosed.

(B) Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs, which facts or circumstances shall be publicly stated on the agenda or announced.

(C) The receipt of a claim pursuant to the Tort Claims Act or some other written communication from a potential plaintiff threatening litigation, which claim or communication shall be available for public inspection pursuant to Section 54957.5.

(D) A statement made by a person in an open and public meeting threatening litigation on a specific matter within the responsibility of the legislative body.

(E) A statement threatening litigation made by a person outside an open and public meeting on a specific matter within the responsibility of the legislative body so long as the official or employee of the local agency receiving knowledge of the threat makes a contemporaneous or other record of the statement prior to the meeting, which record shall be available for public inspection pursuant to Section 54957.5. The records so created need not identify

the alleged victim of unlawful or tortious sexual conduct or anyone making the threat on their behalf, or identify a public employee who is the alleged perpetrator of any unlawful or tortious conduct upon which a threat of litigation is based, unless the identity of the person has been publicly disclosed.

(F) Nothing in this section shall require disclosure of written communications that are privileged and not subject to disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

(c) Based on existing facts and circumstances, the legislative body of the local agency has decided to initiate or is deciding whether to initiate litigation.

Prior to holding a closed session pursuant to this section, the legislative body of the local agency shall state on the agenda or publicly announce the subdivision of this section that authorizes the closed session. If the session is closed pursuant to subdivision (a), the body shall state the title of or otherwise specifically identify the litigation to be discussed, unless the body states that to do so would jeopardize the agency's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

A local agency shall be considered to be a "party" or to have a "significant exposure to litigation" if an officer or employee of the local agency is a party or has significant exposure to litigation concerning prior or prospective activities or alleged activities during the course and scope of that office or employment, including litigation in which it is an issue whether an activity is outside the course and scope of the office or employment.

SEC. 12. Section 54957 of the Government Code is amended to read:

54957. Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions with the Attorney General, district attorney, sheriff, or chief of police, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or public facilities, or from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session. As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in

the closed session shall be null and void. The legislative body also may exclude from that public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

For the purposes of this section, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of a legislative body or other independent contractors. Nothing in this section shall limit local officials' ability to hold closed session meetings pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code. Closed sessions held pursuant to this section shall not include discussions of a local agency's available funds, funding priorities, or budget.

SEC. 13. Section 54957.1 of the Government Code is amended to read:

54957.1. (a) The legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:

(1) Approval of an agreement concluding real estate negotiations pursuant to Section 54956.8 shall be reported after the agreement is final, as specified below:

(A) If its own approval renders the agreement final, the body shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with the other party to the negotiations, the local agency shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the local agency of its approval.

(2) Approval given to the body's legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of a consultation under Section 54956.9 shall be reported in open session at the public meeting during which the closed session is held The report shall identify, if known, the adverse party or parties and the substance of the litigation. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but shall specify that the direction to initiate or intervene in an action has been given and that the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize the agency's ability to effectuate service of process on one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(3) Approval given to the body's legal counsel of a settlement of pending litigation, as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported

after the settlement is final, as specified below:

(A) If the body accepts a settlement offer signed by the opposing party, the body shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final, and upon inquiry by any person, the local agency shall disclose the fact of that approval, and identify the substance of the agreement.

(4) Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant.

(5) Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this paragraph shall identify the title of the position and specify any change in compensation. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the nonrenewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

(6) Approval of an agreement concluding labor negotiations pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. The report shall identify the item approved and the other party or parties to the negotiation.

(b) Reports that are required to be made pursuant to this section may be made orally or in writing. The legislative body shall provide to any person who has submitted a written request to the legislative body within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings pursuant to Section 54954.1 or 54956, if the requester is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session. If the action taken results in one or more substantive amendments to the related documents requiring retyping, the documents need not be released until the retyping is completed during normal business hours, provided that the presiding officer of the legislative body or his or her designee orally summarizes the substance of the amendments for the benefit of the document requester or any other person present and requesting the information.

(c) The documentation referred to in paragraph (b) shall be available to any person on the next business day following the meeting in which the action referred to is taken or, in the case of

substantial amendments, when any necessary retyping is complete.

(d) Nothing in this section shall be construed to require that the legislative body approve actions not otherwise subject to legislative body approval.

(e) No action for injury to a reputational, liberty, or other personal interest may be commenced by or on behalf of any employee or former employee with respect to whom a disclosure is made by a legislative body in an effort to comply with this section.

SEC. 14. Section 54957.5 of the Government Code is amended to read:

54957.5. (a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available pursuant to Sections 6253 and 6256 without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7.

(b) Writings which are public records under subdivision (a) and which are distributed during a public meeting shall be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person.

(c) Nothing in this chapter shall be construed to prevent the legislative body of a local agency from charging a fee or deposit for a copy of a public record pursuant to Section 6257.

(d) This section shall not be construed to limit or delay the public's right to inspect any record required to be disclosed under the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1). Nothing in this chapter shall be construed to require a legislative body of a local agency to place any paid advertisement or any other paid notice in any publication.

SEC. 15. Section 54957.7 of the Government Code is amended to read:

54957.7. (a) Prior to holding any closed session, the legislative body of the local agency shall disclose, in an open meeting, the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. In the closed session, the legislative body may consider only those matters covered in its statement. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law.

(b) After any closed session, the legislative body shall reconvene into open session prior to adjournment and shall make any disclosures required by Section 54957.1 of action taken in the closed session.